

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

**PART 985—SPEARMINT OIL
PRODUCED IN THE FAR WEST**

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 59 FR 44028 on August 26, 1994, and amended by an interim final rule published at 59 FR 54376 on October 31, 1994, is adopted as a final rule without change.

Dated: January 27, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

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7 CFR Part 997

[Docket No. FV94-997-1FIR]

Assessment Obligations for Non-signatory Handlers; Peanut Handlers Not Subject to Peanut Marketing Agreement No. 146

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with modifications, the provisions of an interim final rule implementing administrative assessments on handlers who are not signatory (non-signatory handlers) to Peanut Marketing Agreement No. 146 (Agreement). The interim final rule provided notice that the Department would begin assessing non-signatory handlers during the 1994-95 crop year. However, because of an unforeseen delay in installing an assessment collection database, the Department will not begin assessing non-signatory handlers until the 1995-96 crop year. The postponement will allow the installation to be completed and all affected handlers to be notified prior to the beginning of the 1995-96 crop year will be established by the Department in the spring of 1995.

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT:

Richard Lower or Mark Slupek, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2020, FAX (202) 720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to the requirements of the Agricultural

Marketing Agreement Act of 1937 (Act), as amended [7 U.S.C. 601-674], and as further amended December 12, 1989, Public Law 101-220, section 4 (1), (2), 103 Stat. 1878, and August 10, 1993, Public Law 103-66, section 8b(b)(1), 107 Stat. 312.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Department will establish a 1995-96 crop year assessment rate applicable to non-signatory handlers effective July 1, 1995-June 30, 1996. Segregation 1 farmers stock peanuts received or acquired by non-signatory handlers during that crop year will be subject to the assessment. 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 final 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 action 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. The Small Business Administration defines small agricultural service firms [13 CFR 121.601] as those having annual receipts of less than \$5,000,000 and small agricultural producers as those whose annual receipts are less than \$500,000. A majority of non-signatory handlers and peanut producers may be classified as small entities.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement was established in 1965 and plays a very important role in the industry's quality control efforts. The Peanut Administrative Committee (Committee) was established by the Agreement and works with the Department in administering the marketing agreement program. Approximately 95 percent of the area peanut crop is marketed by handlers who are signatory to the Agreement. Requirements established pursuant to the Agreement provide that farmers stock peanuts with visible

Aspergillus flavus mold (the principal source of aflatoxin) must be diverted to non-edible uses. Each lot of shelled peanuts and certain cleaned inshell peanuts destined for edible channels must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Committee.

Public Law 101-220, enacted December 12, 1989, 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.

Under the non-signer provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Regulations to implement Pub. L. 101-220 were made effective on December 4, 1990 [55 FR 49980], and amended several times thereafter, and are published in 7 CFR part 997. All such amendments were made to ensure that the non-signer handling requirements remain consistent with modifications to the handling requirements applied to signatory handlers under the Agreement. The most recent amendment was published on August 30, 1994 [59 FR 44610].

Public Law 103-66 [107 Stat. 312], enacted August 10, 1993, 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.

This rule will add new permanent § 997.51 Assessments to part 997—Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement. Notice of the actual assessment rate established for each crop year will be issued as a new section as an Implementing Regulation beginning with § 997.100 Assessment rate, and be sequentially numbered each succeeding year. Because of the Department's decision to postpone the imposition of assessments on non-signatory handlers until the 1995-96 crop year, an assessment rate