Agricultural Marketing Service

7 CFR Parts 997, 998, and 999

[Docket Nos. FV96–997–1 PR; FV96–998–4 PR and FV96–999–3 PR]

Peanuts Marketed in the United States; Changes in Handling and Disposition Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on relaxing, for 1996 and subsequent crop peanuts, several provisions regulating the handling and disposition of domestically and foreign produced peanuts marketed in the United States. The rule would eliminate several requirements covering the disposition of inedible peanuts. At the same time, it would provide safeguard measures including amendments to the aflatoxin provisions to prevent inedible peanuts from entering human consumption outlets. The proposal would increase opportunities for reconditioning failing peanuts and reduce inspection and handling costs to handlers and importers. The changes were recommended by the Peanut Administrative Committee (Committee), the administrative agency which oversees the quality assurance program under Peanut Marketing Agreement No. 146 (7 CFR Part 998, Agreement). By law, the same or similar regulations issued under the Agreement also must be issued under Part 997 regulating non-signatory peanut handlers, and Part 999.600 regulating peanut importers. This proposal includes changes recommended by the Department to help ensure effective safeguard measures. The recommended changes should enable the industry to be more competitive in the changing international peanut market.

DATES: Comments must be received by October 24, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; FAX: (202) 720–5698. All comments should reference the docket numbers, the date, and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2170, or fax: (202) 720–5698; or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, or fax: (941) 299–5169. Small businesses may request information on compliance with this proposed regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C., 20090–6456; telephone: (202) 720–2491, fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Peanut Marketing Agreement No. 146 (7 CFR Part 998); the non-signatory handler peanut regulation (7 CFR Part 997); and the peanut import regulation published in the June 19, 1996, issue of the Federal Register (61 FR 31306, 7 CFR Part 999.600). These programs regulate the quality of domestically produced peanuts handled by Agreement signers and non-signers as well as imported peanuts. The first two Parts are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' Part 999 is effective under section 108B(f)(2) of the Agricultural Act of 1949, as amended (7 U.S.C. 1445c–3).

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

About 80 signatory or non-signatory peanut handlers are subject to regulation under the two domestic programs. There are about 47,000 peanut producers in the 16-state production area. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. Approximately 25 percent of the signatory handlers, virtually all of the non-signers, and most of the producers may be classified as small entities. The import requirements have not been in place long enough to determine the exact number of peanut importers or the percentage which qualify as small businesses. However, it can be assumed that some importers are small entities. Interested persons are invited to submit information on the regulatory impact of this proposed rule on small businesses.

The changes to handling requirements proposed in this rule would enable handlers to more efficiently manage and process their peanut inventories and make better use of their inedible peanuts, without jeopardizing safeguard requirements in the current regulations. The relaxed requirements should reduce handling costs and, thus, increase returns to handlers. The rule would also ensure that all lots of peanuts intended for human consumption are chemically tested and negative to aflatoxin, and that foreign produced peanuts awaiting the start of the new quota period are properly stored. These changes should benefit peanut handlers and peanut importers by ensuring that all peanuts in domestic U.S. human consumption markets are wholesome.

Domestic peanut production in 1995 was 1.76 million tons, with a farm value of slightly over $1 billion.

The objective of the two domestic programs and the import regulation is to ensure that only high quality and wholesome peanuts enter human consumption markets in the United States. About 70 percent of domestic handlers, handling approximately 95 percent of the crop, have signed the Agreement. The remaining 30 percent are non-signatory handlers handling the remaining 5 percent of domestic production. The 1995 duty-free import quota was equal to approximately 2 percent of 1995 domestic production.

Under the three regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to inedible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin content. Costs to administer the

Agreement and to reimburse the Department for oversight of the non-signatory program are paid by an assessment levied on handlers in the respective programs.

The Committee, which is composed of producers and handlers of peanuts, meets at least annually to review the Agreement's rules and regulations, which are effective on a continuous basis from one year to the next. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department assesses Committee recommendations as well as information from other sources, prior to making any recommended changes to the regulations under the Agreement.

Public Law 101–220 amended section 608b of the Act in 1989 to require that all peanuts handled by persons who have not entered into the agreement (non-signers) be subject to the same quality and inspection requirements to the same extent and manner as are required under the Agreement. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997.

Similarly, recent amendments to the Agricultural Act of 1949 require that all foreign produced peanuts in the domestic market fully comply with all quality standards under the Agreement. Section 999.600—Specialty Crops; Import Regulations was added to 7 CFR part 999 on June 19, 1996 (61 FR 31306), to establish minimum quality, identification, certification and safeguard requirements for foreign-produced farmers' stock, shelled and cleaned-inshell peanuts presented for importation into the United States.

Thus, the Committee's recommended changes to the Agreement's regulations, as proposed in this rule, also are proposed for the peanut non-signer and import regulations. This proposed rule identifies the corresponding changes to the non-signer and import regulations for each proposed change to Agreement requirements.

According to the Committee, the domestic peanut industry is undergoing a period of great change. The Committee bases its view, in part, on findings in a recent study entitled ''United States Peanut Industry Revitalization Project'' developed by the National Peanut Council and the Department's Agricultural Research Service (May, 1996). According to the study, the U.S. peanut industry has been in a period of dramatic economic decline since 1991 because of: (1) Decreasing consumption of peanuts and peanut products; (2) accompanying decreases in U.S. peanut production and increases in production costs; and (3) increasing imports of peanuts and peanut products.

The study shows that peanut consumption has declined. Between 1991 and 1994, per capita peanut consumption steadily declined a total of 11 percent. Peanuts used in primary products declined 12 percent, and peanuts used in peanut butter (the largest product usage) declined 20 percent.

Among other things, the study shows that harvested acreage of peanuts in the U.S. has declined 25 percent between 1991 and 1995. Production has fluctuated downward, with 1995 production 30 percent below that of 1991. Farm value of peanut production has dropped 29 percent (from $1.4 billion to slightly over $1 billion) in the same period.

The study points to recent increases in the duty-free import quota for raw peanuts. The volume of imported peanuts has, indeed, increased due to recent significant relaxations of the duty-free quota enacted through the legislation to implement the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements under the General Agreement on Tariffs and Trade (GATT). Prior to 1994, the volume of imported peanuts was limited, in most cases, to 1.71 million pounds annually. However, the Schedule of the United States annexed to 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 under GATT increased 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.

The study shows that imports of peanut butter from 1991 to 1996 increased 116 percent. More significantly, the study reports that imported peanut butter's share of U.S. peanut butter consumption increased 12 fold between 1988 and 1993.

The study also makes projections for the near future. Farmer production costs and revenue are projected to be equal by the year 2000, as are handler costs and revenue. Total imports of shelled peanuts and paste are expected to increase 50 percent by the year 2000 and the U.S. position in the world market is expected to drop 7 percent between 1995 and 1996.

In addition, the modifications in the Federal government's peanut quota and price support program under the Federal Agriculture Improvement and Reform Act of 1996 will result in the domestic industry undergoing changes over the next few years. The study shows that the quota poundage was reduced over 20 percent between 1991 and 1995, and the support price dropped from $670 per ton in 1995 to $610 in 1996. Further decreases in the support price are scheduled over the next few years.

The Committee agrees that all of these factors combined show that the domestic peanut industry is in decline and that the outlook is not expected to change without some positive intervention by the industry.

In mid-1994, peanut industry members began to discuss needed changes in the handling of peanuts. In mid-1994, the Committee appointed a subcommittee to evaluate the present program and to recommend changes. The Agreement's handling regulations were evaluated with the intent of streamlining procedures and making them consistent with current industry economies and technological developments.

Different recommendations were developed for streamlining both incoming and outgoing handling procedures. The proposed changes focus on handlers' freedom to prepare and dispose of peanut lots according to economic incentives of the marketplace. For instance, current restrictions that prevent certain lots failing quality requirements from being blanched or remilled would be removed so that more peanuts could be reconditioned to meet human consumption requirements. Also, provisions throughout the regulations under the Agreement require that certain lots be kept separate and apart from other, similar peanut lots. For the most part, these provisions tend to limit handlers' flexibility to move and recondition peanuts. Such provisions also may work against optimum utilization of equipment and facilities, and prevent a handler from making the most economic use of their peanut inventories. Peanut processing machinery has been improved through technological advances to the point that virtually any lot of peanuts, regardless of original (incoming) quality, can now be shelled, remilled and/or blanched (processed) to meet outgoing quality requirements of the Agreement and the non-signer program. In the final analysis, it was the opinion of the subcommittee that handlers should have

the option of deciding whether it is more economically advantageous to recondition a lot or send it to an inedible peanut outlet.

Subcommittee members also recommended that many of the requirements controlling disposition of inedible peanuts be removed because those requirements should be placed on buyers rather than handlers. The subcommittee contended that peanuts either pass or fail quality and aflatoxin requirements, and the requirements limiting disposition based on aflatoxin content (restricted and unrestricted dispositions) should be removed.

The subcommittee contended further that these changes, primarily relaxations, could be made without limiting the effectiveness of the Agreement's quality assurance program. As long as all peanut lots intended for human consumption continue to be sampled and tested against current outgoing requirements, the industry's high quality standards would be maintained.

These recommendations represent a fundamental change in the Agreement's handling regulations. The full Committee met three times from March to May, 1996, to review all of the recommendations. At a May 23, 1996, meeting the Committee recommended the following changes to the Agreement's incoming and outgoing regulations for 1996 and subsequent crop peanuts. After review of the recommendations, the Department concurs that the recommended changes would help the industry and be in the public interest. This proposed rule would not increase reporting and recordkeeping burdens under the Paperwork Reduction Act and, thus, would not change the current impact of those burdens on small businesses. Moreover, costs imposed for required testing would not be applied disproportionately to small businesses. Therefore, the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), information collection requirements that are contained in this proposal have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581–0067 (for signatory handlers), 0581–0163 (for non-signers), and 0581–0176 (for importers).

This proposed rule would not increase the reporting and recordkeeping burden on handlers and importers regulated under the three programs, and may even result in an overall reduction in reporting and recordkeeping requirements.

Following explanation of each recommended change to the Agreement's regulation, the corresponding proposed changes to the non-signatory regulation and to the import regulation are discussed.

Incoming Regulations

Loose Shelled Kernels

The Committee recommended amending *§ 998.100 Incoming quality regulation* by removing paragraph (d) *Loose shelled kernels* which regulates the acquisition of *loose shelled kernels* (LSKs) and other defective kernels. The Committee believes that the regulations should focus more on outgoing quality and less on the shelling and milling processes necessary to meet the outgoing, human consumption requirements. New, high technology milling and blanching equipment enables handlers to recondition failing peanut lots that could not have been reconditioned when the regulations were promulgated. Therefore, it is no longer necessary to impose restrictions that hinder efficiency of handling operations and result in the loss of potentially good quality peanuts. Thus, paragraph (d)(1) restrictions on acquiring farmers stock with more than 14.49 percent LSKs and 5 percent fall-through from specified screen sizes would be removed.

For the non-signer regulation, paragraph (d) *Loose shelled kernels* in § 997.20, corresponds to paragraph (d) of the Agreement's § 998.100. Paragraph (d) of the non-signer regulation would be removed for the reasons cited above and to be consistent with corresponding changes to the Agreement.

For the import regulation, paragraph (b)(1)(iv) *Loose shelled kernels* of § 999.600 also would be removed for the reasons cited above.

The Committee recommended removing paragraph (d)(2) which requires that handlers submit to the Committee diagrams of their handling facilities and procedures. This provision is no longer considered necessary for the Committee's oversight of the signatory handlers. Therefore, it would also be removed.

The non-signer regulation and the import regulation do not have paragraphs corresponding to paragraph (d)(2) of § 998.100.

Seed Peanuts

The Committee recommended removing the requirement in § 998.100, paragraph (e) *Seed peanuts*, that requires handlers who receive or acquire seed residuals to hold and mill such peanuts separate and apart from other edible quality peanuts. The Committee concluded that as long as the peanuts sent to human consumption outlets must ultimately meet outgoing requirements, including certification as negative to aflatoxin, it is not necessary to hold them separate and apart from other lots also destined for edible consumption. Therefore, § 998.100(e) would be amended to remove such requirement.

For the non-signer regulation, paragraph (e) *Seed peanuts* in § 997.20 contains different wording but the same meaning and intent as the Agreement's seed provisions. Changes to the Agreement's paragraph (e) concerning holding and milling seed peanuts separate and apart from other peanuts would be made to § 997.20 paragraph (e) of the non-signer regulation for the reasons cited above and to be consistent with corresponding changes to the Agreement.

For the import regulation, paragraph (b)(2) *Seed peanuts* in § 999.600, also would be changed accordingly. Further, paragraph (b)(2) provides that Segregation 2 and 3 peanuts may be shelled for seed purposes, but must be dyed or chemically treated to indicate the peanuts are unfit for human or animal consumption. This requirement is the same as that in paragraphs (i)(1) and (2) of § 998.200—which are recommended to be removed (discussed below). Corresponding changes would be made to paragraph (b)(2) of § 999.600. Finally, the Department proposes removing the second sentence of the import regulation paragraph (b)(2) on reporting disposition to the Secretary. This information is adequately covered in the last two sentences of the same paragraph.

Oilstock

In paragraph (f) of § 998.100, the Committee recommended removal of the current prohibition on exporting inedible quality peanuts to Canada or Mexico and removal of references to ''fragmented'' peanuts. Committee members expressed the point that other countries ship inedible peanuts and unfragmented peanuts to Canada and Mexico, as well as to other international markets. The Committee believes that domestic handlers should not deny themselves access to the same international markets, thereby optimizing their returns.

Further, the Committee believes that it would be better to remove the term ''fragmented'' from paragraph (f) and allow the term ''peanuts'' to refer to peanuts in any form, including

fragmented kernels, which may be acquired by handlers and disposed of to crushing or exported. The Department concurs with this recommendation. The term ''shelled'' is also removed from paragraph (f) where appropriate for the same reason.

For the non-signer regulation, the prohibition on exports to Canada and Mexico and the requirement of fragmentation would be removed to make paragraph (f) of § 997.20 consistent with the proposed changes to the regulations under the Agreement.

In § 999.600 of the import regulation, paragraph (b)(3) does not restrict exports and so no corresponding change is made.

Finally in § 998.100, the Committee recommended removal of paragraph (j) which covers disposition of shelled peanuts for use as animal feed. This paragraph would be removed, since it contains restrictions which are not necessary to safeguard the quality of peanuts for human consumption. Appropriate safeguard measures are provided in proposed replacement provisions discussed below.

The corresponding paragraph in § 997.20 of the non-signer regulation, is paragraph (h)—which also would be removed for the reason cited. Paragraph (i) of the non-signer regulations would be retained because that paragraph applies to producer/handlers handling peanuts of their own production. This paragraph provides that such farm-stored peanuts must meet the requirements of the non-signer regulation. Paragraph (i) of the non-signer incoming regulation would be retained and redesignated as paragraph (g) in § 997.20.

The import regulation does not have a paragraph corresponding specifically to the Agreement's paragraph (j) on animal feed. The topic is addressed in paragraph (e) of the outgoing regulations, the removal of which is discussed below.

Outgoing Regulations

Paragraph (a) of *§ 998.200 Outgoing quality regulation* provides that peanut lots meeting the Indemnifiable Grade requirements in Table 2 do not have to be tested and certified as negative to aflatoxin. The Committee recommended modification of this requirement to provide that all lots (including Indemnifiable Grade lots) intended for human consumption be chemically tested and certified ''negative'' as to aflatoxin content. This change would make the Agreement regulations consistent with current industry practice. Most, if not all, buyers require that all peanuts for human consumption be certified negative as to aflatoxin. This proposed amendment would, therefore, have a twofold purpose. It would codify a practice which is common in the industry, and would ensure that the regulations effectuate the objectives of the Agreement.

Under the current outgoing regulation, peanut lots meeting the grade requirements of Table 1, Other Edible Quality, must be certified negative to aflatoxin prior to shipment to the buyer. This requirement would not be changed. Under current industry practice, Indemnifiable Grade peanut lots may be chemically tested and certified while the lot is in transit to the buyer. This practice could be continued under the proposed procedures and the actual transfer of lot ownership would not normally occur until certification has been received by the handler. A shorter turn-around time for chemical analysis is now possible with current testing practices and equipment, overnight and express mail services, and fax transmissions.

The Committee recommended that the regulatory language affecting this change should be added to the regulatory text of paragraph (a) after Table 2. However, the Department proposes revising paragraph (a) between Table 1 and Table 2. The proposed, revised text of paragraph (a) more clearly specifies the intent of the Committee's recommendation, and removes current text that some consider misleading of the industry's common practices. Additional conforming changes would be made to the paragraph.

Paragraphs (a)(1) (i) and (ii) in § 997.30 of the non-signer regulation and paragraphs (c)(1) (i) and (ii) in § 999.600 of the import regulation correspond to paragraph (a) in § 998.200 of the signer regulation. Both sets of paragraphs would be revised for the reasons cited above and to correspond with the proposed changes to the Agreement's outgoing regulation.

The Committee recommended changing the title of paragraph (c) *Pretesting shelled peanuts* of § 998.200. The new title is proposed to be *Sampling and testing shelled peanuts* to include the sampling process which comprises a significant part of the current paragraph. As a conforming change, the beginning of the first sentence of revised paragraph (c) would be changed to add the words ''Prior to shipment,* * *.'' Also, the first paragraph is proposed to be numbered (c)(1) because a paragraph (c)(2) is cited in the Code of Federal Regulations. Paragraph (c) is otherwise unchanged.

A conforming change would be made to the title of corresponding paragraph (c) of the non-signer regulation. No conforming change is necessary in the import regulation. A conforming change also would be made to non-signer paragraph (c)(2) which currently specifies that handlers shall cause samples to be ground by the inspection service prior to shipment. The revised paragraph would provide that the non-signer handler shall cause the sample to be ground for testing.

Paragraph (c)(4) of § 998.200 specifies the maximum allowable aflatoxin content for edible peanut lots as 15 parts per billion (ppb). Such lots are certified as ''negative'' to aflatoxin. Paragraph (c)(4) also specifies a ''negative'' content for inedible peanut lots as 25 ppb or less. Under the current regulation, failing lots with aflatoxin content in excess of 15 ppb but 25 ppb or less are considered ''unrestricted,'' which means the peanuts can be used in certain non-human consumption peanut outlets such as animal feed, wildlife feed, etc. ''Unrestricted'' use may provide more of a financial return for handlers while not posing a food safety threat to consumers. Peanut lots with aflatoxin content of more than 25 ppb are certified as ''restricted'' and can only be crushed for oil or exported. Aflatoxin certificates from USDA and private laboratories specify unrestricted lots as ''negative'' and usually do not include the numerical count of the lot's aflatoxin content. Currently, restricted lot certificates must cite the numerical aflatoxin count of the failing lot.

The Committee's recommendations to revise paragraph (h) and remove paragraphs (j) and (l) of § 998.200 would remove, among other things, procedures relevant to ''unrestricted'' and ''restricted'' lots of peanuts. Restrictions on the disposition of failing peanut lots would be relaxed under the proposed rule. Failing lots of peanuts composed on LSKs, fall through and pickouts from initial shelling operations would be limited to crushing or export unless certified as to aflatoxin content. If so certified, the lots could go to other non-edible uses. Other failing lots and residuals from blanching and remilling also could be sold to any buyer provided that the lot is positive lot identified (PLI), certified as to aflatoxin content, and in specified containers. Therefore, there is no reason to retain the phrase in paragraph (c)(4) of § 998.200 that specifies 25 ppb or less as ''negative'' to aflatoxin for inedible peanuts. Such a requirement would only cause confusion under the proposed regulations.

Further, the proposed replacement paragraphs ((f), (g), and (h) of § 998.200) would require that failing lots be ''certified as to aflatoxin content''—which means a numerical count rather than a general term covering a ppb spread from 16 to 26 ppb under current practice. For these reasons, the Department proposes removing reference to 25 ppb or less as ''negative'' for inedible peanuts. For peanut lots testing more than 15 ppb, the aflatoxin certificate would be required to show the lot's numerical aflatoxin count.

Currently, peanut lots meeting human consumption requirements may be certified as ''negative'' to aflatoxin—meaning that the chemical analysis shows the peanuts have 15 ppb or less aflatoxin content. The chemical analysis certificates for such lots usually are certified as ''negative as to aflatoxin for edible peanuts'' (or similar language). The certificates do not have to specify the numerical aflatoxin count of the lot.

If this proposed rule becomes effective, USDA and private aflatoxin laboratories would specify the numerical aflatoxin content on certificates issued on inedible peanut lots testing more than 15 ppb. Aflatoxin certificates on lots which fail grade requirements but are tested at 15 ppb or less, would be certified as ''negative to aflatoxin'' for inedible peanuts. Non-signer and imported peanut lots meeting edible requirements would also be required to be certified as negative to aflatoxin.

In the non-signer regulations, a corresponding change would be made to paragraph (a)(2) of § 997.30. In the import regulation, paragraph (f)(3) establishes the restricted category of inedible peanuts as more than 25 ppb aflatoxin content. That paragraph would be removed for the reasons cited above and to correspond with other recommendations of the Committee.

Paragraph (d) *Identification* of § 998.200 is proposed to be amended by adding a clause in the first sentence establishing the maximum lot size as 200,000 pounds. The maximum limit specification occurs elsewhere in the Agreement's regulatory language and is proposed to be added here for consistency and clarity. The phrase would be removed elsewhere in the Agreement regulations, but would apply to all sampling situations.

In the non-signer regulation, section § 997.50 applies to identification, among other topics. While the maximum lot size is specified elsewhere in the regulations, the same sentence added to paragraph (d) of § 998.200 is added to *§ 997.50 Inspection, chemical analysis, certification and identification.*

In the import regulation, paragraph (d)(3)(ii) in § 999.600 already specifies the 200,000 pound maximum lot size for farmers stock, shelled, and cleaned-inshell peanuts for sampling purposes.

Paragraph (f) *Interplant transfer* of § 998.200 was revised last year and currently provides that peanut lots may be transferred to any handler or storage without PLI and certification, and that, upon disposition for human consumption such transferred peanuts must meet edible requirements. This paragraph is consistent with the Committee's intention to remove provisions which restrict movement and increase costs of handling peanuts. As long as any lot of peanuts intended for human consumption are required to be sampled and meet outgoing quality requirements and are PLI, any additional requirements on the transfer of peanuts between a handler's plants, that do not affect outgoing quality, are irrelevant. Further, handlers would be required to keep records of all such transfers.

In the non-signer regulation, paragraph (f) covers the transfer of non-signer peanuts between plants. This paragraph would be removed (as discussed below).

The import regulation does not have corresponding requirements on the transfer of imported peanuts between plants, and, therefore, no conforming change is necessary for that program.

Disposition of Failing Quality, Inedible Peanuts

Finally, the Committee recommended streamlining § 998.200 by removing 16 paragraphs covering disposition requirements and procedures concerning inedible (failing quality) peanuts used for research projects, wildlife feed, rodent bait, chemically treated seed, fragmented export, meal from crushing, and animal feed. The paragraphs proposed to be removed from § 998.200 are:

(1) Paragraph (g)(1): defining LSKs, fall through, and pickouts and inedible quality peanuts;

(2) paragraph (g)(2): keeping such peanuts separate and apart from other peanuts;

(3) paragraph (g)(3): disposing of such peanuts to research projects, wildlife feed, rodent bait, chemical treatment for seed, and export to countries other than Canada and Mexico, designations of restricted and unrestricted failing lots, and limiting disposition of meal from crushing;

(4) paragraph (g)(4) specifying further requirements on the transfer of inedible peanuts;

(5) paragraph (h)(1) specifying further requirements on identifying and reporting the transfer of inedible peanuts;

(6) paragraph (h)(3) specifying further requirements regarding the disposition of failing quality Segregation 1 peanuts to specified outlets;

(7) paragraph (i)(1) specifying disposition of seed peanuts and seed residuals;

(8) paragraph (i)(2) specifying the chemical treatment of seed peanuts;

(9) paragraph (j)(1) specifying requirements on commingling and disposition of Segregation 2 and 3 peanuts;

(10) paragraph (j)(2) specifying further requirements on commingling and disposition of Segregation 2 and 3 peanuts;

(11) paragraph (k)(1) regulating the exportation of Segregation 1 peanuts;

(12) paragraph (k)(2) specifying further requirements on the disposition of Segregation 1 peanuts to inedible outlets;

(13) paragraph (l)(1) regarding the unrestricted disposition of shelled peanuts;

(14) paragraph (l)(2) regarding the restricted disposition of shelled peanuts;

(15) paragraph (m)(1) specifying requirements for the disposition of shelled peanuts for domestic animal feed; and (16) paragraph (m)(2) specifying coloring or dyeing and other requirements for disposition as domestic animal feed.

The proposed changes include removal of paragraphs (j) and (k) from § 998.200. These paragraphs address disposition requirements for farmers stock peanuts. The Committee believes that these two paragraphs would no longer be needed because current paragraph (f) *Oilstock* of § 998.100 Incoming quality regulations provides that handlers may acquire Segregation 2 and 3 peanuts for crushing or export and that the Area Association supervise such dispositions. Handlers may not acquire Segregation 2 or 3 peanuts for purposes other than crushing or export. Handlers may also acquire for crushing or export peanuts originating from Segregation 1 farmers stock which are milled and fail human consumption quality and are PLI.

Paragraph (j)(3) of the outgoing regulation provides handlers with exemption from assessments for acquisitions of Segregation 2 and 3 peanuts used for crushing or export. The Committee intends that the assessment exemption for such peanuts should remain in effect, but did not specifically discuss retention of the paragraph.

Paragraph (j)(3) was added to the regulatory language last year (60 FR 36208, July 14, 1995) to make clear the provisions of §§ 998.31 and .48 of the Agreement. Because paragraph (j)(3) is relatively new in the regulatory text, and because a corresponding provision in the non-signer regulation is required, the Department proposes that the exemption for Segregation 2 and 3 peanuts acquired for oilstock or export remain in the regulation. The exemption paragraph would be redesignated as paragraph (i) in § 998.100 of the incoming regulation, and revised to remove the references to the removed paragraphs (j)(1) and (j)(2) in § 998.200.

A relaxation also is recommended by the Committee in the current blanching (h)(2) and remilling (h)(4) paragraphs. These provisions prohibit the blanching or remilling of peanut lots which exceed certain defect levels—10 percent total unshelled peanuts and damaged kernels, or 10 percent foreign material, and, for remilling, 10 percent fall through. The restrictions on the amount of damage and foreign material in out-of-grade lots would be removed so that handlers would have more opportunity to recondition failing lots. This would increase handler flexibility, reduce inspection and handling costs, and enable more peanuts to be reconditioned and shipped for human consumption. The Committee recommended that the restriction on 10 percent fall-through for remilling peanuts remain in effect. The non-signer and import regulations do not contain the same limitations on blanching and remilling of defective lots, so the corresponding paragraphs (§ 997.40(a) and § 999.600(f), respectively) in those regulations do not need to reflect this proposed change.

The Committee indicated that the present regulations are too restrictive and limit handlers' ability to recondition potentially edible peanuts. Further, as long as peanuts are required to meet the outgoing requirements, including negative aflatoxin certification, it should not matter from which categories the peanuts originated. The Committee recommended removal of many of the restrictions as proposed in this rule and the addition of appropriate safeguards, as discussed below. The Committee believes these safeguard requirements would help ensure that inedible peanuts do not end up in human consumption outlets.

The provisions covering peanut disposition would be replaced by two new paragraphs and revisions would be made in two existing paragraphs. New paragraphs (f) (1), (2) and (3) of the outgoing regulation would modify § 998.32 of the Agreement and specify disposition requirements for edible and non-edible peanut lots. New paragraph (g) would provide for disposition of inedible milled peanuts (''sheller oilstock residuals''). Proposed paragraph (h)(1) would cover the blanching of inedible peanuts (revised from current paragraph (h)(2)). Proposed paragraph (h)(2) would cover the remilling of inedible peanuts (revised from current paragraph (h)(4)).

The Committee believes that safeguard measures in the current regulations should be maintained in the proposed changes because peanut lots sent to human consumption outlets would still need to meet the quality requirements of paragraph (a) and be certified negative to aflatoxin. Peanuts which cannot be reconditioned (or which a handler chooses not to recondition) to meet outgoing quality requirements would continue to be required to be PLI, red tagged, and maintained in appropriate containers. If disposed of to inedible peanut outlets other than crushing or export, failing peanuts would be required to be certified as to aflatoxin content and that certification would accompany the lot to the inedible peanut outlet. Paragraph (f)(2) also would require that the shipping papers state that the peanuts are not to be used for human consumption. All inedible dispositions would be reported to the Committee.

In proposed paragraph (f)(3), failing quality peanuts not sent to such inedible outlets must be either crushed or exported as prescribed in new paragraph (g) or blanched or remilled pursuant to new paragraphs (h)(1) and (2), respectively. Segregation 2 and 3 farmers stock peanuts would be allowed to be milled for seed. This is a standard procedure for obtaining seed peanuts.

New paragraph (g) of § 998.200 would provide that peanuts and portions of peanuts which result from milling operations are identified as ''sheller oilstock residuals.'' Such peanuts may include loose shelled kernels, fall through, and pick-outs as defined in that paragraph and whole lots of failing peanuts that a handler may choose to crush or export. Under the proposed paragraph (g), sheller oilstock residuals which are certified as to aflatoxin content could be disposed of ''domestically,'' which means that the peanuts could be sent to an inedible peanut outlet pursuant to proposed paragraph (f)(2) or crushed for oil. To be sent to an inedible outlet, sheller oilstock residuals would have to be certified as to aflatoxin content. Such peanuts also could be exported. Seller oilstock residuals not certified as aflatoxin content could only be crushed or exported as specified in proposed paragraph (g). Further, the shipping papers accompanying such lots would specify that disposition limitation. All movement of sheller oilstock residuals would be reported to the Committee—which is consistent with current reporting requirements. However, the Department proposed to establish the following additional safeguard requirement to help ensure that inedible peanut lots are not disposed of to inappropriate inedible peanut outlets.

The Committee's recommended changes in this proposed rule would remove nearly all restrictions on handlers selling peanuts to inedible peanut outlets. To help ensure that peanut lots with excessively high aflatoxin content are not used in inedible outlets where aflatoxin contamination could be transferred to human consumption products, the Department proposes requiring that no peanut lot disposed to an inedible outlet, other than for crushing or export, could exceed 300 ppb aflatoxin content. The 300 ppb content ceiling is the maximum aflatoxin content recommended by the Food and Drug Administration (FDA) for peanuts used in animal (livestock) feed. To make this change, an additional paragraph (2) specifying the restriction would be added to the proposed sheller oilstock residual paragraph (g). Proposed paragraph (g) would be designated as (g)(1). The same provision would be added to the non-signer (§ 997.40(c)(2)) and import regulations (§ 999.600(e)(2)(ii)).

Thus, the affect of this proposed rule is to raise from 25 to 300 ppb aflatoxin content limit for failing peanut lots which can be disposed to inedible outlets. Under the proposed changes to the handling regulations, handlers would be allowed to recondition failing peanut lots, and would have more incentive to do so. Handlers would have the option of crushing a lot for oil or reconditioning the lot. Lots above 300 ppb aflatoxin content which are not economically beneficial to recondition would have to be crushed or exported. With current technologies, reconditioning should be possible for most all failing peanut lots. Whole and residual lots exceeding 300 ppb aflatoxin content could be commingled until sufficient volume is accumulated for crushing disposition.

According to the FDA, residuals from the reconditioning of lots exceeding 300 ppb and the meal from crushed lots exceeding 300 ppb should not be used as animal feed.

To increase peanut handlers and importers awareness of wholesome peanut uses, the Department includes in this preamble discussion a summary of FDA's recommended maximum aflatoxin content for domestic animal feed. This information is summarized from FDA's Compliance Policy Guides (Sec. 683.100) revised March 28, 1994. In that guide, FDA states that ''Action levels for aflatoxin in animal feed now apply also to peanut products (peanuts, peanut meal, peanut hulls, peanut skins and ground peanut hay).'' With regard to animal feeds, the FDA guide provides as follows:

—Peanut products intended for finishing (i.e., feedlot) beef cattle: Action level 300 ppb.
—Peanut products intended for finishing swine of 100 pounds or greater: Action level 200 ppb.
—Peanut products intended for breeding beef cattle, breeding swine, or mature poultry: Action level 100 ppb.
—Peanut products and feed ingredients intended for immature animals: Action level 20 ppb.
—Peanut products and other feed ingredients intended for dairy animals, for animal species or uses not specified above, or when the intended use is not known: Action level 20 ppb.

In the current regulations under the Agreement, inedible peanut lots certified at 26 or more ppb cannot be sent to certain inedible peanut outlets where the peanuts would not be subject to heating in the preparation for inedible use or for uses which would allow the aflatoxin to be passed to another food product entering human consumption channels. This is a food safety measure which helps prevent aflatoxin-contaminated peanut lots from being used in certain inedible outlets—such as dairy cattle feed where the aflatoxin could be passed to human consumption in the milk.

This proposed rule would change the certification protocols for inedible peanut lots. Currently, peanut lots which meet both grade quality (paragraph (a)) and aflatoxin requirements (15 ppb or less) are certified as ''negative as to aflatoxin for edible quality peanuts''—or similar language.

Further, lots failing grade requirements but which are certified as 25 or less ppb are currently certified as ''negative to aflatoxin for inedible peanuts.'' Under the proposal, peanut lots meeting both grade and aflatoxin requirements would continue to be certified as negative to aflatoxin for edible peanuts and the aflatoxin count would not be shown on the aflatoxin certificate.

For peanut lots which fail grade requirements but which meet aflatoxin requirements, the proposed rule would provide that the aflatoxin certificate show the aflatoxin count of the lot and state that the peanuts are inedible grade quality. The Department believes this would assist handlers in marketing inedible quality peanuts. For example, a lot which is inedible grade quality but tests as 5 ppb would be certified as ''inedible quality peanuts with 5 ppb aflatoxin content''—or similar language.

Finally, the proposed rule would provide that the aflatoxin certificate of any peanut lot which exceeds 15 ppb aflatoxin content, regardless of grade certification, would show the numerical count of aflatoxin content and state that the lot is inedible because of excessive aflatoxin content—or similar language. The certification protocols would be implemented by the USDA and PAC-approved laboratories and would be applied to signer, non-signer, and imported peanuts.

The Department also proposes changes to paragraph (h). In the proposed text for the revised blanching and remilling paragraphs, the phrase ''which originated from Segregation 1 peanuts'' was not included. No explanation was provided in the Committee meeting or meeting minutes as to the benefit of removing this important safeguard provision. The phrase, at the very least, serves as a reminder that only Segregation 1 peanuts may be shelled and sent to edible consumption outlets. Thus, the Department proposes re-inserting the phrase ''which originated from Segregation 1 peanuts'' in the blanching (h)(1) and remilling (h)(2) paragraphs proposed by the Committee.

Also, the Committee recommended that the titles of the revised blanching (h)(1) and remilling (h)(2) paragraphs include reference to Committee approved blanchers and remillers, respectively. However, the Department proposes removing the reference in the titles because the reference is not necessary.

In non-signer *§ 997.30 Outgoing regulation,* paragraphs (f) Transfer between plants and (g) Residuals from seed peanuts correspond to the same topics covered in the Agreement's outgoing regulation, and would be removed, accordingly. The subject matter in the two paragraphs would be replaced with a revised *§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.* Current § 997.40 covers certain outgoing requirements corresponding to those in the Agreement's § 998.200. Paragraphs (a)(1) and (2) of § 997.40 covers remilling and blanching of inedible shelled peanuts. These two paragraphs would be revised, and the order reversed, to conform with the Committee's recommended revised blanching and remilling paragraphs (h)(1) and (2). However, the paragraphs are not identical to the Agreement provisions because non-signers are not required to receive Department approval prior to moving a failing shelled lot to a blancher or remiller. Also, the non-signer regulations do not limit remilling and blanching to Committee approved remillers, blanchers or exporters. Therefore, those requirements are not included in the proposed revised non-signer blanching and remilling paragraphs.

The provisions of current non-signer paragraph (a)(3) of § 997.40 covering the ownership of peanuts moved for custom blanching or remilling, and the certification and reporting of such peanuts, are included in the revised § 997.40 blanching and remilling paragraphs (d)(1) and (2), and would be deleted in this proposed rule. Likewise, the contents of current paragraph (a)(4) on the bagging, red tagging and disposition of blanched and remilled peanuts are included in the revised § 997.40(d)(1) and (2). This would make the non-signer blanching and remilling paragraphs conform with the Agreement's revised blanching and remilling paragraphs.

Four paragraphs in § 997.40(b) *Disposition of shelled peanuts failing quality requirements for human consumption* cover the various disposition procedures and outlets for failing quality, inedible peanuts. These requirements would remain the same as, but organized and worded differently from, the Agreement's § 998.200 requirements in paragraphs (g) through (m)—most of which would be removed and replaced as described above. The provisions removed from paragraph (b) of § 997.40 are:

(1) Paragraph (b)(1) regulating the disposition of shelled peanuts to unrestricted crushing, fragmenting or dyeing, export, animal feed, wildlife feed, and rodent bait;

(2) paragraph (b)(2) specifying further requirements for disposition to animal feed (coloring or dyeing, PLI, valid aflatoxin certification, and reporting);

(3) paragraph (b)(3) regulating the disposition of shelled peanuts to restricted crushing, and export;

(4) paragraph (b)(4) regulating the disposition of Segregation 2 and 3 farmers stock peanuts to restricted and

unrestricted meal, crushing and export; and

(5) paragraph (b)(5) specifying reporting requirements for LSKs, fall through, and pickouts.

These paragraphs would be removed for the same reasons and to correspond with the proposed changes to the Agreement's outgoing regulation.

Paragraph (b)(6) of § 997.40 would be retained because it exempts from assessments, Segregation 2 and 3 farmers stock peanuts acquired by non-signatory handlers for crushing or export. The corresponding paragraph in the Agreement is retained and redesignated in this proposed rulemaking. Therefore, such Segregation 2 and 3 peanuts acquired by non-signatory handlers also would continue to be exempt from assessments. Paragraph (b)(6) would be revised and redesignated as paragraph (b) under *§ 997.51 Assessments* and the existing text in § 997.51 would be redesignated as paragraph (1).

There is no authority to assess imported peanuts.

Several changes would be made to the import regulation regarding disposition of inedible peanuts. Paragraph (c)(3) of § 997.40 would be moved and replace current paragraph (e). To make the same changes to the import regulation, the provisions in paragraphs (e) and (f) would be revised and placed under new paragraph (e), and paragraphs (g) and (h) would be redesignated as (f) and (g), respectively.

New paragraph (e)(1) of § 999.600 provides an overview for reconditioning imported lots. New paragraph (e)(2) covers failing lots disposed of to inedible uses such as animal feed, wildlife feed, seed peanuts and meal, which are currently regulated under paragraphs (e) and (f). Dispositions to these inedible outlets would be required to be positive lot identified with red tags, bagged, and the bill of lading would state that the peanuts could not be used for human consumption. This proposal would remove all references to ''restricted'' and ''unrestricted'' failing peanuts and the limitations on the disposition of restricted and unrestricted lots.

Proposed new paragraph (e)(3) of the import regulation would cover disposition of failing quality peanuts (''sheller oilstock residuals'') to crushing or export. Peanuts covered under the new (e)(3) would be primarily loose shelled kernels, fall through and pickouts from milling operations, but may also include any other failing lot that an importer chooses to crush or export. Identification, certification and labeling requirements are the same as those in corresponding paragraphs proposed for the Agreement.

New paragraph (e)(4) would specify reporting requirements for inedible lots pursuant to the reporting requirements in the safeguard procedures.

Finally, a paragraph would be added at the end of the regulations under the Agreement text which would specify that certain records would be required to be maintained pursuant to § 998.43 of the Agreement. These records would pertain to peanuts which are not certified for human consumption. In addition to maintaining certain records, the Agreement provides that all records would be made available to Committee staff and to representatives of the Secretary, as is necessary to document compliance with Agreement regulations. The additional provision does not represent an increase in the number of forms handlers and importers would have to complete, report, or maintain under the program.

No corresponding changes are necessary in the non-signer and import regulations. However, in *§ 997.52 Reports of acquisition and shipments* and elsewhere in the non-signer regulation, references regarding specific Fruit and Vegetable Division form numbers are proposed to be replaced with a more generic statement ''forms provided by the Division.'' This would enable the Department to revise and reduce the number of forms without additional rulemaking expense.

The unchanged portions of the incoming and outgoing regulations currently in effect for 1995 and subsequent crop peanuts would remain in effect for 1996 and subsequent crop peanuts.

Additional Change to § 999.600 Import Regulation

Early Entry and Bonded Storage Pending New Quota

Experience shows that some importers continue to ship peanuts to the U.S. even after the duty-free quota is filled for one year. The peanuts are sampled and inspected when off-loaded at the port and then sent inland to Customs Service bonded warehouses where the peanuts are stored until the opening of the next yearly quota—which could be as long as 11 months. New crop peanuts from Argentina, for instance, may be harvested as early as May or June but may arrive in the U.S. too late to be included in that year's quota. Such peanuts could be placed in bonded storage awaiting the next quota year beginning the following April.

The Department has determined that the grade and aflatoxin certificates issued on such peanuts upon arrival in May, June, or later, of one quota year should continue to be valid until the following quota year. This is consistent with the Agreement which does not place any time limits on the applicability of grade and aflatoxin inspection certificates.

However, paragraph (e) *Reinspection* of § 998.200 provides that if the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, it may reject the then effective inspection certificate and require a reinspection. The Department exercises similar oversight of imported peanuts to ensure that only wholesome peanuts enter human consumption channels. Because of the possibility of deterioration while in storage, the Department needs to know which peanut shipments are held in bonded storage for an extended period of time, so that the wholesomeness of such peanuts could be verified when removed from storage. Therefore, the Department proposes that an additional safeguard measure, new paragraph (f)(6) be added to the import regulation.

The proposal would require that importers report to AMS peanut shipments which are sampled, inspected, and held in bonded storage in excess of a stated period of time. Such time would be set at one month in this proposal. AMS seeks comments as to whether or not one month is appropriate. The report would be filed pursuant to paragraphs (f)(2) and (3) of this section at the time of inspection and entry into a bonded warehouse for storage. The report would include copies of Customs Service documentation of the lot, the grade and aflatoxin certificates, and location of the storage warehouse.

To avoid deterioration, peanuts should be stored in clean, dry, odor free, warehouses and under sanitation and cold storage conditions consistent with industry standards. While the Agreement does not require cold storage conditions, the following points should be used as a cold storage guide:

—Temperatures should range from 34 to 41 degrees Fahrenheit with a relative humidity of 55 to 70 percent.
—Daily or weekly recording charts of temperature and humidity should be maintained.
—Interior air circulation should be adequate to maintain uniform temperatures.
—Pans under refrigeration equipment should prevent condensation from dripping onto the peanuts.
—Peanuts should be gradually removed from cold storage over 2 to 3 days.

This and other information on sanitation, facilities, management practices, and dry storage is taken from *Good Management Practices for Shelled Goods Cold Storage and Shelled Goods Dry Storage* distributed by the National Peanut Council. Copies are available for a nominal price to non-members by calling (703)–838–9500.

Imported peanut lots certified as meeting human consumption requirements and subsequently stored under such conditions and in appropriate warehouses, may be entered for consumption when the next quota year begins—without further reporting to AMS. Upon filing for entry, the importer shall certify in writing to the Customs Service that the peanuts covered by the entry documentation have been stored consistent with industry standards for the entire length of the storage period.

Paragraph (b)(4) of the import regulation provides authority for the Secretary to require a reinspection of an imported peanut lot. If the documentation provided to AMS, or if any evidence subsequently received by AMS, indicates that appropriate storage standards have not been met or maintained and the peanuts may have been damaged or deteriorated, the Secretary could demand reinspection of the lot prior to the importer's filing for consumption entry of the lot.

Paragraph (b)(4) of § 999.600 is currently placed in the import rule's Incoming quality regulation. However, reinspections are more likely to be needed when shelled peanuts are placed under bonded storage several months prior to the beginning of the next quota year, as discussed above. Therefore, the Department proposes to redesignate it as paragraph (f)(5) Reinspection in the import regulation. As a safeguard provision, the paragraph will apply to farmers stock, shelled, and inshell imported peanuts. The intent and requirements of the paragraph remain unchanged.

Some paragraphs of the three peanut regulations would not be changed in this proposal. However, for a better understanding of the proposed changes, the three regulations are published in their entirety as proposed, including paragraphs which are not changed.

If adopted, the proposed changes to the signer and non-signer programs should be in effect as soon as possible to cover as much of the crop year as possible. Thus, a 20-day (rather than 30-day) comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made in this matter.

Because this proposed rule will not be implemented before the beginning of the 1996 domestic crop year, comments are also requested on whether final implementation of this proposal after the beginning of the crop year would have an unequal effect on one or more of the three production areas or unequally affect small or large handlers.

List of Subjects

7 CFR Part 997

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

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

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 parts 997, 998 and 999 are proposed to be amended as follows:

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

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Under the center heading ''Quality Regulations,'' §§ 997.20, 997.30, 997.40 and 997.50 are revised to read as follows:

Quality Regulations

§ 997.20 Incoming regulation.

(a) No handler shall receive or acquire peanuts intended for human consumption, either from a producer or other person, unless such peanuts are inspected pursuant to § 997.50 and are determined to be Segregation 1 peanuts at time of receipt from the producer or, if received from another person, had not been mixed with peanuts of a lower quality than Segregation 1 and meet the following additional requirements specified in this section: Provided, That a handler may—

(1) Acquire shelled peanuts from the Commodity Credit Corporation (CCC) or cleaned inshell or shelled peanuts from other handlers, a handler as defined in 7 CFR 998.8, or from buyers who have purchased such peanuts from handlers or from the CCC, if the lot has been certified as meeting the requirements of § 997.30(a) and the identity is maintained; and/or

(2) Perform services for an area association pursuant to a peanut receiving and warehouse contract.

(b) *Moisture and foreign material.* (1) *Moisture.* Except as provided under paragraph (d) of § 997.20, no handler shall receive or acquire peanuts containing 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 storing or milling. For farmers stock peanuts, moisture determinations shall be rounded to the nearest whole number. Moisture determinations on shelled peanuts shall be carried to the hundredths place.

(2) *Foreign material.* No handler shall receive or acquire farmers stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are 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.

(c) *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.

(d) *Seed peanuts.* Peanuts which are not Segregation 1 peanuts and therefore cannot be acquired for human consumption may be acquired, shelled and delivered for seed purposes. Peanuts intended for seed use, produced under the auspices of a State agency which regulates or controls the production of seed peanuts, which do not meet Segregation 1 requirements shall be stored and shelled separate from peanuts intended for human consumption. However, Segregation 2 seed peanuts, produced under the auspices of the State agency, which contain up to 3.00 percent damaged kernels and are free from visible *Aspergillus flavus* may be stored and shelled with Segregation 1 peanuts which are also produced under the auspices of the State agency. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purposes farmers stock peanuts, and such peanuts shall be exempt from the requirements of this section and, therefore, shall not be required to be inspected and certified as meeting these requirements, and the

handler shall report to the Division the weight of each lot of farmers stock peanuts received on such basis on a form provided by the Department. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts or from another person may mill such residuals with other receipts or acquisitions of the handler, and such peanuts which meet the requirements specified in § 997.30(a) may be disposed of by sale to human consumption outlets.

(e) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. Handlers may act as accumulators and acquire, for other handlers; a handler as defined in 7 CFR 998.8 or from other persons, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire shelled peanuts originating from Segregation 2 or 3 farmers stock or the entire mill production of peanuts from Segregation 1 farmers stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in § 997.30(d), which failed to meet the requirements for human consumption pursuant to § 997.30(a): *Provided,* That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions to the Division as prescribed on a form prescribed by the Division. Handlers who acquire grades or sizes of shelled peanuts which fail to meet the requirements for human consumption for disposition to domestic crushing and subsequent export to countries shall report such disposition on a form provided by the Division.

(f) *Shelled peanuts.* Handlers may acquire shelled peanuts (which originated from ''Segregation 1 peanuts'') from other handlers or a handler as defined in 7 CFR 998.8, for remilling and subsequent disposition to human consumption outlets. Further disposition of such peanuts shall be regulated by § 997.40.

(g) No producer may handle, process, prepare for sale, or otherwise alter peanuts of his own production from the condition of farmers stock, for disposition in human consumption outlets unless such peanuts are first inspected and certified pursuant to § 997.50 and meet the applicable requirements of this section.

§ 997.30 Outgoing Regulation.

(a) *Shelled peanuts.* (1)(i) No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified ''negative'' as to aflatoxin and certified as meeting the requirements in Table 1:

TABLE 1.—MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts damaged kernels and minor defects (percent)	Fall through		Total	Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels			
Maximum limitations							
Excluding lots of ''splits''							
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 16/64 x 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%; 15/64 x 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 15/64 x 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%; 15/64 x 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%; 14/64 x 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%; 14/64 x 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%; 16/64 inch; round screen.	3.00%; 13/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(ii) Prior to disposition to human consumption outlets, peanuts must be positive lot identified, be certified ''negative'' as to aflatoxin, and be certified as meeting the following superior quality requirements in Table 2:

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)	Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total	Foreign materials (percent)	Moisture (percent)
Runner U.S. No. 1 and better.	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 U.S. No. 1 and better.	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 U.S. No. 1 and better.	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
Runner U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 17/64 inch, round screen.	3.00%; 14/64 x 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
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) The term ''fall through'', as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Prior to shipment, appropriate samples for pretesting shall be drawn in accordance with paragraph (c) of this section from each lot of Superior Quality peanuts. For the current crop year, ''negative'' aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements.

(b) *Cleaned inshell peanuts.* No handler shall ship, sell, or otherwise dispose of cleaned inshell peanuts for human consumption:

(1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by a U.S. Department of Agriculture laboratory (hereinafter referred to as ''USDA laboratory'') or a laboratory listed in paragraph (c) of this section and found to be wholesome relative to aflatoxin;

(2) With more than 2.00 percent peanuts with damaged kernels;

(3) With more than 10.00 percent moisture; or

(4) With more than 0.50 percent foreign material.

(c) *Sampling and testing shelled peanuts.* (1) Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as ''Sample #1N'', ''Sample #2N'', and ''Sample #3N'' and each sample shall be placed in a suitable container and ''positive lot identified'' by means acceptable to the Inspection Service. Sample #1N may be prepared for immediate testing or Sample #1N, Sample #2N, and Sample #3N may be returned to the handler for testing at a later date.

(2) The handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service, a USDA laboratory or a laboratory listed herein, in a ''subsampling mill'' approved by the Division. The resultant ground subsample from Sample #1N shall be of a size specified by the Division and shall be designated as ''Subsample 1—ABN'' and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1N. It shall be designated as ''Subsample 1—CDN''. Subsample 1—CDN may be sent as requested by the handler or buyer, for aflatoxin assay, to a USDA laboratory or other laboratory that can provide analyses results on such samples in 36 hours. The cost of sampling and testing Subsample 1—CDN shall be for the account of the requester. Subsample 1—ABN shall be analyzed only in a USDA

laboratory or a laboratory listed herein. Both Subsamples 1—ABN and 1—CDN shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Division.

(3) The samples designated as Sample #2N and Sample #3N shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1N are known.

(4) Upon call from the laboratory, handler shall cause Sample #2N to be ground by the Inspection Service in a ''subsampling mill.'' The resultant ground subsample from Sample #2N shall be of a size specified by the Division and it shall be designated as ''Subsample #2—ABN.'' Upon call from the laboratory, the handler shall cause Sample #3N to be ground by the Inspection Service in a ''subsampling mill.'' The resultant ground subsample from Sample #3N shall be of a size specified by the Division and shall be designated as ''Subsample #3—ABN''. ''Subsamples 2—ABN and 3—ABN'' shall be analyzed only in a USDA laboratory or a laboratory listed herein and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Division. The results of each assay shall be reported by the laboratory to the handler and to the Division. All costs involved in the sampling and testing of peanuts required by this regulation shall be for the account of the applicant.

(5) Information on making arrangements for the required inspection and certification can be obtained by contacting the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 2049–S, Washington, DC, 20090–6456, telephone (202) 690–0604 or facsimile (202) 720–0393.

(i) Laboratories at the following locations are approved to perform the chemical analyses required pursuant to this part. The sampling plan and procedures may be obtained from the Science Division.

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, 1557 Reeves St., Dothan, AL 36303, Tel: (334) 794–5070, Fax: (334) 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

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, Sylvester, 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

(ii) Handlers should contact the nearest laboratory from the list in paragraph (c)(5)(i) of this section to arrange to have samples chemically analyzed for aflatoxin content, or for further information concerning the chemical analyses required pursuant to this part handlers may contact: The Science and Technology Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 3507–S, Washington, D.C., 20090–6456, telephone (202) 720–5231, facsimile (202) 720–6496.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts, in lot sizes not exceeding 200,000 pounds, shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, ''positive lot identification'' of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for appeal inspection. Handler shall keep and maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Division on request.

(e) *Reinspection.* Whenever the Division has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Division may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

(a) Lots of peanuts which have not been certified as meeting the requirements for disposition to human

consumption outlets, may be disposed of for non-human consumption uses which are not regulated or limited by the provisions specified in this section: *Provided,* That each such lot is positive lot identified, using red tags, and certified as to aflatoxin content (actual numerical count). However, on the shipping papers covering the disposition of each such lot of inedible quality peanuts, the handler shall cause the following statement to be shown: ''The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption.''

(b) Except for inedible quality peanuts disposed of under the provisions of paragraph (f)(2) of this section and peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, peanuts which have not been certified as meeting the standards set forth in paragraphs (a) or (b) of § 997.30 shall be disposed of as prescribed hereinafter in this section.

(c) *Sheller Oil Stock Residuals—For Crushing or Export.* Peanuts, or portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process, may be segregated into categories or they may be commingled as sheller oil stock residuals. Such sheller oil stock residuals shall be identified pursuant to paragraph (d) of this section, but using a red tag, and such peanuts may be disposed of domestically or to the export market, in bulk or bags or other suitable containers. The movement of such peanuts shall be reported to the Division by the shipping handler and the crusher, as requested by the Division.

(1) If the peanuts have not been tested and certified as to aflatoxin content, as prescribed in paragraph (c) of this section, the handler shall cause the following statement to be shown on the shipping papers: ''The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin.''

(2) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(d) *Blanching peanuts failing quality requirements.* Handlers may blanch or cause to have blanched positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by a negative aflatoxin certificate. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher to crushers who agree to comply with the terms of paragraph (c) of this section.

(e) *Remilling peanuts failing quality requirements.* Handlers may remiller or cause to have remilled shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section: *Provided,* That such lots of peanuts contain not in excess of 10 percent fall through. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection-Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by a negative aflatoxin certificate. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the remiller, to crushers who agree to comply with the terms of paragraph (c) of this section.

§ 997.50 Inspection, chemical analysis, certification and identification.

Each handler shall, at the handler's own expense, prior to or upon receiving and before shipping or disposing of peanuts, cause an inspection to be made of any such peanuts not covered by a valid inspection certificate, to determine whether such peanuts meet the applicable grade requirements effective pursuant to this part, and shall comply with such identification requirements prescribed by this part or which the Secretary may prescribe. Each handler shall also cause appropriate samples to be drawn and chemically analyzed by a USDA laboratory, or laboratory listed in § 997.30, for wholesomeness as provided in § 997.30 of this part. Such handler shall obtain grade and aflatoxin certificates stating that such peanuts meet the aforementioned applicable requirements and all such certificates shall be available for examination or use by the Division. Acceptable certificates shall be those issued by Federal or Federal-State inspectors authorized or licensed by the Secretary and USDA laboratories or those listed in § 997.30 of this part.

Each handler shall furnish, or cause the inspection service or the laboratory to furnish, to the Division, a copy of the inspection certificate and a copy of the results of the chemical analyses issued to the handler on each lot of shelled peanuts or cleaned inshell peanuts.

3. Under the center heading ''Assessments,'' section 997.51 is revised to read as follows:

§ 997.51 Assessments.

(a) Each first handler shall pay to the Secretary, with respect to Segregation 1 peanuts received or acquired by the handler, including the handler's own production, an administrative assessment as approved by the Secretary. The rate of assessment shall be the same as the administrative assessment approved by the Secretary and applied to signatory handlers under the Peanut Marketing Agreement No. 146. Such administrative assessment shall be applied during the crop year beginning July 1 and ending June 30 of the following year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary per net ton of farmers stock peanuts received or acquired, other than those peanuts described in § 997.20(a) (1) and (2). During the crop year, the Secretary may increase the rate of assessment if such an increase is established under the Agreement.

(b) Segregation 2 and Segregation 3 farmers stock peanuts disposed to

crushing or exported are exempt from assessments under this section.

4. Under the center heading ''Reports, Books and Records,'' §§ 997.52, 997.53 and 997.54 are revised to read as follows:

Reports, Books and Records

§ 997.52 Reports of acquisitions and shipments.

Each handler shall report acquisitions of Segregation 1 farmers stock peanuts on a form provided by the Division and file such other reports of acquisitions and shipments of peanuts, as prescribed in this part. Upon the request of the Division, each handler shall furnish such other reports and information as necessary to enable the Division to carry out the provisions of this part. All reports and records furnished or submitted by handlers to the Division which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler shall not be disclosed unless such disclosure is determined necessary by the Secretary to enforce the provisions of this part.

§ 997.53 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours and shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, movement, holding, processing or disposition of all peanuts which may be held or which may have been disposed of by the handler. Each handler shall maintain such records of peanuts received, held, and disposed of by the handler, that will substantiate any required reports and will show performance under this part. Such records shall be retained for at least two years beyond the crop year of their applicability.

§ 997.54 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Under the center heading ''Implementing Regulations,'' §§ 998.100 and 998.200 are revised to read as follows:

Implementing Regulations

§ 998.100 Incoming quality regulation for 1996 and subsequent crop peanuts.

The following modify § 998.5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of peanuts:

(a) *Modification of § 998.5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of § 998.5 of the peanut marketing agreement are modified for the purposes of this section as to farmers stock peanuts to read respectively as follows:

(1) *Segregation 1. Segregation 1 peanuts* 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.*

(2) *Segregation 2. Segregation 2 peanuts* 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.*

(3) *Segregation 3. Segregation 3 peanuts* means farmers stock peanuts with *visible Aspergillus flavus.*

(b) *Moisture and foreign material.*

(1) *Moisture.* Except as provided under paragraph (d) of § 998.100, no handler shall receive or acquire peanuts containing 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 storing or milling. On farmer's stock, such moisture determinations shall be rounded to the nearest whole number; on shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(2) *Foreign material.* No handler shall receive or acquire farmers stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are 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.

(c) *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.

(d) *Seed peanuts.* A handler may acquire and deliver for seed purposes farmers stock peanuts which meet the requirements of Segregation 1 peanuts. If the seed peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus,* and, in addition, the following moisture content, as applicable:

(1) Seed peanuts produced in the Southeastern and Virginia-Carolina areas, may contain up to 10.49 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 11.49 percent moisture; and

(2) Seed peanuts produced in the Southwestern area may contain up to 10.49 percent moisture. However, seed peanuts produced under the auspices of the State agency, which contain up to 3 percent damaged kernels and are free from visible *Aspergillus flavus,* shall be stored and shelled from other peanuts; and any residuals not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. Seed peanuts produced under the auspices of the State agency which contain up to 3 percent damaged kernels and are free from visible *Aspergillus flavus,* may be stored and shelled with Segregation 1 seed peanuts which are also produced under the auspices of the State agency. A handler whose operations include custom shelling may receive, custom shell, and deliver for seed purposes farmers stock peanuts, and such peanuts shall be exempt from the Incoming Quality Regulation requirements, and, therefore, shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements, and the handler shall report to the Committee, as requested, the weight of each lot of farmers stock peanuts received on such basis on a form furnished by the Committee. Handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts or from another producer or sheller may mill such residuals with

other receipts or acquisitions of the handler, and such residuals which meet the Outgoing Quality Regulation requirements, may be disposed of by sale to human consumption outlets.

(e) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of § 998.31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified pursuant to § 998.34, to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire for crushing or export from other handlers peanuts originating from Segregation 2 or 3 farmers stock or the entire mill production of shelled peanuts from Segregation 1 farmers stock or lots of peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of § 998.200, Outgoing quality regulation, which failed to meet the requirements for human consumption pursuant to paragraph (a) of § 998.200, Outgoing quality regulation: *Provided,* That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers stock peanuts and shelled peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

(f) *Segregation 2 and 3 control.* To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer, commission buyer, or like person through whom the handler receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

(g) *Farmers stock storage and handling facilities.* Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of current crop Segregation 1 farmers stock peanuts, and all such storage facilities must be reported prior to storing of any such handler acquisitions. Handlers shall also report to the Committee the locations at which they will receive or acquire current crop farmers stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, and built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers stock peanuts. All breaks or openings in the walls, floors, or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, transportation equipment, including trucks and hopper cars, and other farmers stock handling equipment conducive to the growth or spread of Aspergillus flavus mold shall be corrected to the satisfaction of the Committee. The Committee may make periodic inspections of farmers stock storage and handling facilities and farmers stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

(h) *Shelled peanuts.* Handlers may acquire shelled peanuts, which originated from ''Segregation 1 peanuts,'' from other handlers, for remilling and subsequent disposition to human consumption outlets.

(i) Segregation 2 and Segregation 3 farmers stock peanuts held separate and apart or commingled, and disposed of to crushing or export are exempt from assessments under this section.

§ 998.200 Outgoing quality regulation for 1996 and subsequent crop peanuts.

The following modify or in addition to the peanut marketing agreement restrictions of § 998.32 on handler disposition of peanuts:

(a) *Shelled peanuts.* (1) No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified ''negative'' as to aflatoxin, and certified as meeting the requirements in the following ''Other Edible Quality * * *'' grades:

TABLE 1.—''OTHER EDIBLE QUALITY'' (INDEMNIFIABLE) GRADES—WHOLE KERNELS AND SPLITS

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%; 16/64 x 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%; 15/64 x 1 inch; slot screen.	4.00%; both screens.	.20	9.00

TABLE 1.—''OTHER EDIBLE QUALITY'' (INDEMNIFIABLE) GRADES—WHOLE KERNELS AND SPLITS—Continued

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		
Excluding lots of ''splits''							
Spanish and Valencia	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 15/64 x 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%; 15/64 x 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%; 14/64 x 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%; 14/64 x 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%; 16/64 inch; round screen.	3.00%; 13/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(2) Prior to disposition to human consumption outlets, peanuts must be positive lot identified, be certified ''negative'' as to aflatoxin, and be certified as meeting the requirements in the following ''Indemnifiable Grades'' grades:

TABLE 2.—INDEMNIFIABLE GRADES

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		
Maximum limitations							
Runner U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64x3/4 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%; 15/64x1 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%; 16/64 inch, round screen.	2.00%; 15/64x3/4 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%; 14/64x3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
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%; 14/64x1 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%; 13/64x3/4 4.00%; 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%; 16/64x3/4 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%; 15/64x1 inch, slot screen.	4.00%; both screens.	.10	9.00

TABLE 2.—INDEMNIFIABLE GRADES—Continued

Type and grade category	Maximum limitations						
	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		
Spanish and Valencia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64x3/4 inch, slot screen.	4.00%; both screens.	.10	9.00

(3) The term ''fall through'', as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens.

(b) *Cleaned inshell peanuts.* No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption:

(1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as ''USDA laboratory'') and found to be wholesome relative to aflatoxin;

(2) with more than 2.00 percent peanuts with damaged kernels;

(3) with more than 10.00 percent moisture; or

(4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Sampling and testing shelled peanuts.* (1) Prior to shipment, each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as ''Sample #1,'' ''Sample #2,'' and ''Sample #3'' and each sample shall be placed in a suitable container and ''positive lot identified'' by means acceptable to the Inspection Service and the Committee. Sample #1 may be prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a ''subsampling mill'' approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as ''Subsample 1–AB'' and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1. It shall be designated as ''Subsample 1–CD.'' Subsample 1–CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 36 hours. Subsample 1–AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1–AB and 1–CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

(2) The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a ''subsampling mill.'' The resultant ground subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as ''Subsample 2–AB.'' Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a ''subsampling mill.'' The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as ''Subsample 3–AB.'' Subsamples 2–AB and 3–AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2–AB and 3–AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

(3) All costs involved in sampling and testing Subsample 1–CD shall be for the account of the buyer of the lot and at the buyer's expense. However, if the handler elects to pay any portion of these cost the handler shall charge the buyer accordingly. Aflatoxin sampling and testing cost for the AB subsamples shall be included as a separate item in the handler's invoice to the buyer at the rate of $0.0027 per pound or $0.27 per hundredweight of the peanuts covered by the invoice. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler, who shall promptly cause notice to be given to the buyer of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(4) For the current crop year, ''negative'' aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements as determined by the Committee's sampling plan applicable to the respective grade categories.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts, in lot sizes not exceeding 200,000 pounds, shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, ''positive lot

identification'' of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except that lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be eligible for indemnification or for appeal inspection. Handlers shall keep and maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Committee on request.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Further modification of § 998.32.*

(1) The provisions of § 998.32(a) restricting the disposition of peanuts which fail to meet the requirements specified heretofore in this section to the Commodity Credit Corporation or in such manner as may be prescribed by the Committee with the approval of the Secretary, is hereby modified to specify that only peanuts which have been certified as meeting the requirements specified in paragraphs (a) or (b) of this section, which have been sampled pursuant to paragraph (c) of this section, and which have been identified pursuant to paragraph (d) of this section are eligible for disposition to human consumption outlets.

(2) Lots of peanuts which have not been certified as meeting the requirements for disposition to human consumption outlets, may be disposed for non-human consumption uses which are not regulated or limited by the provisions specified hereinafter in this section: *Provided*, That each such lot is positive lot identified, using red tags, and certified as to aflatoxin content (actual numerical count). However, on the shipping papers covering the disposition of each such lot of inedible quality peanuts, the handler shall cause the following statement to be shown: ''The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption.''

(3) Except for inedible quality peanuts disposed of under the provisions of paragraph (f)(2) of this section and peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, peanuts which have not been certified as meeting the standards set forth in paragraphs (a) or (b) of this section shall be disposed of as prescribed hereinafter in this section.

(g) *Sheller oil stock residuals—for crushing or export.* Peanuts and portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process, may be segregated into categories or commingled as sheller oil stock residuals. Such sheller oil stock residuals shall be identified pursuant to paragraph (d) of this section, but using a red tag, and such peanuts may be disposed of domestically or to the export market in bulk or bags or other suitable containers. Disposition to crushing may be to handlers who are crushers or to domestic crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of this paragraph and all other applicable requirements of the Agreement. The movement of such peanuts shall be reported to the Committee by the shipping handler and the crusher, as requested by the Committee.

(1) If the peanuts have not been tested and certified as to aflatoxin content, as prescribed in paragraph (c) of this section, the handler shall cause the following statement to be shown on the shipping papers: ''The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin.''

(2) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(h) *Blanching and remilling peanuts failing quality requirements.* (1) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. Prior to movement of such peanuts to a blancher, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and blanching of each such lot. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to domestic crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(2) Handlers may contract with Committee approved remillers for remilling shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section: *Provided,* That such lots of peanuts contain not in excess of 10 percent fall through. Prior to

movement of such peanuts under these provisions to a Committee approved remiller, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and remilling of each such lot. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection-Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the remiller, to handlers who are crushers, or to domestic crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(i) *Documentation of compliance.* Each handler shall keep and maintain records of all receipts and acquisitions and all milling, remilling, blanching, use and disposition of peanuts which have not been certified as meeting the requirements for disposition to human consumption, pursuant to paragraph (a) or (b) of this section, as will document and substantiate compliance and performance under this agreement.

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

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

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

2. Section 999.600 is revised 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 2.00 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 2.00 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 inedible 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.

(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. Residuals from the shelling of Segregation 1 seed peanuts may be milled with other imported peanuts of the importer, and such residuals meeting quality requirements specified in paragraph (c)(1) of this section may be disposed to human consumption channels. Any portion not meeting such quality requirements shall be disposed to inedible peanut channels pursuant to paragraphs (f) and (g) of this section. All disposition of seed peanuts and residuals from seed peanuts, whether commingled or kept separate and apart, shall be reported to the Secretary pursuant to paragraphs (f)(2) and (f)(3) of this section. The receiving seed outlet must retain records of the transaction, pursuant to paragraph (g)(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 inedible outlets. 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 or exported. Shelled peanuts and cleaned-inshell peanuts which fail to meet the requirements for human consumption in paragraphs (c)(1) or (c)(2), respectively, of § 997.600, may be crushed for oil or exported.

(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 one of the following requirements:

(1) *Shelled peanuts.* (i) No importer shall ship or otherwise dispose of shelled peanuts to human consumption markets unless such peanuts are lot identified, certified as ''negative'' to aflatoxin, and meet the requirements specified in Table 1.

TABLE 1.—MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]

Type and grade category	Maximum limitations						
	Excluding lots of ''splits''						
	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%; 16/64 x 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%; 15/64 x 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 15/64 x 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%; 15/64 x 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%; 14/64 x 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%; 14/64 x 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%; 16/64 inch; round screen.	3.00%; 13/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(ii) Shelled peanuts which are lot identified, certified as ''negative'' to aflatoxin pursuant to paragraph (d)(4)(v) of this section, and meet requirements specified in the Table 2, may be shipped to human consumption markets prior to the importer receiving such aflatoxin certification.

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]

Type and grade category	Maximum limitations						
	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts damaged kernels and minor defects (percent)	Fall through			Foreign material (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%; 16/64 x 3/4 inch, slot screen.	4%; 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%; 15/64 x 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%; 16/64 inch, round screen.	2.00%; 15/64 x 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%; 14/64 x 3/4 inch, slot screen.	4.00%; both screens.	20	9.00
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

(iii) The term ''fall through'', as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Prior to shipment, appropriate samples for pretesting shall be drawn in accordance with paragraph (d) of this section from each lot of Superior Quality peanuts.

(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.

(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 (f)(2) and (f)(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: (334) 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, 1557 Reeves St., Dothan, AL 36303, Tel: (334) 794–5070, Fax: (334) 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

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, Sylvester, 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) For the current peanut quota year, ''negative'' aflatoxin content means 15 parts per billion (ppb) or less aflatoxin content for peanuts which have been certified as meeting edible quality grade requirements. Such lots 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 certificate of any inedible peanut lot also shall specify the aflatoxin count in ppb. The importer shall file USDA Form CSSD–3, or equivalent form, with the Secretary, regardless of the test 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.* Peanuts shelled, sized and sorted in another country prior to arrival in the U.S. and shelled peanuts which originated from imported 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. Residual peanut lots resulting from milling or reconditioning of such lots shall be disposed of as prescribed below:

(1) Failing peanut lots may be disposed for non-human consumption uses (such as livestock feed, wild animal feed, rodent bait, seed, etc.) which are not otherwise regulated by this section; *Provided,* that each such lot is lot identified and certified as to aflatoxin content (actual numerical count). On the shipping papers covering the disposition of each such lot, the importer shall cause the following statement to be shown: ''The peanuts covered by this bill of lading (or invoice) are not to be used for human consumption.''

(2) Peanuts, and portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process (''sheller oilstock residuals''), may be sent to inedible peanut markets pursuant to paragraph (e)(1) of this section, crushed or exported. Such peanut may be commingled with other milled residuals. Such peanuts shall be positive lot identified, red tagged in bulk or bags or other suitable containers.

(i) If such peanuts have not been certified as to aflatoxin content, as prescribed in paragraph (d) of this section, disposition is limited to crushing and the importer shall cause the following statement to be shown on the shipping papers: ''The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin.''

(ii) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(3) Shelled peanuts which originated from Segregation 1 peanuts that fail quality requirements of Table 1, peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, and peanuts which are positive to aflatoxin may be remilled or blanched. Residuals of remilled and/or blanched peanuts which continue to fail quality requirements of Table 1 shall be disposed of pursuant to paragraphs (e)(1) or (2) of this section.

(4) All certifications, lot identifications, and movement to inedible dispositions, sufficient to account for all peanuts in each consumption entry, shall be reported to the Secretary by the importer pursuant to paragraphs (f)(2) and (f)(3) of this section.

(f) *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 showing inedible disposition or export, such as bills of lading and sales receipts, export declarations, or certificates of burying, which report the weight of peanuts being disposed and the name, address and telephone number of the inedible 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, D.C., 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.

(5) *Reinspection.* 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.

(6) *Early arrival and storage.* Peanut lots sampled and inspected upon arrival in the United States, but placed in storage for more than one month prior to beginning of the quota year for which the peanuts will be entered, must be reported to AMS at the time of inspection. The importer shall file copies of the Customs Service documentation, copies of the lot's grade and aflatoxin certificates, and the city, street address and any identifying number of the storage warehouse. Such peanuts should be stored in clean, dry warehouses and under cold storage conditions consistent with industry standards. Pursuant to paragraph (f)(5) of this section, the Secretary may require reinspection of the lot at the time the lot is declared for entry with the Customs Service.

(g) *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 (f)(2) and (f)(3) 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) of this section, respectively.

(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 (f)(2) and (f)(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 inedible 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 these regulations. 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: October 1, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150

RIN 3150–AF35

Deliberate Misconduct by Unlicensed Persons

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to revise its regulations to extend the Deliberate Misconduct Rule to six categories of persons: applicants for NRC licenses; applicants for, or holders of, certificates of compliance; applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants; applicants for, or holders of, certificates of registration; applicants for, or holders of, quality assurance program approvals; and the employees, contractors, subcontractors and consultants of the first five categories of persons, so that they may be subject to enforcement action for deliberate misconduct. Deliberate misconduct may involve providing information that is known to be incomplete or inaccurate and in some respect material to the NRC, or it may involve conduct that causes or would have caused, if not detected, a licensee, certificate holder, or applicant to be in violation of any of the Commission's requirements.

DATES: The comment period expires December 18, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or/ before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attn: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Tony DiPalo, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6191, e-mail, ajd@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1991 (56 FR 40664), the Commission adopted changes to NRC regulations that established the Deliberate Misconduct Rule found at 10 CFR 30.10, 40.10, 50.5, 60.11, 61.9b, 70.10, 72.12, and 110.7b, which applies to any licensee or any employee of a licensee; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee. In addition, 10 CFR 150.2 makes the rule applicable to persons conducting activities under reciprocity in areas of NRC jurisdiction, (see 10 CFR 150.20). The Deliberate Misconduct Rule placed licensed and unlicensed persons on notice that they may be subject to enforcement action for deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any of the Commission's requirements, or for deliberately providing to the NRC, a licensee, or contractor, information that is incomplete or inaccurate in some respect material to the NRC. The rule also revised the NRC's procedures for issuing orders to include persons not licensed by the Commission, but who are otherwise subject to the Commission's statutory authority.

Currently, the Deliberate Misconduct Rule does not apply to:

(1) Applicants for NRC licenses;

(2) Applicants for, or holders of, certificates of compliance issued under 10 CFR Parts 71 and 72, including those for dry cask storage;

(3) Applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants issued under 10 CFR Part 52;

(4) Applicants for, or holders of, certificates of registration issued under 10 CFR Parts 30 and 32;

(5) Applicants for, or holders of, quality assurance program approvals issued under 10 CFR Part 71; and

(6) The employees, contractors, subcontractors, and consultants of the first five categories of persons.

To ensure that these persons are subject to enforcement action for wrongdoing under the Deliberate Misconduct Rule, the NRC is proposing to extend the rule to them. The Commission's proposed rule would also add the Deliberate Misconduct Rule to 10 CFR Parts 52 and 71 where it currently does not appear.

The Commission does not believe that it is necessary to add the Deliberate Misconduct Rule to 10 CFR Part 54 because licensees applying to renew their operating licenses for nuclear power plants are already subject to this rule as licensees under 10 CFR Part 50. Similarly, the Commission does not believe that it is necessary to add the Deliberate Misconduct Rule to 10 CFR Part 55 because applicants for, and holders of, reactor operators licenses are already subject to this rule as employees of 10 CFR Part 50 licensees. Moreover, licensed operators are subject to all applicable Commission requirements (see 10 CFR 55.53(d)) and thus a finding of deliberate misconduct is not required to take enforcement action against a licensed reactor operator.

Discussion

It is important that all information provided to the NRC be complete and accurate in all material respects. Section 186 of the Atomic Energy Act of 1954, as amended (AEA), underscores this need by providing that ''[a] license may be revoked for any material false statement in the application or any statement of fact required [by statute or regulation]. * * *'' The Commission has promulgated rules concerning completeness and accuracy of information that specifically apply to information provided to the Commission by a licensee or an applicant for a license (see 10 CFR 30.9(a), 40.9(a), 50.9(a), 60.10(a), 61.9a(a), 70.9(a), 71.7a, 72.11(a), 76.9(a) and 110.7a(a)). Similarly, paragraph (b)