

Rules and Regulations

Federal Register

Vol. 63, No. 209

Thursday, October 29, 1998

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 997 and 998

[Docket Nos. FV98-997-1 FIR and FV98-998-1 FIR]

Domestically Produced Peanuts; Decreased Assessment Rate

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 which decreased the administrative assessment rate established for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (Agreement) for the 1998-99 and subsequent crop years from \$0.35 to \$0.33 per net ton of assessable peanuts. 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 Agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (Act). The Act also requires the Department to impose the same administrative assessment rate on assessable peanuts received or acquired by handlers who have not signed the Agreement. The 1998-1999 crop year covers the period July 1 through June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Wendland or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202)

205-6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with marketing agreements and orders for fruits, vegetables, and speciality crops, by contacting Jay Guerber, also at the above address, telephone, and fax number, or E-mail: Jay_N_Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

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", under Marketing Agreement No. 146 (7 CFR part 998), and under the Peanut Non-Signer Program (7 CFR part 997). The marketing agreement and non-signer program, and the regulations issued thereunder regulate 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 the same assessment rate. It is intended that the assessment rates finalized herein will be applicable to all assessable peanuts beginning July 1, 1998, and continue in effect 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 continues the decreased assessment rate established for the Committee and non-signer handlers for the 1998-99 and subsequent crop years from \$0.35 to \$0.33 per net ton of assessable peanuts.

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 paid to the

Committee and are derived from signatory handler assessments. The Committee members include nine handlers and nine 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 a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who are directly affected have voluntarily signed the Agreement authorizing the expenses that may be incurred and the imposition of assessments.

For the 1996-97 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 May 27, 1998, and unanimously recommended for 1998-99 a reduction in the administrative assessment rate from \$0.35 to \$0.33 per net ton of assessable peanuts, and administrative expenditures of \$495,000. In comparison, last year's budgeted administrative expenditures were \$525,000. The assessment rate of \$0.33 is \$0.02 lower than the rate previously in effect.

Major expenditures approved for the Committee for the 1998-99 crop year compared with those budgeted for 1997-98 (in parentheses) include: \$58,000 for executive salaries (\$55,000), \$43,500 for clerical salaries (\$50,000), \$129,000 for compliance officers salaries (\$125,000), \$19,000 for payroll taxes (\$18,000), \$70,000 for employee benefits (\$65,000), \$40,000 for committee members travel (\$40,000), \$55,000 for compliance officers travel (\$60,000), \$13,000 for office rent (\$19,000), and \$10,400 for the audit fee (\$10,400).

The Committee had discussed alternatives to this rule, including alternative expenditure levels but decided that each of the budgeted expenses was reasonable and appropriate. It had also discussed the

alternative of not decreasing the assessment rate but decided it needed to decrease the rate to reduce handlers' costs as much as possible. The Committee had also discussed an even lower rate, but decided that an assessment rate of less than \$0.33 would not generate the income necessary to administer the program.

The assessment rate approved for 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 those peanuts 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 by signatory handlers. Peanut receipts and acquisitions for the year under the Agreement are estimated at 1,500,000 tons, which should provide \$495,000 in assessment income. Approximately 95 percent of the domestically produced peanut crop is handled by handlers who signed the Agreement. The remaining 5 percent is handled by non-signer handlers.

The Act provides for the 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 with signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary. Thus, the assessment rate of \$0.33 per net ton of assessable peanuts also applies to non-signatory handlers of domestic peanuts.

The assessment rates finalized 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 for signatory handlers. 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 1998-99 budget has been approved 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. Marketing agreements and orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 peanut handlers who are subject to regulation under the Agreement or the non-signer program and approximately 25,000 commercial peanut producers in the 16-State production area. Small agricultural service firms, which include handlers, are 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 having annual receipts of 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 the decreased assessment rate established for the Committee (as it unanimously recommended) to be collected from handlers for the 1998-99 and subsequent crop years from \$0.35 to \$0.33 per net ton. The rate is \$0.02 less than the 1997-98 rate.

The Committee had discussed alternatives to this rule, including alternative expenditure levels but unanimously voted that each of the budgeted expenses was reasonable and appropriate. It had also discussed the alternative of not decreasing the assessment rate. However, it had 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 where possible. The Committee's approved budget for 1998-99 is \$495,000, or \$30,000 less than the amount budgeted for 1997-98. Based on

an estimated 1,500,000 net tons of assessable peanuts, income derived from handler assessments during 1998-99 will be adequate to cover budgeted expenses.

Major expenditures approved for the Committee for the 1998-99 crop year compared with those budgeted for 1997-98 (in parentheses) include: \$58,000 for executive salaries (\$55,000), \$43,500 for clerical salaries (\$50,000), \$129,000 for compliance officers salaries (\$125,000), \$19,000 for payroll taxes (\$18,000), \$70,000 for employee benefits (\$65,000), \$40,000 for committee members travel (\$40,000), \$55,000 for compliance officers travel (\$60,000), \$13,000 for office rent (\$19,000), and \$10,400 for the audit fee (\$10,400).

The Committee had reviewed historical information and information pertaining to the 1998-99 crop year. The Department expects the area for harvest to total 1.48 million acres of peanuts for the 1998 crop. The Committee projected shipments for the 1998-99 crop year to be 1.5 million net tons. Based on 1997-98 crop figures, the approximately \$560,000 in total assessments collected by the Committee as a percentage of the \$932,000,000 total peanut crop value was only 0.0006 percent. With a decreased assessment rate, the relationship of total assessment cost as a percentage of total crop value is expected to be even smaller for the 1998-99 crop.

This action finalizes the decreased administrative assessment obligation imposed on all domestic peanut handlers, whether signers or non-signers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the decreased assessment rate reduces the burden on handlers, and may reduce the burden on producers. Also, the reduced burdens are offset by the benefits derived from the operations of the Agreement and the non-signer programs. 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 deliberations on all issues. Like all Committee meetings, the May 27, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses and none were received.

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. In addition, as noted in the initial regulatory flexibility analysis, 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 August 3, 1998 (63 FR 41182). Copies of that rule were mailed by the Committee's staff to all Committee members and peanut handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended October 2, 1998, and no comments were received.

After consideration of all relevant material presented, including the information and unanimous 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 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 63 FR 41182 on August 3, 1998, is adopted as a final rule without change.

Dated: October 23, 1998.

Larry B. Lace,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-28972 Filed 10-28-98; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA-98-05]

Dairy Promotion and Research Order; Amendment to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends a provision of the Dairy Promotion and Research Order (Order). The amendment, requested by the National Dairy Promotion and Research Board (Board), which administers the Order, modifies the number of members from geographic regions in accordance with the provisions of the Order in order to best reflect the geographic distribution of milk production volume in the United States.

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: David R. Jamison, Chief, USDA/AMS/Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, SW, Stop 0233, Room 2734 South Building, Washington, DC 20250-0233, (202) 720-6909, E-Mail address: David_Jamison@usda.gov.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the dairy industry have been defined by the Small Business Administration as those employing less than 500 employees. There are approximately 99,413 dairy farmers subject to the provisions of the Order. Most of the parties subject to the Order are considered small entities.

The Order (7 CFR Part 1150) is authorized under the Dairy and Tobacco Adjustment Act of 1983 (Act), as amended (7 U.S.C. 4501-4513). This rule will modify a provision of the Order by adjusting the number of members representing four geographic regions on the Board to reflect the volume of milk produced within the specified regions. This amendment was requested by the Board to fulfill certain requirements of the Order.

Currently, the Order provides for a 36-member board with members representing 13 geographic regions. Section 1150.131(c) states that the Board is required at least every five years, and not more than every three years, to review the geographic distribution of milk production volume throughout the

United States and if necessary recommend modification of regional representation. The last modification was made in 1994. Section 1150.131(d) of the Order specifies the formula to be used to determine the number of Board seats to represent each of the 13 geographic regions of the country designated in the Order. Under the formula, total milk production for the 48 States for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region. The initial Board that was established in 1984 was based on 1983 milk production. The Board was last modified in 1994 based on the 1992 milk production. In 1983, each Board member represented about 3,875 million pounds of the 139,509 million pounds of milk produced in the 48 States. During 1997, total milk production increased to 156,464 million pounds which indicated that each of the Board members would represent 4,346 million pounds of milk.

Based on a review of the 1997 geographic distribution of milk production, the Board has concluded that the number of Board members for four of the 13 geographic regions should be changed. Milk production in Region 2 (California) increased to 27,628 million pounds in 1997 up from 22,084 million pounds in 1992, indicating 6.36 Board members based on 1997 production (27,628 divided by 4,346 = 6.36) compared to 5.24 Board members based on 1992 production (22,084 divided by 4,211 = 5.24). Also, milk production in Region 3 (Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming) increased to 11,929 million pounds in 1997 up from 8,470 in 1992, indicating 2.74 Board members based on 1997 production (11,929 divided by 4,346 = 2.74) compared to 2.01 Board members based on 1992 production (8,470 divided by 4,211 = 2.01). Milk production in Region 6 (Wisconsin) decreased to 22,368 million pounds in 1997 from 24,103 million pounds in 1992, indicating 5.15 Board members based on 1997 production (22,368 divided by 4,346 = 5.15) compared to 5.72 Board members based on 1992 production (24,103 divided by 4,211 = 5.72). Also, milk production in Region 7 (Illinois, Iowa, Missouri, and Nebraska) decreased to 9,699 million pounds from 11,168 million pounds in 1992, indicating 2.23 Board members based on 1997 production (9,699 divided by