

**§ 982.245 Free and restricted percentages—1997–98 marketing year.**

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 1997–98 marketing year shall be 10 and 90 percent, respectively.

(b) On April 30, 1998, the final free and restricted percentages for merchantable hazelnuts for the 1997–98 marketing year shall be 12 and 88 percent, respectively.

Dated: January 15, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 997 and 998**

[Docket No. FV97–998–3 FIR]

**Domestically Produced Peanuts Handled by Persons Not Subject to Peanut Marketing Agreement No. 146; 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, without change, an interim final rule which decreased the assessment rate for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (agreement) for the 1997–98 and subsequent crop years. Authorization to assess peanut handlers who have signed the agreement enables the Committee to incur expenses that are reasonable and necessary to administer the program. The Department is also required to impose an administrative assessment on farmers' stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to the agreement. Therefore, the assessment rate established under the agreement also must be applied to all non-signatory handlers. The 1997–98 crop year began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** February 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Tammie Bryant or Jim Wendland, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereafter referred to as the "Act"; and under Marketing Agreement No. 146 (7 CFR part 998) regulating the quality of domestically produced peanuts.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31(c) and (d), are subject to assessments. It is intended that the assessment rates issued herein will be applicable to all assessable peanuts beginning July 1, 1997, and continuing 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This rule adopts as a final rule, without change, the provisions of an interim final rule, which decreased the assessment rate established for the Committee for the 1997–98 and subsequent fiscal years from \$0.70 to \$0.35 per ton.

The agreement provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Funds to administer the agreement program are derived from signatory handler assessments. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs of goods and services in their local areas and, thus, are in a position to formulate an appropriate budget and assessment rate. The

assessment rate is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. 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.

For the 1997–98 and subsequent crop years, the Committee recommended and the Department approved, an assessment rate that would continue in effect from crop year to crop year indefinitely unless modified, suspended, or terminated by the Secretary, upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 30, 1997, and unanimously recommended 1997–98 administrative expenditures of \$525,000 and an administrative assessment rate of \$0.35 per net ton of assessable farmers' stock peanuts received or acquired by handlers. The Committee also voted not to recommend an assessment rate for indemnification for handler losses due to aflatoxin contamination. Adequate funds are included in the Committee's indemnification reserve for such expenses during the 1997–98 crop year. In comparison, last year's budgeted administrative expenditures were \$1,025,500. Major expenditures recommended by the Committee for the 1997–98 crop year compared with those budgeted for 1996–97 (in parentheses) include: \$55,000 for executive salaries (\$112,450), \$50,000 for clerical salaries (\$131,500), \$125,000 for field representatives (3 compliance officers rather than 7 fieldmen) salaries (\$296,700), \$18,000 for payroll taxes (\$42,000), \$65,000 for employee benefits (\$148,000), \$40,000 for Committee members travel (\$40,000), \$5,000 for staff travel (\$5,000), \$60,000 for field representatives travel (\$110,000), \$9,800 for insurance and bonds (\$9,800), \$19,000 for office rent and parking (\$46,200), \$10,000 for office supplies and stationery (\$14,000), \$10,400 for postage and mailing (\$13,200), \$11,000 for telephone and telegraph (\$15,000), \$6,000 for repairs and maintenance agreements (\$6,000), \$10,400 for the audit fee (\$10,400), and \$15,800 for the contingency reserve (\$10,250).

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. Farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in § 998.31(c) and

(d), are subject to the assessments. Farmers stock peanuts received or acquired by non-signatory handlers by law are subject to the same assessment rate. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Receipts for the year under the agreement are estimated at 1,500,000 tons, which should provide \$525,000 in assessment income. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the agreement. The remaining 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

The Act provides for mandatory assessment of farmers' stock peanuts acquired by non-signatory peanut handlers. Section 608b of the Act specifies that: (1) Any assessment (except indemnification assessments) imposed under the agreement on signatory handlers shall also apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although these assessment rates are effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997-98 budget was reviewed and approved by the Department on September 17, 1997, and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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. There are approximately 80 peanut handlers who are subject to regulation under the agreement or the non-signer program and approximately 25,000 peanut producers in the 16-State production area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. Approximately 25 percent of the signatory handlers, virtually all of the non-signer handlers, and most of the producers may be classified as small entities.

This rule continues in effect the assessment rate established for the Committee and collected from handlers for the 1997-98 and subsequent crop years of \$0.35 per net ton. The assessment rate is \$0.35 less than the rate previously in effect.

The Committee discussed alternatives to this rule, including alternative expenditure levels. The Committee also discussed the alternative of not decreasing the assessment rate. However, it decided against this course of action. The peanut industry has been in a state of economic decline since 1991, with the Committee attempting to cut costs wherever possible. The Committee's budget for 1997-98 is \$525,000; this is \$500,500 less than the amount budgeted for 1996-97. Based on an estimated 1,500,000 net tons of assessable peanuts, income derived from handler assessments during 1997-98 will be adequate to cover budgeted expenses.

This rule continues in effect the assessment obligation imposed on handlers. While this action will impose some costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the agreement. This administrative assessment is required to also be applied uniformly to all non-signatory handlers and should be of benefit to all. In addition, the Committee's meeting was widely publicized throughout the peanut industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 30, 1997, meeting was a public meeting and all entities,

both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large peanut handlers. As with all Federal marketing agreement and order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on September 17, 1997 (62 FR 48749). A copy of the interim final rule was also made available on the Internet by the Office of the Federal Register. The comment period ended October 17, 1997, and no comments were received.

After consideration of all relevant matter presented, including the information and recommendation 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.

#### **List of Subjects**

##### *7 CFR Part 997*

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

##### *7 CFR Part 998*

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

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

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

Accordingly, the interim final rule amending 7 CFR parts 997 and 998 which was published at 62 FR 48749 on September 17, 1997, is adopted as a final rule without change.

Dated: January 15, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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