supplies in light of existing market conditions.

Revision of Minimum Size Requirements for Grapefruit

Minimum size requirements for grapefruit are in effect under § 906.365 of the order's rules and regulations. During the period November 16 through January 31 each season, grapefruit must be at least pack size 96, with a minimum diameter of 3$^{9}/_{16}$ inches. At other times, grapefruit that is pack size 112 (with a minimum diameter of 3$^{5}/_{16}$ inches), may be shipped if it grades at least U.S. No. 1. Otherwise, the minimum grade requirement for grapefruit is Texas Choice. The smaller fruit is subject to a higher grade requirement because experience indicates that a market exists for this smaller fruit only if it meets a higher quality standard.

This final rule provides that pack size 112 grapefruit (if it grades at least U.S. No. 1) may be shipped throughout the entire season. This has been done in recent seasons. The Texas citrus industry has found that there is a market for this smaller grapefruit, particularly in juice bars, health food stores, and other types of retail outlets that use smaller fruit for juicing. In addition, some markets, such as Canada, prefer smaller fruit.

Also, as previously indicated, drought conditions can lead to an abundance of smaller sizes. Such conditions currently exist in the Lower Rio Grande Valley in Texas. The expected small sized grapefruit, which cannot be marketed profitably in processing outlets, will be made available to meet fresh market needs through this rule. This action is expected to result in improved grower returns.

Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 will enable Texas grapefruit handlers to meet market needs and compete with similar size grapefruit expected to be shipped from Florida.

These changes in pack and size requirements for Texas oranges and grapefruit are intended to broaden the range of sizes and increase the amount of fruit available to consumers and increase grower returns. An alternative to this rule is to leave the current regulations in place. However, that would result in more of the larger oranges and grapefruit and the smaller grapefruit going to processors, and less fruit going to the more lucrative fresh market, which yields higher returns to growers.

In the interim final rule, a conforming change to all references to ''Table I'' of paragraph (a)(2)(i)(c) of § 906.340 was inadvertently omitted. The interim final rule did not specifically request that all references to ''Table I'' be revised to read ''Table II.'' The final rule will be modified by revising the phrase ''Table I'' each time it appears to read ''Table II.''

After consideration of all relevant material presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, with modification, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 61 FR 43139 on August 21, 1996, is adopted as a final rule with the following change:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 906.340 [Amended]

2. In § 906.340, paragraph (a)(2)(i)(c), the phrase ''Table I'' is revised to read ''Table II'' each time it appears.

Dated: November 15, 1996.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–30033 Filed 11–22–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 997 and 998

[Docket No. FV96–998–2 FIR]

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: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that established 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 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 also must be applied to all non-signatory handlers.

EFFECTIVE DATE: Effective on July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–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. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–2491, FAX 202–720–5698.

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 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, 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 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 area 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 was published on June 13, 1996 (61 FR 29926) increasing last year's administrative assessment rate to $0.83 per ton.

The finalization of that rule was published on August 20, 1996 (61 FR 42993).

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 farmers' 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.

An interim final rule regarding this action was published in the July 8, 1996, issue of the Federal Register (61 FR 35594). That interim final rule added §§ 997.101 and 998.409 to establish assessment rates for the Committee and non-signatory handlers. That rule provided that interested persons could file comments through August 7, 1996. No comments were received.

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 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 Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) Pub. L. 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 began on July 1, 1996, and the marketing agreement and Pub. L. 103–66 require that the rate of assessment for the crop year apply to all peanuts handled during the 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 budget actions issued in past years; and (5) an interim final rule was published on this action which provided a 30-day comment period, and no comments were received.

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.

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

Accordingly, the interim final rule amending 7 CFR parts 997 and 998 which was published at 61 FR 35594 on July 8, 1996, is adopted as a final rule without change.

Dated: November 19, 1996.

Sharon Bomer Lauritsen,

Acting Director Fruit and Vegetable Division.

[FR Doc. 96–30035 Filed 11–22–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1748–96; AG Order No. 2063–96]

RIN 1115–AE27

Periods of Lawful Temporary Resident Status and Lawful Permanent Resident Status To Establish Seven Years of Lawful Domicile

AGENCY: Immigration and Naturalization Service (INS), Executive Office for Immigration Review (EOIR), Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends Department of Justice regulations that limit discretion to grant an application for relief under section 212(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(c), by expanding the class of aliens eligible for section 212(c) relief. This interim rule allows an alien who has adjusted to lawful permanent resident status pursuant to section 245A, 8 U.S.C. 1255a, or section 210, 8 U.S.C. 1160, of the Act to use the combined period of his or her status as a lawful temporary resident and lawful permanent resident to establish seven (7) years of lawful domicile in the United States for purposes of eligibility for section 212(c) relief. This interim rule will provide uniformity between the regulation and case law.

DATES: This interim rule is effective November 25, 1996. Written comments must be submitted on or before December 26, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attention: Public Comment Clerk. To ensure proper handling, please reference INS number 1748–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470; David M. Dixon, Chief Appellate Counsel, Immigration and Naturalization Service, Suite 309, 5113 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756–6257.

SUPPLEMENTARY INFORMATION: Under recent case law, an alien who has acquired lawful permanent resident status under section 245A of the Act may accrue the seven (7) years of lawful domicile required for purposes of section 212(c) relief from the date of his or her application for temporary resident status. *See Robles* v. *INS,* 58 F.3d 1355 (9th Cir. 1995); *Avelar-Cruz* v. *INS,* 58 F.3d 338 (7th Cir. 1995); *Castellon-Contreras* v. *INS,* 45 F.3d 149 (7th Cir. 1995). The current regulation allows an alien to apply for section 212(c) relief only if he or she has established at least seven consecutive years of lawful permanent resident status immediately prior to filing the application *See* 8 CFR 212.3(f)(2). The Board of Immigration Appeals (BIA) has determined that, in cases arising in the Ninth Circuit, an alien may use the period of temporary resident status to establish the requisite seven years. *See In re Carlos Cazares-Alvarez,* Interim Decision 3262 (BIA 1996). However, in cases arising in circuits without such a temporary resident status rule, the BIA has determined that the current regulation requires seven years of lawful permanent resident status. *See In re Hector Ponce de Leon-Ruiz,* Interim Decision 3261 (BIA 1996). The BIA has referred these cases to the Attorney General pursuant to 8 CFR 3.1(h)(1)(ii) to resolve the issue. The issue raised in *White* v. *INS,* 75 F.3d 213 (5th Cir. 1996) (whether 8 CFR 212.3(f)(2) is consistent with 8 U.S.C. 1182(c) and therefore is entitled to deference), has been addressed and rendered moot by section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009 (September 30, 1996) (repealing section 212(c) and substituting other relief), effective April 1, 1997, codified at section 240A of the Immigration and Nationality Act as amended. The *White* court computed the years of lawful unrelinquished domicile (including the years of lawful temporary resident status) rather than lawful permanent residence in determining eligibility for relief.

This interim rule will permit an alien to demonstrate lawful domicile for section 212(c) relief purposes by combining his or her status as a lawful temporary resident and as a lawful permanent resident under section 245A or section 210 of the Act. This rule,