

economic impact on a substantial number of small entities.

Pursuant to authority contained in section 958.51 of the marketing order, the Idaho-Eastern Oregon Onion Committee (Committee), at its November 16, 1995, meeting, unanimously recommended changing the minimum and maximum sizes set forth in section 958.328(a)(3)(ii) of the handling regulation. For this size category, the Committee recommended increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for all onions except white or red varieties produced and handled in the production area. Yellow onions are the major variety produced in the regulated production area.

This final rule modifies a marketing order size category that is recognized by the onion industry as "repacker" or "prepacker" size onions. Onions in this size category are generally packed and shipped in 50-pound sacks for later repacking into various consumer packs.

The U.S. Standards for Grades of Onions were recently amended to include a classification for "repacker/prepacker" size onions (60 FR 46976, September 8, 1995), effective October 10, 1995. Section 51.2836 of the U.S. Standards defines such onions as those ranging from a minimum diameter of 1¾ inches to a maximum diameter of 3 inches. The U.S. Standards also specify that not more than 5 percent of the onions in a lot may be undersized and that not more than 10 percent may be oversized.

Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. The Committee reports that the current maximum diameter of 2½ inches for this size category is too restrictive and has resulted in a high percentage of onions being packed in a different category due to oversize. This has resulted in fewer "repacker/prepacker" size onions being available for market. With an increase in the maximum allowable diameter to 2¾ inches for "repacker/prepacker" size onions, the Committee expects the quantity of such onions available for market to increase. The Committee recommended an increase to 2¾ inches rather than 3 inches, the upper limit of the size range specified in the U.S. Standards, because the smaller size is more suitable for this industry and its customers. In addition to the increase in the maximum diameter for onions in this category, the Committee recommended that the minimum diameter be increased from 1½ inches

to 1¾ inches to be the same as the recently amended U.S. Standards.

Any costs to handlers and producers attributable to this regulation are expected to be offset by the benefits derived from improved returns. The modification increases the volume of onions marketed in this size category, and is expected to result in higher returns for producers and handlers.

Section 8e of the Act requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in more direct competition with the imported commodity. Imports must then meet the requirements established for the particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order 958 and Marketing Order 959, which regulates the handling of onions grown in South Texas. Pursuant to section 8e of the Act, the current import regulation (7 CFR 980.117) specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulation specifies that imported onions must meet the requirements of Marketing Order 958 during the June 5 through March 9 period each season (61 FR 25556; May 22, 1996), and Marketing Order 959 through the remainder of the year. The current import regulation also provides that all varieties of imported onions, except for white varieties, must be a minimum of 1½ inches in diameter. This final rule will change the import requirements for the period June 5 through March 9 each marketing year to provide that all varieties of onions except white or red varieties shall be a minimum of 1¾ inches in diameter. While no changes are required in the language of § 980.117, all imported onions other than white or red varieties will be required to meet the minimum size requirement herein.

The proposed rule concerning this action was published in the May 6, 1996, Federal Register (61 FR 20188), with a 30-day comment period ending June 5, 1996. No comments were received.

After consideration of all relevant matters 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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action will provide handlers more marketing flexibility in meeting buyer preferences; (2) the 1996 crop harvest and shipments are expected to begin in August and this action needs to be effective promptly to allow handlers to make their marketing plans; and (3) interested persons were invited to submit written comments and no comments were submitted.

#### List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is hereby amended as follows:

#### **PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON**

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.328 is amended by revising paragraph (a)(3)(ii) to read as follows:

#### **§ 958.328 Handling Regulation.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(ii) U.S. No. 1, 1¾ inches minimum to 2¾ maximum diameter; or

\* \* \* \* \*

Dated: June 28, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–17197 Filed 7–5–96; 8:45 am]

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**7 CFR Parts 997 and 998****[Docket No. FV96-998-2IFR]****Assessment Rate for Domestically Produced Peanuts Handled by Persons Not Subject to Peanut Marketing Agreement No. 146 and for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule establishes an assessment rate for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (agreement) for the 1996-97 and subsequent crop years. The Committee is responsible for local administration of the marketing agreement which regulates the handling of peanuts grown in 16 States. 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. Public Law 103-66 requires the Department of Agriculture (Department) 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, this same assessment rate established under the agreement will apply to all non-signatory handlers.

**DATES:** Effective on July 1, 1996. Comments received by August 7, 1996, 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 in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX 202-720-5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Program Assistant, 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, FAX 202-720-5698, or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 2276, Winter Haven, FL 33883-2276, telephone 941-299-4770, FAX 941-299-5169.

**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), and as further amended December 12, 1989, hereinafter referred to as the "Act"; public Law 101-220, section 4(1), (2), 103 Stat. 1878, December 12, 1989; Public Law 103-66, section 8b(b)(1), 107 Stat. 312, August 10, 1993; and under Marketing Agreement 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 12778, 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, 1996, 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.

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.

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. Also, there are approximately 47,000 producers of peanuts in the 16 States covered under the agreement and approximately 32 handlers subject to regulation 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 and the non-

signatory handlers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

The peanut marketing 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 peanut agreement program are paid to the Committee and 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 for 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.

The Committee met on March 19, 1996, and unanimously recommended 1996-97 administrative expenditures of \$1,025,500 and an administrative assessment rate of \$0.70 per net ton of assessable farmers' stock peanuts received or acquired by handlers. The Committee met again on May 23, 1996, and with 17 favorable votes and one abstention 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 1996-97 crop year. In comparison, last year's budgeted administrative expenditures were \$1,067,500. The assessment rate of \$0.70 is the same as last year's initially established rate. An interim final rule has been published on June 13, 1996 (61 FR 29926) increasing last year's administrative assessment rate to \$0.83 per ton.

Major expenditures recommended by the Committee for the 1996-97 year include \$112,450 for executive salaries, \$131,500 for clerical salaries, \$296,700 for field representatives salaries, \$42,000 for payroll taxes, \$148,000 for employee benefits, \$40,000 for committee members travel, \$5,000 for staff travel, \$110,000 for field representatives travel, \$9,800 for insurance and bonds, \$46,200 for office rent and parking, \$14,000 for office supplies and stationery, \$13,200 for postage and mailing, \$15,000 for

telephone and telegraph, \$6,000 for repairs and maintenance agreements, \$10,400 for the audit fee, and \$10,250 for the contingency reserve. Budgeted expenses for these items in 1995-96 were \$145,051, \$138,856, \$304,344, \$44,000, \$148,000, \$40,000, \$5,000, \$110,000, \$9,500, \$44,360, \$14,000, \$13,200, \$15,000, \$6,000, \$10,400, and \$4,789, respectively.

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 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 the assessments. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Peanut shipments for the year under the agreement are estimated at 1,465,000 tons, which should provide \$1,025,500 in assessment income. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the agreement.

Public Law 101-220 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.

Public Law 103-66 (107 Stat. 312) 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.

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. This administrative assessment is required by law to be applied uniformly to all non-signatory handlers and should be of benefit to all. Therefore, the AMS has

determined that this rule will not have a significant economic impact on a substantial number of small entities.

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 1996-97 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

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.

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 action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) Public Law 103-66 requires the Department to impose an administrative assessment on peanuts received or acquired for the account of non-signatory handlers; (3) the 1996-97 crop year begins on July 1, 1996, and the marketing agreement and Public Law 103-66 require that the rate of assessment for each crop year apply to all peanuts handled during such crop year; (4) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (5) this interim final rule

provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### 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.

For the reasons set forth in the preamble, 7 CFR parts 997 and 998 are amended as follows:

1. The authority citation for 7 CFR parts 997 and 998 continues to read as follows:

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

Note: These amendments will appear in the Code of Federal Regulations.

#### PART 997—[AMENDED]

2. In part 997, a new undesignated center heading, Assessment Rates, and § 997.101 are added to read as follows:

##### Assessment Rates

###### § 997.101 Assessment rate.

On and after July 1, 1996, an administrative assessment rate of \$0.70 per net ton of assessable farmers stock peanuts received or acquired by each non-signatory first handler is established for peanuts.

#### PART 998—[AMENDED]

3. In part 998, a new undesignated center heading, Assessment Rates, and § 998.409 are added to read as follows:

##### Subpart—Assessment Rates

###### § 998.409 Assessment rate.

On and after July 1, 1996, an administrative assessment rate of \$0.70 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31 (c) and (d) is established for handlers signatory to the agreement. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

Dated: June 28, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

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