

Standards for Grades of Fresh Tomatoes (7 CFR 51.1855 through 51.1877, hereafter referred to as the "standards,") applies.

Specialty packed red ripe tomatoes are a product recently available from Florida. They are shipped in relatively small volume and marketed as a specialty item.

This rule defines specialty packed red ripe tomatoes as tomatoes which, at the time of inspection, are light red (#5 color) or red (#6 color) according to color classification requirements in the standards, have their calyx ends and stems attached, and are cell packed in a single layer container.

Cell packed tomatoes are placed in containers with fiber board on plastic compartments for such tomatoes to provide separation and reduce bruising during transport and handling. This is especially important in shipping tomatoes at an advanced stage of ripeness when tomatoes have their calyx ends and stems attached. The separation provided by the individual compartments permits the tomatoes from moving around inside the shipping container during transport and handling, thus ensuring arrival at destination with tomato calyx ends and stems attached and no tomato stem punctures.

Most tomatoes shipped from Florida are shipped at the mature green stage without calyx ends and stems, and are packed in volume fill containers. When volume fill containers are packed, the tomatoes are placed by hand or machine into the container until the required net weight is reached. Mature green tomatoes are not as susceptible to bruising and other damage during transport as red ripe tomatoes. These specialty tomatoes have to be packaged so that they do not touch each other. If volume fill containers were used by registered handlers in Florida to ship specialty tomatoes, serious product bruising and stem punctures would result, which would detract from the unique appearance and marketability of these tomatoes.

However, the cell pack method of packaging needed to ensure that these specialty tomatoes arrive at markets in good condition does not lend itself well when packing to meet a required net weight. Normally, such packs are used when the product is packed by count per container. The tomatoes have to be properly sized to fit snugly in the container.

During the harvesting season, the weight of equal size tomatoes or the shape of tomatoes of equal weight may vary dramatically. If the red ripe tomatoes are light in weight, handlers

cannot add extra tomatoes because all cells are full, or if the tomatoes are heavier than normal, the removal of a tomato by a handler results in an empty cell. Because the buyer expects a full tray, empty cells are viewed suspiciously and a marketing problem results.

To overcome this problem and allow this market to be further developed, the committee unanimously recommended that shipments of specialty packed red ripe tomatoes as defined herein, be exempt from the container net weight requirements of the order. As stated earlier, all other order requirements will apply to such shipments.

This rule reflects the committee's and the Department's appraisal of the need to exempt specialty packed red ripe tomatoes from the net weight requirements for tomatoes grown in Florida. The Department's view is that this action will have a beneficial impact on producers and handlers since it will allow tomato handlers to make additional supplies of tomatoes available to meet consumer needs consistent with crop and market conditions.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final 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 rule until 30 days after publication in the Federal Register because: (1) This action provides an exemption to container requirements currently in effect for tomatoes grown in Florida; (2) Florida tomato handlers are aware of this action that was unanimously recommended by the committee at a public meeting, and they will need no additional time to take advantage of the exemption; (3) Florida tomato shipments are currently in progress; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 915

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

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

2. Section 966.323 is amended by revising paragraph (d)(1) and the first sentence in paragraph (g) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(d) *Exemption*—(1) *For types*. The following types of tomatoes are exempt from these regulations: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top, and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes. Specialty packed red ripe tomatoes and yellow meated tomatoes are exempt from the container net weight requirements specified in paragraph (a)(3)(i) of this section, but must meet the other requirements of this section.

* * * * *

(g) *Definitions*. *Hydroponic tomatoes* means tomatoes grown in solution without soil; *greenhouse tomatoes* means tomatoes grown indoors; and *specialty packed red ripe tomatoes* means tomatoes which at the time of inspection are #5 or #6 color (according to color classification requirements in the U.S. tomato standards) with their calyx ends and stems attached and cell packed in a single layer container. * * *

Dated: November 20, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
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7 CFR Part 997

[Docket No. FV95-997-1FIR]

Assessment Obligation for 1995-96 Crop Year Peanuts Under 7 CFR Part 997; 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, without modification, the provisions of an interim final rule

which imposed administrative assessments on farmers stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to Peanut Marketing Agreement No. 146 (Agreement). The assessment rate for 1995-96 crop year peanuts continues at \$.70 per net ton. The interim final rule also clarified which categories of farmers stock peanuts are assessable and established that non-signatory handlers shall submit their pro rata assessment to the Secretary of Agriculture. The assessment rate is the same as the administrative assessment established by the Department on handlers who are signers of the Agreement (signatory handlers).

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, PO 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, December 12, 1989; and Public Law 103-66, section 8b(b)(1), 107 Stat. 312, August 10, 1993.

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 established a 1995-96 crop year assessment rate applicable to non-signatory handlers effective July 1, 1995-June 30, 1996. Farmers stock peanuts received or acquired by non-signatory handlers during that crop year are 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 interim 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. There are also approximately 47,000 producers of peanuts, who potentially might do business with these handlers. The Small Business Administration now 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.

The Agreement was established in 1965 and plays a very important role in maintaining 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 domestically produced peanut crop is marketed by handlers who are signatory to the Agreement.

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. Agreement requirements 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 destined for edible channels must be officially sampled and chemically tested for aflatoxin by Department laboratories or laboratories approved by the Committee.

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-signatory handlers) 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-signatory handlers.

Regulations to implement Pub. L. 101-220 were issued and made effective on December 4, 1990 (55 FR 49980). The regulations, which have been amended several times, are published in 7 CFR part 997—Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement. Under these provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the edible quality requirements of the Agreement. All amendments were made to ensure that the non-signer

handling requirements remain the same as, or are equal to, the handling requirements applied to signatory handlers under the Agreement.

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.

The Committee meets in February or March each year and recommends to the Secretary a per ton, administrative assessment of farmers stock peanuts received or acquired by signatory handlers for the upcoming crop year. The crop year covers the 12-month period from July 1 to June 30.

The Committee met on March 23, 1995, and unanimously recommended a \$.70 administrative assessment per ton of 1995-96 crop year farmers stock peanuts received or acquired by signatory handlers. The Department published an interim final rule in the May 17, 1995, issue of the Federal Register (60 FR 26348) which imposed such an administrative assessment on signatory handlers.

Peanuts are assessed based on the rate applicable to the crop year in which the lot is presented for incoming inspection. Therefore, pursuant to Pub. L. 103-66, this final rule provides that, for the 1995-96 crop year, the Department will assess non-signatory handlers a \$.70 administrative assessment per net ton of farmers stock peanuts received or acquired by non-signatory handlers.

The interim final rule clarified which categories of farmers stock peanuts are assessed. Segregation 1 peanuts are assessed under the Agreement and under this regulation. Until recently, all Segregation 2 and 3 peanuts were subject to assessment. However, the Committee recommended that signatory handler assessments should not be applied to Segregation 2 and 3 peanuts that are crushed for oil. Crushing represents the minimum market value that handlers can receive for poor quality peanuts. Thus, it is reasonable that Segregation 2 and 3 peanuts acquired by non-signatory handlers and disposed of to crushing shall not be assessed pursuant to § 997.51. Under some surplus market conditions, Segregation 1 peanuts may also be crushed for oil. However, such peanuts are not exempt from assessments.

The assessment will be applied to all such peanuts received or acquired for a handler's account, including the handler's own production. The assessment will continue to be based on: (1) Tonnage reported on incoming inspection certificates of each handler's Segregation 1 farmers stock peanuts received or acquired for the handler's account, and (2) Segregation 2 and 3 tonnage received or acquired for non-edible uses, except Segregation 2 and 3 peanuts sent to crushing.

Segregation 1 peanuts are defined as farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*. Segregation 2 peanuts are defined as farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*. Segregation 3 peanuts are defined as farmers stock peanuts with visible *Aspergillus flavus*.

Handling is defined in § 997.14 as engaging in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce. Handling does not include the sale or delivery of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handlers and the sale or delivery of peanuts by such intermediary to a handler.

Section 997.15 defines a non-signatory handler as "any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling; *provided*, that this term does not include handlers signatory to the Peanut Marketing Agreement."

Thus, for the 1995-96 crop year, a handler who receives or acquires 100,000 pounds of Segregation 1 farmers stock peanuts will pay an assessment of \$35 (100,000 pounds is 50 tons, times 70 cents per ton, equals \$35).

The assessment will continue to be applied, pro rata, on each non-signatory handler who is the first handler to receive or acquire an assessable lot of farmers stock peanuts. Only one assessment is applied to each farmers stock peanut lot. Assessments will not be applied on peanuts received or

acquired from other handlers, speculators, buying points, brokers, or other entities who have paid assessments on the peanuts received or acquired.

Assessments will not be applied on peanuts received on behalf of an area association pursuant to a peanut receiving and warehouse contract.

Non-signatory producer/handlers who store peanuts of their own production ("farm-stored" peanuts) will, at some point prior to further handling, obtain incoming inspection on such peanuts. At the time of incoming inspection, such producer/handlers pay their pro rata administrative assessment on such farm stored peanuts.

Speculators, brokers, or other entities who take possession of farmers stock peanuts, submit such peanuts for incoming inspection, and subsequently enter such peanuts into edible and non-edible channels of commerce will pay assessments on such peanuts unless the peanuts are Segregation 2 or 3 peanuts crushed for oil.

A crop year's original assessment on non-signatory handlers may be increased by the Secretary if a similar increase is applied by the Secretary on signatory handlers. Such an increase will be applied on all assessable peanuts handled by non-signatory handlers during the crop year in which the increased assessment occurred.

Also pursuant to Pub. L. 103-66, this rule continues to require that non-signatory handlers pay their administrative assessment to the Secretary. The Secretary has begun billing non-signatory handlers on a monthly basis. Each non-signatory handler is responsible for remitting payment by the date specified. Payment in the form of a personal check, cashier's check, or money order shall be remitted to the Department. Audits of each handler's account may be conducted by the Department to reconcile farmers stock peanuts received or acquired and assessments paid.

Violation of this assessment regulation may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price of quota peanuts for the crop year during which the violation occurs. The support price for quota peanuts is determined under 7 U.S.C. 1445c-3.

The interim final rule was published in the Federal Register on August 21, 1995 (60 FR 43353). That rule invited interested persons to submit written comments through September 20, 1995. No comments were received and the Department is adopting as a final rule, without change, the provisions of the interim final rule.

This administrative assessment rate imposes some additional costs on non-signatory handlers. However, the costs are in the form of uniform assessments on all handlers who are not signatory to the Agreement as well as all signatory handlers.

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0163.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities. This rule is required by law. This administrative assessment will be applied uniformly to all non-signatory handlers.

After consideration of all relevant matter presented, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Act requires collection of this assessment. Non-signatory handlers are aware of this requirement which was published in the August 21, 1995, issue of the Federal Register. The assessment applies to all assessable peanuts handled during the 1995-96 crop year, which began on July 1, 1995.

List of Subjects in 7 CFR Part 997

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

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

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

Accordingly, the interim final rule amending 7 CFR part 997 which was published at 60 FR 43353 on August 21, 1995, is adopted as a final rule without change.

Dated: November 20, 1995.

Martha B. Ransom,
Acting Deputy Director, Fruit and Vegetable
Division.

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