

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 999****[Docket No. FV94-999-2FR]****Specialty Crops; Import Regulations; Peanut Import Regulations****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This final rule establishes minimum quality, identification, certification and safeguard requirements for imported farmers stock, shelled, and cleaned-in-shell peanuts. This rule is issued under section 108B(f)(2) of the Agricultural Act of 1949, as amended. The provisions of paragraph (f)(2) require all peanuts in the domestic market to fully comply with all quality standards under Peanut Marketing Agreement No. 146 (Agreement). Therefore, this rule establishes the same quality requirements and handling procedures for imported peanuts as those which are in effect for domestically produced peanuts. This final rule addresses comments to the proposed rule submitted by members of the industry and other interested persons. This action will benefit peanut handlers, importers and consumers by helping to ensure that all peanuts in the marketplace comply with the same quality standards.

EFFECTIVE DATE: July 19, 1996.

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SUPPLEMENTARY INFORMATION: This final rule is issued under paragraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c-3), as amended November 28, 1990; Pub. Law 101-624, hereinafter referred to as the Act. Paragraph (f)(2) of section 108B of the Act provides that the Secretary of Agriculture (Secretary) shall require that all peanuts in the domestic market fully comply with all quality standards under Marketing Agreement No. 146 (7 CFR part 998), issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

This rule adds "\$999.600 governing the importation of peanuts" under 7 CFR part 999—Specialty Crops; Import Regulations. Section 999.600 establishes

minimum quality, identification, certification and safeguard requirements for foreign produced farmers stock, shelled and cleaned-in-shell peanuts presented for importation into the United States. The quality requirements are the same as those specified in § 998.100 Incoming quality regulation and § 998.200 Outgoing quality regulation established pursuant to the Agreement. Whenever the regulations specified in the Agreement are changed, the regulations in § 999.600 will be changed accordingly. Safeguard procedures enable the Department to monitor and assure importers' compliance with the requirements of this regulation.

The intent of paragraph (f)(2) of section 108B of the Act is to ensure that all peanuts in the domestic marketplace comply with the same quality standards.

The U.S. Department of Agriculture (Department or USDA) is issuing this rule in accordance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform, and is not intended to have retroactive effect. 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. Small agricultural service firms, which include importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5 million. This import regulation is based on regulations established under the Agreement which regulates the quality of domestically produced peanuts.

Experience shows that peanut importers affected by this regulation are comprised primarily of signatories to the Agreement and import brokers. The majority of signatories to the Agreement cannot be classified as small entities. Import brokers may contract with peanut handlers who have the equipment and storage facilities needed to carry out necessary shelling and reconditioning of imported peanuts. While the Department is aware of at least seven importers who imported

peanuts into the United States (most of whom are small entities), it is unable to accurately estimate the number or size of importers who may choose to import peanuts in the future. The Department estimates that there are as many as 50 domestic peanut handlers with storage and milling facilities that can be used to prepare peanuts for human consumption markets.

The quality and handling requirements of this import regulation apply uniformly to all importers, whether small or large. The peanut import quota, while limited, is available to all importers, regardless of size or business orientation. There are no known additional costs incurred by small importers that are not incurred by large importers.

No significant alternatives which could accomplish the objectives of this action were identified.

Importers must incur the costs of inspection and aflatoxin analysis. However, these costs are proportional to the volume of peanuts imported and the size of each inspected and tested lot. Such costs are applied to all importers regardless of size and also are consistent with such costs incurred by handlers of domestically produced peanuts. Additional costs are incurred if an imported lot must be reconditioned to meet quality requirements of the import rule. Losses may occur if an imported failing lot cannot be reconditioned and must be disposed to a non-edible peanut outlet, destroyed or re-exported. However, such costs are relative to the quality of each imported peanut lot, and importers may reduce the likelihood of incurring reconditioning costs or other losses due to poor quality peanuts, by importing only high quality peanuts. In this regard, the business risks for peanut importers are no different than those for handlers of domestically produced peanuts. Further, it is common industry practice that buyers (manufacturers) of peanuts require, or make purchase contingent upon, passing grade and aflatoxin certificates of each peanut lot purchased. Thus, the costs of inspection and maintenance of lot identification are a part of normal business practices for this industry.

While the level of benefits of this action are difficult to quantify, the stabilizing effects of shipping only high quality and wholesome peanuts to human consumption outlets impact both small and large importers positively by helping them maintain and expand markets. The Department is not aware of any Federal rules which duplicate, overlap, or conflict with this final rule. Finally, this action is required by statute.

Based on available information, the AMS has determined that this rule would not have a significant impact on a substantial number of small entities.

In the past, the importation of peanuts has been limited to 1.71 million pounds annually. However, the Schedule of the United States annexed to the North American Free Trade Agreement (NAFTA), implemented on January 1, 1994, provided duty free entry for up to approximately 7.43 million pounds of qualifying peanuts from Mexico. For 1996, the duty-free access for Mexican peanuts increased to approximately 7.88 million pounds. In calendar year 2008, access for Mexican peanuts will be unlimited. In addition, the United States Schedule to the Uruguay Round Agreements negotiated under the General Agreement on Tariffs and Trade (GATT) relaxes the peanut import quota to 74.5 million pounds in 1995, with additional annual increases of approximately 10 million pounds to reach a ceiling of 125 million pounds by the year 2000 for all imported peanuts.

Various qualities of peanuts are entered into the United States from countries such as Argentina, Mexico, Nicaragua, India, and the People's Republic of China. Foreign produced peanuts are produced under varying weather conditions and using different cultural practices.

Consistent with the Agreement's regulatory provisions, each lot of peanuts entered into the U.S. would be required to be officially sampled and graded by the Federal or Federal-State Inspection Service (inspection service). Incoming inspection for farmers stock peanuts and outgoing inspection for edible quality shelled peanuts and cleaned-in-shell peanuts will be required for imported peanuts. A list of inspection service offices is provided in paragraph (d)(2)(i) of this regulation.

Some peanuts contain defects or other damage which cause them to be of low quality or have poor taste which could affect the demand for peanuts. Producers, handlers and manufacturers in the domestic peanut industry believe that even an isolated quality problem could adversely affect consumer confidence, which would be detrimental to the domestic peanut industry.

The Agreement imposes quality standards for domestically produced inshell and shelled peanuts. Peanut lots are graded based on the percentage of unshelled peanuts, percentage of kernels with damage and minor defects, percentage of loose shelled kernels, percentage of foreign material, and percentage of moisture content. In addition, an integral part of these quality standards is the extent of the

presence of *Aspergillus flavus* mold (the principal cause of aflatoxin, which is a carcinogen). This mold is more likely to be found on damaged or defective kernels than on sound, whole, good quality kernels. A chemical analysis for aflatoxin is required on shelled peanut lots not meeting superior quality requirements. Shelled lots that exceed certain superior quality requirements need not be analyzed prior to shipment for human consumption.

The proposed rule was issued January 23, 1996, and published in the Federal Register February 1, 1996. A 30-day comment period was provided and 16 comments were received. Comments were received from a United States Congressman, as well as persons representing the agricultural office of a South American embassy, the Peanut Administrative Committee (PAC), the American Farm Bureau Federation, the Southwestern Peanut Growers' Association, the Peanut Growers Cooperative Marketing Association in the Virginia-Carolina area, the American Peanut Shellers Association, and the American Peanut Product Manufacturers, Inc. Comments were also received from a peanut product manufacturer, three peanut brokers, one peanut handler/importer, and a company making chemical analysis testing kits. Most all commenters agree that imported peanuts should meet domestic requirements for human consumption. However, they also were critical of various provisions in the proposed rule.

Three commenters stated that the regulation should establish requirements for aflatoxin testing of peanut butter and peanut paste imported from Canada and Mexico. However, Peanut Marketing Agreement No. 146, the authorizing statute, and the quality regulations under the Agreement are only applicable to peanuts and not peanut products. The Food and Drug Administration (FDA) is responsible for certifying the aflatoxin level of imported peanut butter and peanut products.

Four commenters recommended that the rule should establish country-of-origin requirements on imported peanuts to guard against peanuts produced in one country and transhipped through another country before importation into the U.S. However, the purpose of this rule is to establish quality requirements for all imported peanuts, and establishment of country-of-origin requirements is not necessary. The United States Customs Service (Customs Service) monitors country-of-origin on imported peanuts for tariff purposes. In addition, the grade and aflatoxin certificates will identify

the country-of-origin as the shipping country unless another producing country is identified on Customs Service documentation.

Five commenters were of the opinion that the regulation is contrary to the spirit of GATT and NAFTA, which is to promote free and fair trade. However, both GATT and NAFTA recognize the rights of signatories to protect themselves from inferior quality imports by allowing the receiving country to apply to imports the same standards mandated for its domestically produced, agricultural products. The Department believes that this rule meets such "national treatment" requirements in that it provides the same grade and handling requirements applied to peanuts domestically produced throughout the United States.

One commenter indicated that European countries are implementing a program using the quality test results conducted by suppliers in origin-producing countries. The commenter questioned why the Department does not honor origin-testing programs in other countries while United States peanut suppliers are aggressively supporting origin-testing of peanuts they ship to Europe. The commenter recommended that imported peanuts be origin-tested by recognized independent laboratories overseas. The commenter suggested that a laboratory owned and operated by a PAC-approved laboratory in the United States be authorized to perform the grade and aflatoxin inspections in Argentina. The lab is currently certifying peanut shipments to the United States and Europe, and those shipments have met minimum aflatoxin requirements over the past year.

The Agreement's requirements, as reflected in these import regulations, are supported by an integrated quality assurance system that includes statistically based sampling, positive lot identification, and laboratory oversight. Because it would be difficult, at this time, to ascertain that imported peanuts meet the same quality requirements as domestic peanuts without the application of that inspection system, these regulations do not provide for country of origin inspection and testing.

A number of commenters complained about the increased burden on importers, and four commenters contended that the regulation is more burdensome on importers than the domestic regulation is on handlers under the Agreement. Individually or jointly, they commented that the proposed regulations would increase importers' burdens by: placing time constraints on certification or non-edible disposition of each imported lot;

requiring bonded storage which may be scarce or not available; adding costs for demurrage, sampling, and inspection of imported lots; and adding layers of bureaucracy and regulations. They commented that any peanut lots requiring more than simple aflatoxin testing could not be shelled, sorted, sized, remilled, and reported in 23 days.

As stated in the proposed rule, the purpose of these regulations is to ensure that all peanuts (including imported peanuts) marketed in the United States comply with quality standards of the Agreement. Quality standards cannot be guaranteed without handling requirements that prohibit the commingling of certain peanut lots and ensure lot identification of imported shipments. Further, in order to ensure compliance with non-edible disposition requirements, it is necessary to require that imported peanut lots failing edible quality be certified as handled and disposed of to appropriate non-edible peanut uses.

In this rule, the Department attempted to establish the least burdensome and least costly procedures which would assure that imported peanuts meet the required quality standards. Grade and disposition requirements are the same as those provided under the Agreement. Lot identification and storage requirements are similar to those of the Agreement, but vary slightly because of Customs Service requirements and because shipments have to be monitored from the place and time of conditional release rather than from a buying point or shelling facility.

The initial 30 day reporting period is a Customs Service requirement that cannot be changed by a USDA regulation. It is applied by Customs Service to imported merchandise that must meet product requirements in effect in the United States. Also, as stated in the proposed rule, the Department needs to establish a shorter reporting period because a Customs Service port-of-entry office issuing the entry documentation needs up to 7 days to issue a redelivery demand notice. Therefore, the Department established a reporting period of 23 days from the date of entry by the Customs Service.

The intent of a Customs Service redelivery notice is not necessarily to require immediate return of the shipment to the port-of-entry. Rather, the redelivery notice serves as a notice to the importer that the lot must be either: (1) Brought into compliance with program requirements within the number of days specified on the redelivery notice, or (2) returned to the port-of-entry. During the redelivery period, the importer may recondition a

failing lot in order to bring the lot into compliance with regulatory requirements. This option was not clearly stated in the proposed rule.

The Department has been informed that it may establish a redelivery period which is longer than the 30 days specified in the proposal. Therefore, to enable importers more opportunity to meet the requirements of this regulation, the Department is extending the redelivery demand period from 30 days to 60 days. Customs Form 4647 ("Notice to Mark and/or Notice to Redeliver") is issued by the Customs Service at the request of AMS. A 60 day redelivery period should be entered by the Customs Service under item 15 on the form. Thus, an importer has as long as 90 days to move an imported peanut lot through the peanut handling process. By the end of the redelivery period, the importer must submit certifications to AMS that the lot either: (1) Meets requirements for human consumption; (2) is disposed to one or more non-edible peanut outlets; (3) is destroyed under supervision of the inspection service and Customs Service; or (4) is exported out of the U.S. Alternatively, the importer must redeliver the peanuts to the port-of-entry pursuant to the redelivery notice.

An exception to this rule may be applied to cleaned-inshell peanuts that are conditionally released for movement to an inland facility for outgoing inspection. As stated in the proposed rule, such cleaned-inshell peanut lots must proceed directly to the outgoing inspection and may not undergo any cleaning, drying or sorting prior to outgoing inspection. During outgoing inspection, if AMS determines that the peanut lot sampled and graded is a farmers stock lot which has been mislabeled or misrepresented as cleaned in-shell peanuts, the lot is considered as ungraded farmers stock peanuts and must be sent to incoming inspection or redelivered to the port-of-entry. Such lots, if determined to be Segregation 1 quality at incoming inspection, can then be cleaned, dried, sorted and otherwise prepared for outgoing inspection as cleaned-inshell peanuts.

The importer must notify both the Customs Service and the AMS that an outstanding lot has been certified as meeting disposition requirements of these regulations, destroyed or exported. Failure to meet these requirements or redeliver the peanut lot can result in liquidated damages up to three times the value of the product.

The Department also wishes to reiterate that the above import procedure is not the only procedure available to importers. Importers can

avoid the 23-day reporting requirement by holding shelled and cleaned-inshell shipments under Customs Service custody until the peanuts are sampled, tested and certified as meeting requirements for human consumption. This should be possible with containerization of the shipment that allows for sampling by the inspection service and storage while under Customs Service custody.

The Customs Service requires (19 CFR part 141.5) that lots so held must be entered within 5 working days after arrival at the port. Thus, it is important that the peanut shipment be sampled and the samples sent for outgoing quality inspection and chemical analysis as soon as possible after unloading. Using overnight mail services and fax transmissions, the importer should be able to obtain grade and aflatoxin content certificates within 2 or 3 days. If certified as meeting import requirements for human consumption, such peanuts do not have to be reported to the Department and are not subject to further handling requirements of this regulation. As stated in the proposed regulations, shipments moved inland under Customs Service custody and held in bonded warehouses are not considered as entered by the Customs Service. Thus, the time under Customs Service custody will not be counted against the 23-day reporting period.

One commenter questioned how the time frames relate to the stamp-and-fax procedure and receipt of aflatoxin analyses. For all imported shipments, it is incumbent on the importer to plan ahead by contacting the inspection service offices where sampling and grading will take place and the aflatoxin lab where the analysis will be conducted. The stamp and fax procedure should take place before arrival of the shipment. As noted above, the 23-day reporting period begins when the shipment is released from Customs Service custody, whether at the port-of-entry or inland after movement and storage under Customs Service custody. Samples can be taken, inspections performed, and results reported back to the importer within 2 or 3 days. Extra demurrage charges at a port-of-entry would be less likely if the importer or customs broker makes proper preparations prior to the arrival of a shipment.

The Customs Service suggested that two definitions in paragraph (a) be changed to be consistent with terminology used by Customs. The Department has revised definitions for "importation" and "conditionally released" and has made conforming

changes throughout this final rule to be consistent with the new definitions. In the proposed rule, the term "importation" was defined to mean release from custody of the Customs Service. That definition referred to peanuts after arrival and release by the Customs Service for inland movement. To make the term consistent with Customs Service operations, and for the purposes of this peanut import regulation, the term "importation" means the arrival of a peanut shipment at a port-of-entry with the intent to enter the peanuts into channels of commerce of the United States.

"Conditionally released" was defined in the proposed rule to mean peanuts released under bond for consumption or withdrawal from warehouse for consumption. This definition did not describe the reason for release. For the purposes of this import regulation, "conditional release" means released from Customs Service custody for further handling (sampling, inspection, chemical analysis, or storage) before liquidation (final release after computation of applicable duties) by the Customs Service of the imported peanut lot.

After receiving information from a Customs Service port-of-entry officer, the Department has made an additional relaxation that could reduce the filing burden on importers. The proposed rule stated that one Customs Service entry document must be filed for each peanut lot entered. However, one entry document may encompass several lots. Each lot must be separately identified on the entry document to allow for appropriate monitoring and clearance. For example, a shipment of 500,000 pounds of shelled peanuts in 10 containers can be entered on one entry document as 10 lots of one container per lot; 5 lots of two containers per lot; 3 lots of 200,000 and 200,000 and 100,000 pounds per lot, or other variations. Subdivision of a large shipment is a decision for the importer, working cooperatively with the Customs Service and the inspection service at the port-of-entry. Paragraph (g) has been changed accordingly.

Two commenters pointed out that the proposed rule did not provide for changes in lot weight, especially after remilling or cleaning of a failing lot. The Department acknowledges potential difficulty in accounting for the total weight of a very large lot which may be shelled and reconditioned several times. However, the Department believes that the accepted percentage for the weight of shells in the shelling process plus the combined weight of resultant sublots and residuals should account for the

total weight of the original lot. The Customs Service and the inspection service both recognized that inshell peanuts are 65 percent kernel weight and 35 percent shell weight. Further, the lot identification procedures of the inspection service identify the weight of the certified lot. Thus, when an importer reports disposition of a lot that has been reconditioned, the report must include inspection and lot identification certificates on all sublots—both edible and non-edible residuals—resulting from remilling or blanching.

One commenter offered three recommendations that the Department has included in this final rule. The commenter correctly stated that, under the Agreement, in addition to shelling, failing cleaned-inshell lots may be remilled by running the inshell peanuts through inshell milling two or more times to remove moldy, damaged, moisture laden peanuts, and foreign material that prompted the failing certification. However, as noted above regarding reconditioning of cleaned-inshell peanuts, reconditioning may not be conducted if the inspection service determines that the failing peanuts are farmers stock peanuts and not cleaned-inshell peanuts. Such lots are considered to be mislabeled and, therefore, subject to redelivery without reconditioning.

The commenter also pointed out that destroying failing peanuts by burying must be carried out under the supervision of the inspection service. Finally, he pointed out that under the Agreement, Segregation 2 and 3 farmers stock peanuts which are shelled before exportation, must first also be fragmented. This requirement is a safeguard against such peanuts being diverted to human consumption outlets. Therefore these changes have been made in the final rule.

A commenter pointed out two places in the preamble of the proposed rule where positive lot identification provisions could be inserted to ensure positive lot identification of failing peanut lots. The commenter also suggested that a definition for positive lot identification be added to the final rule. While the Department agrees with the need to ensure lot identification on all imported lots, it also understands the great burden that 'positive' lot identification could place on importers—particularly for large shiploads of peanuts. Positive lot identification involves an inspection service seal or tag that clearly identifies the peanuts covered by the seal or tag—which is affixed in such a way that the peanut container cannot be tampered with without destroying the seal or tag.

Because of the size of some imported shipments (up to 200,000 pounds), or because of the multiple containers or bags used for such lots, it would be impractical to require that a seal be placed or tag be sewed onto every container or bag of such large shipments at the port-of-entry. For this reason, a definition of *positive* lot identification was not included in the proposed rule. This does not mean, however, that lot identity is not as important under the import regulation as it is under the Agreement. Each imported lot must be lot identified in such a way as to clearly distinguish the peanuts in the lot, but not necessarily require tags on individual bags or plastic wrap around an entire lot. Arrangements for lot identification should be made with the inspection service and Customs Service officers at the port-of-entry. Such arrangements can be tailored for the particular circumstances of each imported lot. Lot identification requirements of this rule should provide no less assurance of positive lot identity than is provided under the Agreement for domestically produced peanuts.

The commenter's suggestion that positive lot identification be placed on failing lots is accepted by the Department. This final rule makes the identification procedures for failing residual peanuts more precise by establishing that residual peanuts resulting from the reconditioning, remilling or blanching of a failing imported lot must be positive lot identified. At this point in the handling process, residual peanuts from a milling process are capable of being handled the same as domestically produced peanuts—and therefore, should be subject to the same positive lot identity labeling requirements (such as sewing tags on bags or stamping individual containers of failing peanuts) that are required for domestically produced failing peanuts. Clarifying sentences are added to paragraphs (c)(3) and (g)(2) requiring positive lot identification of residual lots.

Several commenters addressed the proposed provision which states that superior quality shelled peanuts do not have to be tested for aflatoxin prior to shipment for human consumption. Two addressed the dangers of aflatoxin contamination in food products and recommended that aflatoxin testing be required on all peanut lots imported into the United States.

Under the Agreement, all domestically produced, shelled peanuts intended for human consumption use must meet specified minimum quality requirements found in the Agreement's "Other Edible Quality" table and must

undergo chemical analysis for aflatoxin content prior to shipment for human consumption. Other edible quality grade is referred to as minimum grade in this import regulation. Further, the Agreement provides that peanuts which meet the higher quality requirements found in the "Indemnifiable Grades" table do not need to undergo such chemical analysis. Indemnifiable grade is referred to as superior grade in this import regulation.

One commenter referred to paragraph (1)(3) of section 998.300 "Terms and Conditions for Indemnification" as a requirement for aflatoxin analysis. However, this section of the Agreement refers to indemnified lots and has no relevance to imported peanuts as those peanuts cannot be indemnified under the Agreement.

One commenter, while recognizing that the superior grade peanuts do not have to be tested for aflatoxin, suggested that uncontrolled temperature, humidity, and moisture could degrade the condition of a peanut lot during shipment. Therefore, the commenter recommended that all imported peanuts, even those that meet "Superior Quality Requirements" upon arrival in the U.S., should be chemically tested for aflatoxin content. Imported peanut lots which are not properly packaged or handled during shipment and are degraded or otherwise damaged as a result, would most likely fail "Superior Quality Requirements" and would be subject to aflatoxin analysis. Therefore, the recommendation is denied.

One commenter asked whether the regulations in the proposed rule represented an overlap of responsibility between the Department and FDA with regards to the methodology used for sampling and testing peanut shipments and the enforcement of test results. As stated in the proposed rule, this rule does not supersede laws or requirements of other Federal government agencies. Thus, this rule does not prevent FDA from inspecting imported peanut shipments, should it choose to do so. The Department has initiated a Memorandum of Understanding with FDA to minimize possible duplication of inspections.

Three commenters recommended that the implementation of the regulation be delayed. Two suggested that because some members of the Agreement wish to amend the regulations regarding the handling of farmers stock peanuts, it would be better to delay implementation of the import regulation until such a change, if approved by the Secretary, is implemented. They commented that such delay would avoid confusion regarding applicable

import requirements. One commenter complained that some peanut shipments are already in transit to the United States and should not be held to requirements established after departure of the shipment. Because of concerns such as these, the Department has decided to make this rule effective 30 days after the date of publication in the Federal Register. Since the rule was first proposed on February 1, 1996, importers should have ample time to prepare for its implementation.

As noted in the proposed rule, whenever the quality requirements and handling procedures are changed in the Agreement, the same or equivalent changes will be made in the quality requirements and handling procedures of this import regulation.

In preparing for implementation of this regulation, the inspection service has issued instructions to its field offices which will receive and collect the samples of imported peanut shipments. To reduce the possibility of split kernels caused in the sampling process, special instructions have been issued for collecting the samples from bags. While no comments were received regarding this issue, the Department wants the industry to be aware that precautions have been taken to avoid causing defects in lots during the handling. The same procedures are followed when sampling domestically produced peanuts presented in bags.

Several minor corrections and clarifications also are made to correct references to paragraphs in the regulatory text and clarify procedures presented in the proposed rule. The changes are based on comments received and on the Department's review of the published proposed rule.

Customs Service Entry Requirements and USDA Safeguard Procedures

Importer obligations include filing documents notifying the Customs Service and the Department of different actions taken concerning foreign produced inshell and shelled peanuts. Customs Service importation procedures and requirements are set out in title 19 of the Code of Federal Regulations (19 CFR). The Customs Service regulations applicable to peanut handling and processing include, but are not limited to: bond requirements (19 CFR part 113); transfer from port-of-entry to another Customs Service office location (19 CFR part 112); entry of merchandise for consumption (19 CFR part 141); warehouse entry, and withdrawal from warehouse for consumption (19 CFR part 144); establishment of bonded warehouses (19 CFR parts 19.13 and 19.2); and

manipulation in bonded warehouses (19 CFR part 19.11); transfer of ownership (19 CFR parts 141.113 and 141.20); failure to recondition (19 CFR part 113.62(e); and redelivery of merchandise 19 CFR part 113.62(d). For purposes of this regulation, the term "consumption" means "use in the United States." Customs Service entry procedures are not superseded by this import regulation.

Foreign produced peanuts may be entered for "warehouse" or entered for "consumption," or may be transported to another Customs Service port-of-entry to be entered there for warehouse or consumption. Peanuts transported from one Customs Service port-of-entry to another Customs Service port-of-entry must be transported by a carrier designated by the Customs Service under 19 U.S.C. 1551. Peanuts entered for warehouse are stored in a Customs Service bonded warehouse. Such peanuts remain in Customs Service custody until they are withdrawn from warehouse, or entered, for consumption—and are released from Customs Service custody. Peanuts entered for consumption, or withdrawn from warehouse for consumption, are released conditionally, pending certification that the peanuts meet the handling and quality requirements of this regulation and conform to Customs Service entry requirements. The Customs Service can demand redelivery of peanuts that fail these requirements.

The importer, or import broker acting on behalf of the importer, is required to file with the Customs Service required entry documentation for each foreign produced peanut shipment to be entered. More than one lot can be filed on one entry document. Under safeguard procedures established in this rule, each importer is also required to file completed entry documentation (Customs Form 3461 or other equivalent form) with the inspection service office that will perform the sampling of the lot for inspection to provide that office with advanced notice of requested inspection. The entry documentation may be filed by mail or facsimile transmission (fax). The filing should occur prior to arrival of the shipment at the port-of-entry in order to expedite entry procedures. The inspection service office will stamp, sign, and date the entry document and return it to the importer or broker by fax or mail. The importer/broker will then submit the stamped copy to the Customs Service. This "stamp-and-fax" procedure is similar to a procedure in place for other imported agricultural commodities under AMS jurisdiction. Failure to show the Customs Service a copy of the entry

documentation stamped by the inspection service will result in a delay or denial of entry of a peanut lot. The importer/broker must also mail or fax a completed copy of the document to AMS to initiate the Department's monitoring process.

The location and telephone numbers of inspection service offices that perform peanut sampling and/or grade inspections are provided in paragraph (d)(3) of this rule. Inspection service offices at other locations may be contacted to sample the imported peanut lot. In such cases, the collected peanut samples will be shipped to an inspection service office which has equipment and personnel qualified to perform grade inspections. Samples of lots meeting minimum grade requirements will also be sent to an approved laboratory (listed in paragraph (d)(4)) for aflatoxin analysis. The lot will have to remain in storage pending grade and aflatoxin certification.

It is the importer's responsibility to provide, in the mailed or faxed documentation, sufficient information to identify the peanut lot being entered and to ensure that arrangements are made for sampling and inspection. The information will include the container identification, weight of the peanut lot, the city, street address, and building number (if known) receiving the peanut lot, the requested date and time of inspection, and a contact name or number at the destination. If the destination is changed from that listed on the stamp-and-fax document, it is the importer's responsibility to immediately advise inspection service offices at both the original destination and the new destination of such change. Shipments which are not made available pursuant to the entry document, or are not properly displayed for sampling purposes, will be reported to the Customs Service.

Falsification of reports submitted to AMS is a violation of Federal law punishable by fine or imprisonment, or both.

A bond secured by surety or U.S. Treasury obligations is required to be posted by the importer with the Customs Service to guarantee the importer's performance. Peanuts can be determined inadmissible because the importer failed to follow Customs Service importation procedures, the peanuts failed to meet quality requirements, or because the handling procedures (including lot identification and certification) specified in this regulation were not followed.

Redelivery will be demanded for failure to comply with the quality, handling, and reporting requirements of

this import regulation, including: arrival at the inland destination with a broken Customs Service or inspection service seal; failure to maintain lot identity; mislabeling of the peanuts being imported; failure to receive required inspection; commingling of peanut lots not of like quality or condition; disposition of non-edible peanuts to an edible peanut outlet or an improper, non-edible peanut outlet; and failure to fully report the disposition of foreign produced peanuts. Disposition reports will include grade, aflatoxin, and identification certifications and bills of lading, sales receipts, and other documentation showing the peanuts were disposed to a non-edible peanut outlet, exported, or destroyed.

Following Customs Service regulations, a redelivery demand must be issued by the Customs Service within 30 days of Customs Service entry of the peanuts—if the peanuts are not certified as meeting requirements of this import regulation. Because the Customs Service requires one week to prepare and issue a redelivery demand notice, this import rule establishes that importers must report disposition of lots of peanuts to AMS within 23 calendar days of the date of entry. Although a 23-day reporting deadline may be considered burdensome by some, the deadline is necessary because of the Customs Service 30-day notification requirement.

If an importer has difficulty meeting edible consumption certification or completing necessary shelling, remilling, or other reconditioning by the 23rd day after entry, the importer should notify AMS of such difficulty. If the importer fails to so notify AMS, or fails to report necessary certification, AMS will request the Customs Service to issue a redelivery demand for the out-of-compliance lot.

As covered above, after receiving a notice of redelivery, the importer may continue to try to recondition the failing lot or redeliver the failing lot to the port-of-entry. The redelivery notice, in effect, provides an additional 60 days, from the date of issuance, for the importer to comply with requirements of this import regulation. The exception to this is for peanuts labeled as cleaned-in-shell which are determined by the inspection service to be unprepared farmers stock peanuts. Such peanuts must be redelivered immediately and may not be reconditioned.

If the importer is unable to meet these import requirements by the end of the 60-day redelivery period, the importer may request an extension of the period from the Customs Service. The Customs Service may authorize an appropriate extension for good cause. The importer

is responsible for reporting any such extension to AMS.

When moving a conditionally released lot inland, the importer will cause a copy of the entry documentation applicable to the peanut lot to be forwarded with the peanuts to the lot's inland destination. If the shipment is sealed by Customs Service or the inspection service, the seal must remain intact and can be broken only by an authorized official at the destination point.

The identification requirements in this regulation are similar to the Agreement's lot identification requirements. Lot size is limited to 200,000 pounds to comply with Agreement requirements and sampling provisions of the inspection service. Boatload shipments exceeding 200,000 pounds must be entered as two or more lots, but may be entered under one Customs Service entry document. For instance, five containers averaging 40,000 pounds each (the domestic industry standard) may be entered as five lots on one entry document. Lot size and identification arrangements must be made consistent with the port-of-entry inspection service office requirements and should be established cooperatively between the inspection service, Customs Service offices and the importer at the port-of entry. This will facilitate subsequent lot identification, inspection, and reporting of large imported shipments.

Foreign produced peanuts placed in storage may be commingled only with like-quality, foreign produced peanuts belonging to the same importer. Similarly, failing quality peanuts may be commingled with other such foreign produced peanuts prior to clean-up or non-edible disposition. Reports certifying disposition of all peanuts in the commingled lot must be filed within 23 days of Customs Service entry of the earliest-entered lot commingled, or, if a redelivery notice is issued on the earliest entered lot, within the 60-day redelivery period for that lot. The remaining commingled peanuts must be withdrawn, inspected, properly disposed, and reported before the end of that 60-day redelivery period. If necessary, the importer may request that Customs Service extend the redelivery period for the remaining peanuts in the commingled lot.

The objective of the lot identification requirements is to help ensure that individual peanut lots are disposed as required and that defects in poor quality peanut lots are not blended out by commingling poor quality peanuts with higher quality peanuts. The lot identification requirements in this

import regulation are similar to positive lot identification requirements specified for domestically produced peanuts. Positive lot identification involves a Federal or Federal-State Inspection Service seal or tag that clearly identifies the peanuts covered by the seal or tag, and which is affixed in such a way that the peanut lot cannot be tampered with, without destroying the seal or tag. Because of the size of some imported shipments (up to 200,000 pounds) it would be impractical to have a seal or tag sewed onto every bag or container in such a lot. Thus, an imported lot may be lot identified in such a way as to clearly distinguish the peanuts in the lot, but not require tags on individual bags or plastic wrap around the entire lot. However, residual sublots resulting from the reconditioning, remilling or blanching of a failing lot must be positive lot identified, consistent with the provisions of lot identification provisions of the Agreement.

All USDA required sampling, quality certification, and lot identification must be conducted by the inspection service. Chemical analysis must be conducted by a USDA or an approved laboratory. Foreign produced peanuts stored in bonded warehouses are subject to Customs Service audits. Importers will reimburse the inspection service, laboratories, and the Customs Service for services provided and costs incurred with regard to the entry of the importer's peanuts.

Depending on condition (shelled or cleaned-inshell) and containerization, foreign produced peanuts may be either: (1) Sampled, inspected, and held in a Customs Service bonded warehouse at the port-of-entry until certified by the inspection service as meeting the edible quality requirements of this rule; or, (2) conditionally released at the port-of-entry and entered under Customs Service entry procedures for later inspection and certification.

Under option (1), foreign produced shelled or cleaned-inshell peanuts which are cleaned, sorted, sized, and otherwise prepared for edible consumption prior to importation, are sampled at the port-of-entry. The importer must present such peanuts in containers or bags that allow appropriate sampling of the lot pursuant to inspection service requirements. After sampling, such lots are held at the port-of-entry, under lot identification requirements of the inspection service, pending results of the inspection and chemical analysis. Depending on location of the port-of-entry, portions of the samples are sent to an inspection service inspection facility for grade inspection and to an aflatoxin laboratory

for chemical analysis. If determined to meet the applicable edible quality requirements in paragraph (c) of this rule, the shelled or cleaned-inshell peanuts may be entered for consumption without further inspection. Reports of such entries do not have to be filed with AMS because the lots cleared all requirements while under Customs Service custody.

Such shelled or cleaned-inshell peanuts, sampled and held at the port-of-entry, which fail edible quality requirements may, at the importer's discretion, be: (1) re-exported; (2) entered for reconditioning, and if satisfactorily remilled or blanched, certified for edible consumption; or (3) entered for non-edible consumption. Failing peanuts that are re-exported do not have to be reported to AMS because the peanuts were not entered into the U.S. The importer must file certifications which report all actions taken on each lot entered for reconditioning or non-edible consumption. Such certifications must be reported within 23 days of entry, or, if a redelivery notice is issued, within the 60-day redelivery period.

Under option (2), shelled and cleaned-inshell peanuts which are cleaned, sorted, sized, and otherwise prepared for edible consumption prior to importation, may be entered and transported inland for subsequent sampling, inspection, and certification. Farmers stock peanuts also must be shipped inland for sampling and inspection because specialized, farmers stock sampling facilities are not available at ports-of-entry. Certifications reporting disposition of these lots must be filed within 23 days of entry, or, if a redelivery notice is issued on the lot, within the 60-day redelivery period.

Categories of Peanuts Submitted for Importation

Farmers Stock Peanuts

Such peanuts are required to undergo incoming inspection at a prearranged buying point prior to arrival at a shelling or storage destination. All required inspections, shelling, and dispositions of farmers stock peanuts must be completed and reported within 23 days of entry, or, if a redelivery notice is issued on the lot, within the 60-day redelivery period.

Foreign produced farmers stock peanut lots cannot be commingled with other peanut lots prior to incoming inspection. Incoming inspection determines the quality of the farmers stock peanuts based on moisture content, foreign material, damage, loose shelled kernels, and visible *Aspergillus*

flavus mold. The inspection service will issue USDA form CFSA-1007, "Inspection Certificate and Sales Memorandum" (formerly ASCS-1007) designating the lot as either Segregation 1, 2, or 3 quality.

Only Segregation 1 peanuts can be prepared for human consumption use. Such peanuts may be shelled or prepared for cleaned-inshell use. For quality control and reporting purposes, Segregation 1 lots intended for human consumption outlets may be commingled only with other like quality peanuts of the same importer. A Segregation 1 lot which is commingled with Segregation 2 or 3 peanuts must assume the lower Segregation 2 or 3 quality and must be disposed as non-edible quality peanuts.

Foreign produced farmer stock peanuts received by importers and determined at incoming inspection to be Segregation 2 and 3 quality peanuts must be disposed only as non-edible peanuts. Segregation 3 and commingled Segregation 2 and 3 farmers stock peanuts may be exported inshell or exported shelled if fragmented prior to export. Segregation 2 and 3 peanuts also may be destroyed by burying (under inspection service and Customs Service supervision) or exported (certified by Customs Service). The importer must report non-edible disposition by providing a copy of the incoming inspection certificate, bills of lading and sales receipts, or other official certifications as proof of disposition to crushing, exportation, other non-edible outlets, or burying. Segregation 2 and 3 peanuts that are exported must be lot identified by the inspection service and certified as exported by the Customs Service. Certification of non-edible disposition or export must be filed with AMS within 23 days of entry, or, if a redelivery notice is issued, within the 60-day redelivery period. Customs Service re-export procedures must be followed.

Foreign produced Segregation 2 and 3 quality peanuts may be shelled by a custom seed sheller for seed use and, if so disposed, such peanuts must be dyed or chemically treated so as to be unfit for human or animal consumption. Domestically produced Segregation 2 and 3 peanuts shelled for seed need not be dyed or treated but must be produced under the auspices of a State agency, shelled by a custom seed sheller, and subject to PAC oversight. Measures such as these are necessary to ensure that peanuts used for human consumption are safe and wholesome. Proof of dyeing or chemical treatment of foreign produced peanuts must be filed with AMS within 23 days of entry, or, if a

redelivery notice is issued on the lot, within the 60-day redelivery period.

Foreign produced farmers stock peanuts do not qualify for the support program administered by the Department's Farm Service Agency, formerly the Agricultural Stabilization and Conservation Service.

Shelled peanuts: Foreign produced shelled peanuts may: (1) Originate from foreign produced Segregation 1 farmers stock milled at facilities in the U.S., or (2) be peanuts produced and milled in another country which are conditionally released at the port-of-entry for inland sampling and inspection. Both categories of shelled peanuts must be sampled and inspected against outgoing quality requirements specified in paragraph (c) of this regulation.

Domestically produced shelled peanuts intended for edible markets must originate from farmers stock peanuts which have undergone incoming inspection and are determined to be of Segregation 1 quality. AMS cannot determine whether peanuts produced and shelled in a foreign country originated from Segregation 1 quality peanuts prior to shelling. However, because outgoing inspection and chemical analysis is more reliable and precise in determining aflatoxin content in peanut kernels, this import regulation provides that peanuts shelled prior to importation are exempt from incoming inspection before delivery for outgoing inspection. Such shelled peanuts must be sampled and tested against outgoing quality requirements prior to disposition to edible outlets.

Two grade levels for shelled peanuts are in effect under the Agreement and are established in this import regulation. The Agreement provides that shelled peanut lots meeting the quality requirements specified in a table entitled "Other Edible Quality," under paragraph (a) of § 998.200, must be chemically analyzed for aflatoxin content prior to disposition to edible outlets. The quality requirements specified in the Other Edible Quality table are duplicated in "Table 1, Minimum Grade Requirements—Peanuts for Human Consumption" of this import regulation. The outgoing quality requirements also include a parts-per-billion tolerance for aflatoxin, determined by chemical analysis.

The Department has corrected an entry in Table 1, Minimum Grade Requirements" as published in the proposed rule. Under the "Lots of splits" category, the cite for Virginia peanuts should read "Virginia (not less than 90% splits)." The proposed rule incorrectly stated not more than 90%.

Aflatoxin appears most frequently in damaged, stressed, under-developed and malformed kernels. Domestic lots with fewer poor quality kernels are less likely to be contaminated and, thus, do not have to be chemically tested. The Agreement's "Indemnifiable Grades" table in paragraph (a) of § 998.200, provides for a superior quality level with more rigorous percentage tolerances than those found in the Other Edible Quality table. Foreign produced shelled lots meeting the superior quality standards do not have to be chemically analyzed prior to their disposition for human consumption. The quality requirements specified in the "Indemnifiable Grades" table are duplicated in "Table 2 Superior Quality Requirements—Peanuts for Human Consumption" of this rule.

Paragraph (c)(4) of § 998.200 provides that peanuts are considered edible quality if the chemical assay shows the lot contains 15 ppb or less of aflatoxin. Thus, the level of aflatoxin in foreign produced peanut lots intended for edible peanut markets must not exceed 15 ppb. Consistent with paragraphs (c)(4) and (g)(3) of § 998.200, non-edible quality peanut lots with 25 ppb or less must be disposed to certain non-edible peanut outlets. Disposition of non-edible quality peanut lots with aflatoxin exceeding 25 ppb must be further restricted to certain other non-edible peanut outlets. The sampling, testing, certification and identification of foreign produced peanut lots must be performed in accordance with paragraph (d)(4) of this rule.

Chemical testing is performed by an AMS, Science and Technology Division laboratory or a laboratory approved by the PAC. The PAC locally administers the Agreement with Department oversight. A list of approved laboratories is provided in paragraph (d)(4)(iv) of this regulation. These are the same laboratories specified in the Agreement and any changes to the list will be incorporated in this section.

Thus, to obtain approval for human consumption use of a foreign produced shelled peanut lot, the importer must present to AMS and the Customs Service two certifications: (1) Quality certification Form FV-184-9A "Milled Peanut Inspection Certificate" and (2) aflatoxin certification Form CSSD-3 "Certificate of Analysis for Official Samples" issued by USDA laboratories, or equivalent forms issued by a PAC approved lab. An aflatoxin certificate is not required if the lot meets the superior grade requirements, but may be required by the buyer. The certificates are the same as those used to report grade and chemical analysis results for

domestically produced peanuts. The required certificates must be received by AMS within 23 days of entry, or, if a redelivery notice is issued, within 60 days of the redelivery notice.

Cleaned-Inshell Peanuts

Inshell peanuts that have been cleaned, sorted, and prepared in another country for edible inshell peanut markets in the U.S. may be presented for importation at the port-of-entry. Such peanuts can be declared as cleaned-inshell peanuts on the Customs Service entry document and can either be presented for outgoing inspection at the port-of-entry, if delivered in bags and presented in such a way as to be accessible for sampling by the inspection service, or conditionally released for outgoing inspection at a facility inside the U.S. Because the Department is unable to determine if foreign produced cleaned-inshell peanuts come from Segregation 1 peanuts, peanuts declared as cleaned-inshell on a Customs Service entry document must not undergo additional cleaning, sorting, sizing, or drying prior to outgoing inspection at the destination point inside the U.S.

Cleaned-inshell lots that fail outgoing inspection for inshell peanuts may be reconditioned (remilled) and subsequently sampled and graded for outgoing inspection. If there is any indication that an imported farmers stock lot is mislabeled or misrepresented as cleaned-inshell peanuts when entered, redelivery of the lot will be required and the lot may not be reconditioned prior to redelivery to the port-of-entry.

Cleaned-inshell peanut lots destined for edible peanut markets are required to meet certain minimum quality inshell requirements for damage, moisture and foreign material. Cleaned-inshell lots containing more than 1 percent kernels with visible mold have to be chemically tested and meet minimum aflatoxin requirements. The cleaned-inshell quality requirements specified in paragraph (c)(2) of this rule are the same as the quality requirements in paragraph (b) of § 998.200 of the Agreement.

Foreign produced farmers' stock Segregation 1 peanuts also can be prepared and presented at outgoing inspection as cleaned-inshell peanuts. Such peanuts inspected and certified as meeting grade requirements for edible cleaned-inshell peanuts must be designated as imported peanuts on inspection service form FV-184-9A. The importer must file form FV-184-9A with AMS for each lot of foreign produced cleaned-inshell peanuts

meeting edible quality requirements for cleaned-inshell peanuts.

Imported peanuts certified as meeting edible requirements can be used any way desired. Only after shelled and cleaned-inshell peanuts are certified as meeting applicable requirements can such peanuts be commingled with imported lots of other importers or domestically produced peanuts which also have been certified for human consumption.

Disposition of Failing Peanuts

The following peanuts cannot be used for human consumption: (1) Farmers' stock peanuts that grade either Segregation 2 or Segregation 3; (2) cleaned-inshell and shelled peanuts that fail outgoing quality and/or aflatoxin requirements and are not reconditioned or reworked (the removal of defective kernels); and (3) below grade residue from any shelling, milling or blanching operations.

Cleaned-inshell lots that fail outgoing inspection requirements of paragraph (c)(2) can be reconditioned by remilling the peanuts, which can include shelling. If shelled or remilled, the peanuts must meet outgoing requirements of paragraph (c)(1) for shelled peanuts or (c)(2) for inshell peanuts.

Failing lots of shelled peanuts, which originated from Segregation 1 peanuts, can be reconditioned following procedures established in paragraph (f) of this rule. These provisions are the same as those established under various provisions of the Agreement.

Segregation 1 shelled peanuts which fail quality requirements in Table 1 and/or exceed 15 ppb aflatoxin content can be reconditioned by remilling and/or blanching and, when subsequently reinspected and certified as meeting edible quality and aflatoxin requirements, can be disposed to edible peanut outlets. If not reconditioned, failing Segregation 1 lots must be disposed to non-edible peanut outlets as unrestricted or restricted peanuts as described below.

Provisions controlling the disposition of residue peanuts from inshell remilling and shelled remilling and blanching that continue to fail edible quality requirements are also provided in this rule. Two categories of non-edible peanuts are specified under the Agreement—"unrestricted" and "restricted." The designation is based on the amount of aflatoxin detected in the lot. "Unrestricted" peanuts are peanuts which fail one or more quality requirements and, when chemically assayed, contain more than 15 ppb but 25 ppb or less aflatoxin. While such peanuts are of non-edible quality, they

can be crushed for oil, exported or used in animal feed, provided that certain handling and container labeling requirements are followed. Unrestricted peanuts also can be used for seed (if dyed or treated to prevent edible use), crushed for oil, exported, or buried. Meal resulting from the crushing of unrestricted peanuts does not have to be tested a second time for aflatoxin content. Disposition of meal resulting from the crushing of peanuts is not regulated under the Agreement or this regulation.

Peanuts containing more than 25 ppb aflatoxin are designated as "restricted" peanuts. Restricted peanut lots may or may not meet quality requirements of Table 1. At the direction of the importer, restricted peanut lots must be used either for seed (if dyed or treated), crushed for oil, destroyed by burying (under supervision of the inspection service), or exported. Meal resulting from the crushing of restricted peanuts must be certified as to aflatoxin content and such certification must accompany the meal into the channels of commerce.

The importer can dispose of a failing peanut lot directly to a non-edible peanut outlet or set aside and commingle several failing lots for eventual disposition to one or more non-edible outlets. Commingled failing quality peanuts must be held separate and apart from edible peanuts and identified with red tags indicating non-edible peanuts. Eventual disposition must be to non-edible peanut outlets consistent with the failing quality of the peanuts, pursuant to paragraph (e) of this rule.

If an importer chooses to destroy unrestricted or restricted peanuts by burying, the peanuts must be lot identified and disposition must be reported to AMS. The importer must provide inspection service and Customs Service certification if a lot is buried, or a Customs Service export declaration if a lot is exported. Customs Service procedures controlling re-exported merchandise must also be followed by the importer. Burying and exportation expenses are borne by the importer.

It is the importer's responsibility to file inspection certificates and other documentation sufficient to account for disposition of all failing quality peanuts acquired by the importer. Such proof consists of copies of bills of lading and sales receipts between the importer and non-edible peanut outlet receivers. The documentation must contain identifying information, such as container or lot numbers, that tie the peanuts reported on the documents to failing quality peanuts on inspection service or aflatoxin certificates. The name and

address of the non-edible peanut receiver and valid contact information must also be specified on the documentation.

Disposition of unrestricted and restricted peanut lots must be reported to AMS within 23 days of filing for entry with the Customs Service, or, if a redelivery notice is issued, within the 60-day redelivery period. As noted in above, disposition of unrestricted and restricted peanut lots may be carried out and reported during the redelivery demand period.

The inspection service identifies imported peanuts as peanuts of foreign origin on the inspection certificate to assist in lot identification. Foreign origin designations also help AMS meet its monitoring responsibilities.

From time to time, the PAC may recommend to the Secretary that quality requirements or handling procedures specified in the Agreement be revised. If such changes are approved by the Secretary and implemented for the domestic peanut industry in 7 CFR Part 998, corresponding changes will be made in § 999.600. Changes in regulations for domestically produced peanuts are generally made effective July 1. Thus, corresponding changes to the import regulation will be made effective on that date, or as close to that date as possible under informal rulemaking, unless otherwise specified in the regulation. Quality requirements in effect on the date of inspection of a foreign produced lot will be applied to the inspected lot.

Safeguard Procedures

This rule establishes a procedure to verify importers' compliance with import requirements. The safeguard procedures provide for monitoring of peanut lots from importation to final disposition. The purpose of these procedures are to ensure that foreign produced peanuts either meet edible requirements or are appropriately disposed to non-edible peanut outlets, exported or destroyed. The safeguard procedures are similar to safeguard procedures already in place for other imported commodities and are consistent with the inspection, identification and certification requirements applied to domestically produced peanuts under the Agreement.

The safeguard process includes the "stamp-and-fax" entry procedure, as already described, whereby the importer provides the Customs Service with an entry document stamped by the inspection service. The importer also files a copy of the entry document with AMS and forwards a copy, with the released lot, to the inland destination

where the lot is to be inspected or warehoused. Edible certification and non-edible disposition is reported by filing with AMS copies of all grade certificates, aflatoxin certificates, and proof of non-edible disposition. Such certifications must be filed within 23 days of filing for entry, or, if a redelivery notice is issued, within the 60-day redelivery period.

Failure to report or redeliver peanuts within applicable time frames could result in liquidated damages against the importer.

Certificates and other supplementary documentation must be sent to AMS, Marketing Order Administration Branch (MOAB) which oversees the domestic peanut program and this import program. Facsimile or express mail deliveries can be used to ensure timely receipt of certificates and other required documentation. Overnight and express mail deliveries should be addressed to the USDA, AMS, Marketing Order Administration Branch, 14th and Independence Avenue, SW., Room 2525, Washington, DC 20250, Attn: Report of Imported Peanuts. The MOAB's fax number is (202) 720-5698, Attn: Report of Imported Peanuts.

For the purposes of checking and verifying reports filed by importers and disposition outlets, this regulation provides that importers must allow the Secretary, through duly authorized agents, to have access to any premises where peanuts may be held and processed. Authorized agents, at any time during regular business hours, are permitted to inspect any peanuts held, and any and all records with respect to the acquisition, holding or disposition of any peanuts which may be held, or which may have been disposed by that importer.

USDA record retention requirements also are established to require importers to retain information for at least two years beyond the year of applicability. Customs Service record retention requirements are longer.

The handling of each imported lot must be consistent with Customs Service procedures and reported in accordance with normal Customs Service requirements. Any Customs Service reporting or recordkeeping requirements for disposition of imported merchandise or clearance of bonding requirements are not superseded by this regulation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) as amended in 1995, the information and collection requirements that are contained in this rule have been

approved by the Office of Management and Budget (OMB) on a temporary basis and have been assigned OMB number 0581-0176. A 60-day period was established in the proposed rule to receive comments on the information collection requirements. All responses to the request for comments will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

In addition to the reporting requirements, this rule establishes that importers and customs brokers retain copies of all certifications and entry documentation for not less than two years after the calendar year of acquisition. This is a commonly accepted records retention period and within good business practices. The time for maintaining records by filing each document internally is included in the filing estimate. The information collected is used only for compliance purposes by personnel of the Department.

The reporting and recordkeeping requirements established in this rule will enable the Department to oversee the entry of peanuts and help ensure that only good quality, wholesome peanuts will be used in edible peanut outlets in the U.S. Without the quality requirements specified in the Agreement (7 CFR Part 998), regulations for non-signatory handlers (7 CFR Part 997), and these regulations, poor quality peanuts could more easily be entered into edible channels, causing consumer dissatisfaction and having a negative impact on the market for peanuts and peanut products. Compliance with these standards help the peanut industry in its efforts to expand markets.

Although these requirements result in some additional costs for importers, the benefits from restricting low quality peanuts from edible markets outweigh any additional inspection, handling, recordkeeping and reporting costs resulting from the requirements. These requirements have been carefully reviewed and every effort has been made to minimize any unnecessary reporting and recordkeeping costs.

List of Subjects in 7 CFR part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Peanuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 999 is amended as follows:

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 999 is revised to read as follows:

Authority: 7 U.S.C. 601-674; and 7 U.S.C. 1445c-3.

2. A new § 999.600 is added to part 999 to read as follows:

§ 999.600 Regulation governing imports of peanuts.

(a) *Definitions.* (1) *Peanuts* means the seeds of the legume *Arachis hypogaea* and includes both inshell and shelled peanuts produced in countries other than the United States, other than those marketed in green form for consumption as boiled peanuts.

(2) *Farmers stock peanuts* means picked and threshed raw peanuts which have not been shelled, crushed, cleaned or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the form in which customarily marketed by producers.

(3) *Inshell peanuts* means peanuts, the kernels or edible portions of which are contained in the shell.

(4) *Incoming inspection* means the sampling and inspection of farmers stock peanuts to determine Segregation quality.

(5) *Segregation 1 peanuts*, unless otherwise specified, means 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* mold.

(6) *Segregation 2 peanuts*, unless otherwise specified, means 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* mold.

(7) *Segregation 3 peanuts*, unless otherwise specified, means farmers' stock peanuts with visible *Aspergillus flavus* mold.

(8) *Shelled peanuts* means the kernels of peanuts after the shells are removed.

(9) *Outgoing inspection* means the sampling and inspection of either: shelled peanuts which have been cleaned, sorted, sized and otherwise prepared for human consumption markets; or inshell peanuts which have been cleaned, sorted and otherwise prepared for inshell human consumption markets.

(10) *Negative aflatoxin content* means 15 parts-per-billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements, and 25 ppb or less for non-edible quality peanuts.

(11) *Person* means an individual, partnership, corporation, association, or any other business unit.

(12) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture (Department or USDA) who is, or who may hereafter be, authorized to act on behalf of the Secretary.

(13) *Inspection service* means the Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, USDA.

(14) *USDA laboratory* means laboratories of the Science and Technology Division, Agricultural Marketing Service, USDA, that chemically analyze peanuts for aflatoxin content.

(15) *PAC approved laboratories* means laboratories approved by the Peanut Administrative Committee, pursuant to Peanut Marketing Agreement No. 146 (7 CFR Part 998), that chemically analyze peanuts for aflatoxin content.

(16) *Conditionally released* means released from Customs Service custody for further handling (sampling, inspection, chemical analysis, or storage) before final release.

(17) *Importation* means the arrival of a peanut shipment at a port-of-entry with the intent to enter the peanuts into channels of commerce of the United States.

(b) *Incoming regulation*: (1) Farmers stock peanuts presented for consumption must undergo incoming inspection. Only Segregation 1 peanuts may be used for human consumption. All foreign produced farmers stock peanuts for human consumption must be sampled and inspected at a buying point or other handling facility capable of performing incoming sampling and inspection. Sampling and inspection shall be conducted by the inspection service. Only Segregation 1 peanuts certified as meeting the following requirements may be used in human consumption markets:

(i) *Moisture*. Except as provided under paragraph (b)(2) *Seed peanuts*, of this section, peanuts may not contain more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storage or milling.

(ii) *Foreign material*. Peanuts may not contain more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be held separately until milled, or moved

over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term *sand-screen* means any type of farmers stock cleaner which, when in use, removes sand and dirt.

(iii) *Damage*. For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(iv) *Loose shelled kernels*. Peanuts may not contain more than 14.49 percent loose shelled kernels, except that peanuts having a higher loose shelled kernel content may be imported if held separately until milled or shipped directly to a shelling facility for prompt shelling. All percentage determinations shall be rounded to the nearest whole number. Kernels which ride screens with the following or larger slot openings may be separated from loose shelled kernels: Runner— $1\frac{5}{64} \times \frac{3}{4}$ inch; Spanish and Valencia— $1\frac{5}{64} \times 1$ inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared for inspection and sale for human consumption: *Provided*, That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for non-edible use, pursuant to paragraph (e) of this section. If the kernels which ride the prescribed screen are not separated from the kernels which do not ride the prescribed screen, the entire amount of loose shelled kernels shall be removed from the farmers stock peanuts and shall be held separate and apart and disposed of for non-edible use, pursuant to paragraph (e) of this section.

(2) *Seed peanuts*. Farmers stock peanuts determined to be Segregation 1 quality, and shelled peanuts certified negative to aflatoxin (15 ppb or less), may be imported for seed purposes. Disposition of such peanuts to a seed outlet must be reported to the Secretary by submitting a copy of the bill of lading or sales contract which reports the weight of the peanuts so disposed, and the name, address and telephone number of the receiving seed outlet.

Residuals from the shelling of Segregation 1 seed peanuts shall be held and/or milled separate and apart from other peanuts, and such residuals meeting quality requirements specified in paragraph (c)(1) of this section may be disposed to human consumption channels, and any portion not meeting such quality requirements shall be disposed to non-edible peanut channels pursuant to paragraph (e) of this section. Segregation 2 and 3 peanuts may be shelled for seed purposes but must be dyed or chemically treated so as to be unfit for human or animal consumption. All disposition of seed peanuts and residuals from seed peanuts shall be reported to the Secretary pursuant to paragraphs (g)(2) and (g)(3) of this section. The receiving seed outlet must retain records of the transaction, pursuant to paragraph (h)(7) of this section.

(3) *Oilstock and exportation*. Farmers stock peanuts of lower quality than Segregation 1 (Segregation 2 and 3 peanuts) shall be used only in non-edible outlets as provided herein. Segregation 2 and 3 peanuts may be commingled but shall be kept separate and apart from edible quality peanut lots. Commingled Segregation 2 and 3 peanuts and Segregation 3 peanuts shall be disposed only to oilstock, exported inshell, or exported as shelled if fragmented as provided in paragraph (e)(3) of this section. Shelled peanuts and cleaned-inshell peanuts which fail to meet the requirements for human consumption in paragraph (b)(1) may be crushed for oil or exported.

(4) Whenever the Secretary has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Secretary may reject the then effective inspection certificate and may require the importer to have the peanuts reinspected to establish whether or not such peanuts may be disposed of for human consumption.

(c) *Outgoing regulation*. No person shall import peanuts for human consumption into the United States unless such peanuts are lot identified and certified by the inspection service as meeting the following requirements:

(1)(i) *Shelled peanuts*. All shelled peanuts shall at least meet the requirements specified in Table 1 as follows:

TABLE 1.—MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION
[Whole Kernels and Splits]

Maximum limitations							
Excluding lots of "splits"							
Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; $17/64$ inch round screen.	3.00%; $1\frac{5}{64} \times \frac{3}{4}$ inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2)	1.50	2.50	3.00%; $17/64$ inch; round screen.	3.00%; $1\frac{5}{64} \times 1$ inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia	1.50	2.50	3.00%; $1\frac{5}{64}$ inch; round screen.	3.00%; $1\frac{5}{64} \times \frac{3}{4}$ inch; slot screen.	4.00%; both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; $17/64$ inch; round screen.	6.00%; $1\frac{5}{64} \times 1$ inch; slot screen.	6.00%; both screens.	.20	9.00
Lots of "Splits"							
Runner (not more than 4% sound whole kernels).	1.50	2.50	3.00%; $17/64$ inch; round screen.	3.00%; $1\frac{5}{64} \times \frac{3}{4}$ inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits).	1.50	2.50	3.00%; $17/64$ inch; round screen.	3.00%; $1\frac{5}{64} \times 1$ inch slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	1.50	2.50	3.00%; $1\frac{5}{64}$ inch; round screen.	3.00%; $1\frac{3}{64} \times \frac{3}{4}$ inch; slot screen.	4.00%; both screens.	.20	9.00

(ii) Peanuts meeting the specifications in Table 1 must also be certified "negative" to aflatoxin content, pursuant to paragraph (d)(4) of this section, prior to shipment to domestic human consumption markets. Shelled peanuts meeting requirements specified in Table 2 must be sampled pursuant to paragraph (d)(4) of this section but may be disposed to human consumption outlets without testing for aflatoxin.

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION
[Whole Kernels and Splits]

Maximum limitations							
Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Runner U.S. No.1 and better.	1.25	2.00	3.00%; $17/64$ inch, round screen.	3.00%; $1\frac{5}{64} \times \frac{3}{4}$ inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia U.S. No.1 and better.	1.25	2.00	3.00%; $17/64$ inch, round screen.	3.00%; $1\frac{5}{64} \times 1$ inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia U.S. No.1 and better.	1.25	2.00	3.00%; $1\frac{5}{64}$ inch, round screen.	2.00%; $1\frac{5}{64} \times \frac{3}{4}$ inch, slot screen.	4.00%; both screens.	.10	9.00
Runner U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; $17/64$ inch, round screen.	3.00%; $1\frac{5}{64} \times \frac{3}{4}$ inch, slot screen.	4.00%; both screens.	.20	9.00

TABLE 2.— SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION—Continued
[Whole Kernels and Splits]

Maximum limitations							
Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through ²⁰ / ₆₄ inch round screen).	1.25	2.00	3.00%; ¹⁷ / ₆₄ inch, round screen.	3.00%; ¹⁴ / ₆₄ x 1 inch, slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; ¹⁶ / ₆₄ inch, round screen.	3.00%; ¹³ / ₆₄ x ³ / ₄ inch, slot screen.	4.00%; both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.25	2.00	3.00%; ¹⁷ / ₆₄ inch, round screen.	3.00%; ¹⁶ / ₆₄ x ³ / ₄ inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; ¹⁷ / ₆₄ inch, round screen.	3.00%; ¹⁵ / ₆₄ x 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; ¹⁶ / ₆₄ inch, round screen.	2.00%; ¹⁵ / ₆₄ x ³ / ₄ inch, slot screen.	4.00%; both screens.	.10	9.00

(2) *Cleaned-inshell peanuts.* Peanuts declared as cleaned-inshell peanuts may be presented for sampling and outgoing inspection in bags at the port-of-entry. Alternatively, peanuts may be conditionally released as cleaned-inshell peanuts but shall not subsequently undergo any cleaning, sorting, sizing or drying process prior to presentation for outgoing inspection as cleaned-inshell peanuts. Cleaned-inshell peanuts which fail outgoing inspection may be reconditioned or redelivered to the port-of-entry, at the option of the importer. Cleaned-inshell peanuts determined to be unprepared farmers stock peanuts must be inspected against incoming quality requirements and determined to be Segregation 1 peanuts prior to outgoing inspection for cleaned-inshell peanuts. Cleaned-inshell peanuts intended for human consumption may not contain more than:

- (i) 1.00 percent kernels with mold present, unless a sample of such peanuts is drawn by the inspection service and analyzed chemically by a USDA or PAC approved laboratory and certified "negative" as to aflatoxin.
 - (ii) 2.00 percent peanuts with damaged kernels;
 - (iii) 10.00 percent moisture (carried to the hundredths place); and
 - (iv) 0.50 percent foreign material.
- (3) *Reconditioned peanuts.* Peanuts shelled, sized and sorted in another

country prior to arrival in the U.S. and shelled peanuts which originated from Segregation 1 peanuts that fail quality requirements of Table 1 (excessive damage, minor defects, moisture, or foreign material) or are positive to aflatoxin may be reconditioned by remilling and/or blanching. After such reconditioning, peanuts meeting the quality requirements of Table 1 and which are negative to aflatoxin (15 ppb or less) may be disposed for edible peanut use. Residuals resulting from such reconditioning of failing lots shall be positive lot identified, and red-tagged if in sacks, and disposed of pursuant to paragraphs (g)(2) and (g)(3) of this section.

(d) *Sampling and inspection.* (1) All sampling and inspection, quality certification, chemical analysis, and lot identification, required under this section, shall be done by the inspection service, a USDA laboratory, or a PAC-approved laboratory, as applicable, in accordance with the procedures specified herein. The importer shall make arrangements with the inspection service for sampling, inspection, lot identification and certification of all peanuts accumulated by the importer. The importer also shall make arrangements for the appropriate disposition of peanuts failing edible quality requirements of this section. All costs of sampling, inspection,

certification, identification, and disposition incurred in meeting the requirements of this section shall be paid by the importer. Whenever peanuts are offered for inspection, the importer shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection.

(2) For farmers stock inspection, the importer shall cause the inspection service to perform an incoming inspection and to issue an CFSA-1007, "Inspection Certificate and Sales Memorandum" form designating the lot as Segregation 1, 2, or 3 quality peanuts. For shelled and cleaned-inshell peanuts, the importer shall cause the inspection service to perform an outgoing inspection and issue an FV-184-9A, "Milled Peanut Inspection Certificate" reporting quality and size of the shelled or cleaned-inshell peanuts, whether the lot meets or fails to meet quality requirements for human consumption of this section, and that the lot originated in a country other than the United States. The importer shall provide to the Secretary copies of all CFSA 1007 and FV-184-9A applicable to each peanut lot conditionally released to the importer. Such reports shall be submitted as provided in paragraphs (g)(2) and (g)(3) of this section.

(3) *Procedures for sampling and testing peanuts.* Sampling and testing of

peanuts for incoming and outgoing inspections of peanuts presented for consumption into the United States will be conducted as follows:

(i) *Application for sampling.* The importer shall request inspection and certification services from one of the following inspection service offices convenient to the location where the peanuts are presented for incoming and/or outgoing inspection. To avoid possible delays, the importer should make arrangements with the inspection service in advance of the inspection date. A copy of the Customs Service entry document specific to the peanuts to be inspected shall be presented to the inspection official prior to sampling of the lot.

(A) The following offices provide incoming farmers stock inspection:

Dothan, AL, tel: (205) 792-5185,
Graceville, FL, tel: (904) 263-3204,
Winter Haven, FL, tel: (813) 291-5820, ext 260,
Albany, GA, tel: (912) 432-7505,
Williamston, NC, tel: (919) 792-1672,
Columbia, SC, tel: (803) 253-4597,
Suffolk, VA, tel: (804) 925-2286,
Portales, NM, tel: (505) 356-8393,
Oklahoma City, OK, tel: (405) 521-3864,
Gorman, TX, tel: (817) 734-3006,
Yuma, AZ, tel: (602) 344-3869.

(B) The following offices, in addition to the offices listed in paragraph (d)(3)(i) (A) of this section, provide outgoing sampling and/or inspection services, and certify shelled and cleaned-inshell peanuts as meeting or failing the quality requirements of this section:

Eastern U.S.

Mobile, AL, tel: (205) 690-6154,
Jacksonville, FL, tel: (904) 359-6430,
Miami, FL, tel: (305) 592-1375,
Tampa, FL, tel: (813) 272-2470,
Presque Isle, ME, tel: (207) 764-2100,
Baltimore/Washington, tel: (301) 344-1860,
Boston, MA, tel: (617) 389-2480,
Newark, NJ, tel: (201) 645-2670,
New York, NY, tel: (212) 718-7665,
Buffalo, NY, tel: (716) 824-1585,
Philadelphia, PA, tel: (215) 336-0845,
Norfolk, VA, tel: (804) 441-6218,

Central U.S.

New Orleans, LA, tel: (504) 589-6741,
Detroit, MI, tel: (313) 226-6059,
St. Paul, MN, tel: (612) 296-8557,
Las Cruces, NM, tel: (505) 646-4929,
Alamo, TX, tel: (210) 787-4091,
El Paso, TX, tel: (915) 540-7723,
Houston, TX, tel: (713) 923-2557,

Western U.S.

Nogales, AZ, tel: (602) 281-0783,
Los Angeles, CA, tel: (213) 894-2489,
San Francisco, CA, tel: (415) 876-9313,
Honolulu, HI, tel: (808) 973-9566,
Salem, OR, tel: (503) 986-4620,
Seattle, WA, tel: (206) 859-9801.

(C) Questions regarding inspection services or requests for further assistance may be obtained from: Fresh Products Branch, P.O. Box 96456, room 2049-S, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20090-6456, telephone (202) 690-0604, fax (202) 720-0393.

(ii) *Sampling.* Sampling of bulk farmers' stock lots shall be performed at a facility that utilizes a pneumatic sampler or approved automatic sampling device. The size of farmers' stock lots, shelled lots, and cleaned-inshell lots, in bulk or bags, shall not exceed 200,000 pounds. For farmers' stock, shelled and cleaned-inshell lots not completely accessible for sampling, the applicant shall be required to have lots made accessible for sampling pursuant to inspection service requirements. The importer shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by the inspection service. The amount of such peanuts drawn shall be large enough to provide for a grade and size analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. Because there is no acceptable method of drawing official samples from bulk conveyances of shelled peanuts, the importer shall arrange to have bulk conveyances of shelled peanuts sampled during the unloading process. A bulk lot sampled in this manner must be positive lot identified by the inspection service and held in a sealed bin until the associated inspection and aflatoxin test results have been reported.

(4) *Aflatoxin assay.* (i) The importer shall cause appropriate samples of each lot of shelled peanuts intended for edible consumption to be drawn by the inspection service. The three 48-pound samples shall be designated by the inspection service as "Sample 1IMP," "Sample 2IMP," and "Sample 3IMP" and each sample shall be placed in a suitable container and lot identified by the inspection service. Sample 1IMP may be prepared for immediate testing or Samples 1IMP, 2IMP and 3IMP may be returned to the importer for testing at a later date, under lot identification procedures.

(ii) The importer shall cause Sample 1IMP to be ground by the inspection service or a USDA or PAC-approved laboratory in a subsampling mill. The resultant ground subsample shall be of a size specified by the inspection service and shall be designated as "Subsample 1-ABIMP." At the importer's option, a second subsample may also be extracted from Sample 1IMP and designated "Subsample 1-CDIMP" which may be sent for aflatoxin

assay to a USDA or PAC-approved laboratory. Both subsamples shall be accompanied by a notice of sampling signed by the inspector containing identifying information as to the importer, the lot identification of the shelled peanut lot, and other information deemed necessary by the inspection service. Subsamples 1-ABIMP and 1-CDIMP shall be analyzed only in a USDA or PAC-approved laboratory. The methods prescribed by the Instruction Manual for Aflatoxin Testing, SD Instruction-1, August 1994, shall be used to assay the aflatoxin level. The cost of testing and notification of Subsamples 1-ABIMP and 1-CDIMP shall be borne by the importer.

(iii) The samples designated as Sample 2IMP and Sample 3IMP shall be held as aflatoxin check-samples by the inspection service or the importer until the analyses results from Sample 1IMP are known. Upon call from the USDA or PAC-approved laboratory, the importer shall cause Sample 2IMP to be ground by the inspection service in a subsampling mill. The resultant ground subsample from Sample 2IMP shall be designated as "Subsample 2-ABIMP." Upon further call from the laboratory, the importer shall cause Sample 3IMP to be ground by the inspection service in a subsampling mill.

The resultant ground subsample shall be designated as "Subsample 3-ABIMP." The importer shall cause Subsamples 2-ABIMP and 3-ABIMP to be sent to and analyzed only in a USDA or PAC-approved laboratory. Each subsample shall be accompanied by a notice of sampling. The results of each assay shall be reported by the laboratory to the importer. All costs involved in the sampling, shipment and assay analysis of subsamples required by this section shall be borne by the importer.

(iv)(A) Importers should contact one of the following USDA or PAC-approved laboratories to arrange for chemical analysis.

Science and Technology Division, AMS/
USDA, P.O. Box 279, 301 West Pearl St.,
Aulander, NC 27805, Tel: (919) 345-1661
Ext. 156, Fax: (919) 345-1991

Science and Technology Division, AMS/
USDA, 1211 Schley Ave., Albany, GA
31707, Tel: (912) 430-8490 / 8491, Fax:
(912) 430-8534

Science and Technology Division, AMS/
USDA, P.O. Box 488, Ashburn, GA 31714,
Tel: (912) 567-3703

Science and Technology Division, AMS/
USDA, 610 North Main St., Blakely, GA
31723, Tel: (912) 723-4570, Fax: (912)
723-3294

Science and Technology Division, AMS/
USDA, P.O. Box 1368, Dothan, AL 36301,
Tel: (205) 792-5185, Fax: (205) 671-7984

Science and Technology Division, AMS/
USDA, 107 South Fourth St., Madill, OK
73446, Tel: (405) 795-5615, Fax: (405)
795-3645

Science and Technology Division, AMS/
USDA, P.O. Box 272, 715 N. Main Street,
Dawson, GA 31742, Tel: (912) 995-7257,
Fax: (912) 995-3268

Science and Technology Division, AMS/
USDA, P.O. Box 1130, 308 Culloden St.,
Suffolk, VA 23434, Tel: (804) 925-2286,
Fax: (804) 925-2285

ABC Research, 3437 SW 24th Avenue,
Gainesville, FL 32607-4502, Tel: (904)
372-0436, Fax: (904) 378-6483

J. Leek Associates, Inc., P.O. Box 50395, 1200
Wyandotte (31705), Albany, GA 31703-
0395, Tel: (912) 889-8293, Fax: (912) 888-
1166

J. Leek Associates, Inc., P.O. Box 368, 675
East Pine, Colquitt, GA 31737, Tel: (912)
758-3722, Fax: (912) 758-2538

J. Leek Associates, Inc., P.O. Box 6, 502 West
Navarro St., DeLeon, TX 76444, Tel: (817)
893-3653, Fax: (817) 893-3640

J. Leek Associates, Inc., P.O. Box 548, 42 N.
Ellis St., Camilla, GA 31730, Tel: (912)
336-8781, Fax: (912) 336-0146

Pert Laboratories, P.O. Box 267, Peanut
Drive, Edenton, NC 27932, Tel: (919) 482-
4456, Fax: (919) 482-5370

Pert Laboratory South, P.O. Box 149, Hwy 82
East, Seabrook Drive, Sylvestre, GA 31791,
Tel: (912) 776-7676, Fax: (912) 776-1137

Professional Service Industries, Inc., 3
Burwood Lane, San Antonio, TX 78216,
Tel: (210) 349-5242, Fax: (210) 342-9401

Southern Cotton Oil Company, 600 E. Nelson
Street, P.O. Box 180, Quanah, TX 79252,
Tel: (817) 663-5323, Fax: (817) 663-5091

Quanta Lab, 9330 Corporate Drive, Suite 703,
Selma, TX 78154-1257, Tel: (210) 651-
5799, Fax: (210) 651-9271.

(B) Further information concerning
the chemical analyses required pursuant
to this section may be obtained from:
Science and Technology Division,
USDA/AMS, P.O. Box 96456, room
3507-S, Washington, DC 20090-6456,
telephone (202) 720-5231, or facsimile
(202) 720-6496.

(v) *Reporting aflatoxin assays.* A
separate aflatoxin assay certificate, Form
CSSD-3 "Certificate of Analysis for
Official Samples" or equivalent PAC
approved laboratory form, shall be
issued by the laboratory performing the
analysis for each lot. The assay
certificate shall identify the importer,
the volume of the peanut lot assayed,
date of the assay, and numerical test
result of the assay. The results of the
assay shall be reported as follows.

(A) Lots containing 15 ppb or less
aflatoxin content shall be certified as
"Meets U.S. import requirements for
edible peanuts under § 999.600 with
regard to aflatoxin."

(B) Lots containing more than 15 ppb
aflatoxin content shall be certified as
"Fails to meet U.S. import requirements
for edible peanuts under § 999.600 with
regard to aflatoxin." The importer shall

file USDA Form CSSD-3, or equivalent
form, with the Secretary, regardless of
result.

(5) *Appeal inspection.* In the event an
importer questions the results of a
quality and size inspection, an appeal
inspection may be requested by the
importer and performed by the
inspection service. A second sample
will be drawn from each container and
shall be double the size of the original
sample. The results of the appeal
sample shall be final and the fee for
sampling, grading and aflatoxin analysis
shall be charged to the importer.

(e) *Disposition of peanuts failing
edible quality requirements.* (1) Peanuts
failing grade and/or aflatoxin
requirements shall be designated as
non-edible quality "unrestricted"
peanuts or "restricted" peanuts and
shall be crushed for oil, exported, or
disposed to other non-edible outlets as
specified in this section. For the
purposes of this regulation, the term
"non-edible quality unrestricted
peanuts" means loose shelled kernels,
fall through, and pickouts from—and
the entire milled production of—
Segregation 1, Segregation 2, and
commingled Segregation 1 and 2
farmers stock peanuts which contain
more than 15 ppb and 25 ppb or less
aflatoxin. The term "non-edible quality
restricted peanuts" means loose shelled
kernels, fall through, and pickouts
from—and the entire milled production
of—Segregation 1, Segregation 2, and
commingled Segregation 1 and 2
farmers stock peanuts which contain
in excess of 25 ppb aflatoxin. The term
loose shelled kernels means peanut
kernels or portions of kernels
completely free of their hulls, as found
in deliveries of farmers stock peanuts or
those which fail to ride the screens
prescribed in paragraph (b)(1)(iv) of this
section; the term *fall through* means
sound split and broken kernels and
whole kernels which pass through
specified screens; and the term *pickouts*
means those peanuts removed during
the final milling process at the picking
table, by electronic equipment, or
otherwise during the milling process.

(2) Non-edible quality unrestricted
peanuts may be disposed to animal feed:
Provided, That such peanuts are
certified by the inspection service as to
moisture, foreign material content and
treated with a coloring agent or dyeing
solution covering at least 80 percent of
the peanuts, handled and shipped under
lot identification procedures. Except for
bulk loads, red tags shall be used and
marked "Animal Feed, Not For Human
Consumption."

(3) Lots of non-edible quality
unrestricted peanuts may be

commingled during or after
fragmentation and, if certified as
meeting fragmentation requirements by
the inspection service, such fragmented
peanuts may be exported. For the
purposes of this section, the term
fragmented means that not more than 30
percent of the peanuts shall be whole
kernels that ride the following screens,
by type: Spanish— $1\frac{5}{64}$ x $\frac{3}{4}$ inch slot;
Runner— $1\frac{6}{64}$ x $\frac{3}{4}$ inch slot; and
Virginia— $1\frac{5}{64}$ x 1 inch slot. All peanut
lots exported must be lot identified by
the inspection service, certified as
exported by the Customs Service, and
reported to AMS pursuant to paragraphs
(g)(2) and (g)(3) of this section.
Applicable Customs Service procedures
for the export of merchandise must be
followed.

(4) Unrestricted fall through may be
disposed for use as wild-life feed and
rodent bait, if in labeled containers.

(5) Seed peanuts which are
chemically treated causing them to be
unfit for edible or animal feed use shall
be exempt from the requirements of
paragraph (c) of this section.

(6) Meal produced from the crushing
of unrestricted peanuts shall be exempt
from further aflatoxin testing. Meal
produced from the crushing of restricted
peanuts shall be tested and the
numerical test result of the chemical
assay shall be shown on a certificate
covering each lot and the certification
shall accompany each shipment or
disposition.

(7) Non-edible quality restricted
peanuts may be crushed for oil or
exported: *Provided*, That such peanuts
are positive lot identified, bagged, red
tagged, and so certified by the
inspection service.

(8) All certifications and proof of non-
edible dispositions sufficient to account
for all peanuts in each consumption
entry filed by the importer must be
reported to the Secretary by the
importer pursuant to paragraphs (g)(2)
and (g)(3) of this section.

(f) *Reconditioning of failing peanuts:*

(1) Importers may remill and/or blanch
shelled peanuts which originated from
Segregation 1 peanuts that fail quality
requirements of Table 1 or are positive
to aflatoxin. After such reconditioning,
peanuts meeting the quality
requirements of Table 1 and which are
certified negative to aflatoxin (15 ppb or
less) may be disposed for edible use.

(2) Whole lots of remilled and/or
blanched peanuts, and residuals of such
peanuts, which continue to fail quality
requirements of Table 1 and contain 25
ppb or less aflatoxin content shall be
considered "non-edible quality
unrestricted" peanuts and shall be
disposed as "unrestricted" peanuts

crushed for oil, exported, or animal feed, pursuant to provisions of paragraph (e) of the section. Meal produced from unrestricted peanuts shall be disposed pursuant to paragraph (e)(6) of this section.

(3) Whole lots of remilled and/or blanched peanuts, and residuals of such peanuts, which continue to fail quality requirements of Table 1 and contain more than 25 ppb aflatoxin content, shall be considered "non-edible quality restricted" peanuts and shall be disposed as "restricted" peanuts pursuant to paragraph (e)(6) of this section. Meal produced from restricted peanuts shall be disposed pursuant to paragraph (e)(6).

(4) All certifications and proof of non-edible dispositions sufficient to account for all peanuts in each consumption entry filed by the importer must be reported to the Secretary by the importer pursuant to paragraphs (g)(2) and (g)(3) of this section.

(g) *Safeguard procedures.* (1) Prior to arrival of a foreign produced peanut lot at a port-of-entry, the importer, or customs broker acting on behalf of the importer, shall mail or send by facsimile transmission (fax) a copy of the Customs Service entry documentation for the peanut lot or lots to the inspection service office that will perform sampling of the peanut shipment. More than one lot may be entered on one entry document. The documentation shall include identifying lot(s) or container number(s) and volume of the peanuts in each lot being entered, and the location (including city and street address), date and time for inspection sampling. The inspection office shall sign, stamp, and return the entry document to the importer. The importer shall present the stamped document to the Customs Service at the port-of-entry and send a copy of the document to the Secretary. The importer also shall cause a copy of the entry document to accompany the peanut lot and be presented to the inspection service at the inland destination of the lot.

(2) The importer shall file with the Secretary copies of the entry document and grade, aflatoxin, and lot identification certifications sufficient to account for all peanuts in each lot listed on the entry document filed by the importer. Positive lot identification of residual lots, transfer certificates, and other documentation providing proof of non-edible disposition, such as bills of lading, certificates of burying, export declarations, and sales receipts which report the weight of peanuts being disposed and the name, address and telephone number of the non-edible peanut receiver, must be sent to the

Marketing Order Administration Branch, Attn: Report of Imported Peanuts. Facsimile transmissions and overnight mail may be used to ensure timely receipt of inspection certificates and other documentation. Fax reports should be sent to (202) 720-5698. Overnight and express mail deliveries should be addressed to USDA, AMS, Marketing Order Administration Branch, 14th and Independence Avenue, SW, Room: 2525-S, Washington, DC, 20250, Attn: Report of Imported Peanuts. Regular mail should be sent to AMS, USDA, P.O. Box 96456, room 2526-S, Washington, DC 20090-6456, Attn: Report of Imported Peanuts. Telephone inquiries should be made to (202) 720-6862.

(3) Certificates and other documentation for each peanut lot must be filed within 23 days of the date of filing for consumption entry, or, if a redelivery notice is issued on the peanut lot, subsequently filed prior to conclusion of the redelivery period which will be 60 days, unless otherwise specified by the Customs Service.

(4) The Secretary shall ask the Customs Service to issue a redelivery demand for foreign produced peanut lots failing to meet requirements of this section. Extensions in a redelivery period granted by the Customs Service will be correspondingly extended by the Secretary, upon request of the importer. Importers unable to account for the disposition of all peanuts covered in a redelivery order, or redeliver such peanuts, shall be liable for liquidated damages. Failure to fully comply with quality and handling requirements or failure to notify the Secretary of disposition of all foreign produced peanuts, as required under this section, may result in a compliance investigation by the Secretary. Falsification of reports submitted to the Secretary is a violation of Federal law punishable by fine or imprisonment, or both.

(h) *Additional requirements:* (1) Nothing contained in this section shall preclude any importer from milling or reconditioning, prior to importation, any shipment of peanuts for the purpose of making such lot eligible for importation into the United States. However, all peanuts presented for entry for human consumption use must be certified as meeting the quality requirements specified in paragraph (c) of this section.

(2) Conditionally released peanut lots of like quality and belonging to the same importer may be commingled. Defects in an inspected lot may not be blended out by commingling with other lots of higher quality. Commingling also must be consistent with applicable Customs

Service regulations. Commingled lots must be reported and disposed of pursuant to paragraphs (e)(2) and (e)(3) respectively of this section.

(3) Inspection by the Federal or Federal-State Inspection Service shall be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (7 CFR part 51). The importer shall make each conditionally released lot available and accessible for inspection as provided herein. Because inspectors may not be stationed in the immediate vicinity of some ports-of-entry, importers must make arrangements for sampling, inspection, and certification through one of the offices and laboratories listed in paragraphs (d)(3) and (d)(4), respectively, of this section.

(4) Imported peanut lots sampled and inspected at the port-of-entry, or at other locations, shall meet the quality requirements of this section in effect on the date of inspection.

(5) A foreign-produced peanut lot entered for consumption or for warehouse may be transferred or sold to another person: *Provided*, That the original importer shall be the importer of record unless the new owner applies for bond and files Customs Service documents pursuant to 19 CFR §§ 141.113 and 141.20: and *Provided further*, That such peanuts must be certified and reported to the Secretary pursuant to paragraphs (g)(2) and (g)(3) of this section.

(6) The cost of transportation, sampling, inspection, certification, chemical analysis, and identification, as well as remilling and blanching, and further inspection of remilled and blanched lots, and disposition of failing peanuts, shall be borne by the importer. Whenever peanuts are presented for inspection, the importer shall furnish any labor and pay any costs incurred in moving, opening containers, and shipment of samples as may be necessary for proper sampling and inspection. The inspection service shall bill the importer for fees covering quality and size inspections; time for sampling; packaging and delivering aflatoxin samples to laboratories; certifications of lot identification and lot transfer to other locations, and other inspection certifications as may be necessary to verify edible quality or non-edible disposition, as specified herein. The USDA and PAC-approved laboratories shall bill the importer separately for fees for aflatoxin assay. The importer also shall pay all required Customs Service costs as required by that agency.

(7) Each person subject to this section shall maintain true and complete records of activities and transactions specified in this part. Such records and documentation accumulated during entry shall be retained for not less than two years after the calendar year of acquisition, except that Customs Service documents shall be retained as required by that agency. The Secretary, through

duly authorized representatives, shall have access to any such person's premises during regular business hours and shall be permitted, at any such time, to inspect such records and any peanuts held by such person.

(8) The provisions of this section do not supersede any restrictions or prohibitions on peanuts under the Federal Plant Quarantine Act of 1912,

the Federal Food, Drug and Cosmetic Act, any other applicable laws, or regulations of other Federal agencies, including import regulations and procedures of the Customs Service.

Dated: June 11, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

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