

Rules and Regulations

Federal Register

Vol. 61, No. 209

Monday, October 28, 1996

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV96-998-3 FR]

Domestically Produced Peanuts Handled by Persons Subject to Peanut Marketing Agreement No. 146; Changes in Terms and Conditions of Indemnification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule modifies, for 1996 and subsequent crop peanuts, the indemnification program for signatory handlers under Peanut Marketing Agreement No. 146 (Agreement). This rule reduces indemnification payment coverage to certain costs involved with appeal and product claims. The Peanut Administrative Committee (Committee), which is responsible for local administration of the quality assurance program under the Agreement, recommended the changes. This rule reduces the Committee's indemnification payments for losses incurred by signatory handlers in not being able to ship unwholesome peanuts for edible purposes from a ceiling of \$7 million for each of the last two years, to about \$300,000. With the reduction in indemnification claim payments, the Committee will have adequate funds in its indemnification reserve to cover costs. No handler assessments for indemnification will be necessary. This will reduce signatory handlers' costs, enabling them to be more competitive in the marketplace.

EFFECTIVE DATE: This final rule becomes effective October 29, 1996.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 96456, room 2525-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 regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, or Fax: (202) 720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Peanut Marketing Agreement No. 146 (7 CFR part 998). The program regulates the quality of domestically produced peanuts handled by Agreement signers. The Agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to apply to 1996 (beginning July 1, 1996) and subsequent crop year peanuts. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with 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. Marketing agreements and orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

About 32 signatory peanut handlers subject themselves to regulation under the Agreement. There are about 47,000

peanut producers in the 16-State production area. Small agricultural service firms, which includes handlers, 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. Although approximately 25 percent of the signatory handlers may be classified as small entities, they are seed shellers who ship almost no peanuts to human consumption outlets. This final rule will have virtually no effect on them. A majority of the producers may be classified as small entities.

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

The objective of the Agreement 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.

Under the regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of milled peanuts must be sampled and tested and those certified "positive" as to aflatoxin must be diverted to non-edible uses. Handlers of such peanuts currently may be eligible to receive indemnification payments for losses incurred in not being able to ship the peanuts for edible uses. Costs to administer the Agreement and make indemnification payments are paid by assessments levied on signatory handlers.

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 reviews Committee recommendations and justifications, as well as information from other sources, to determine whether modification of the Agreement regulations would tend to effectuate the declared policy of the Act.

The Committee believes that the domestic peanut industry is undergoing a period of great change. The Committee endorses the 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. According to the study, since 1991, the U.S. peanut industry has been in a period of dramatic economic decline because of (1) decreasing consumption of peanuts and peanut products, (2) decreasing U.S. peanut production and increasing production costs, and (3) increasing imports of peanuts and peanut products.

The study shows that peanut per capita consumption has steadily declined; between 1991 and 1994, a total of 11 percent. Harvested acres of peanuts in the U.S. have 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 in the same period. Farmer production costs and revenue are projected to be equal by the year 2000, as are handler costs and revenue, which would leave no profit.

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. The Committee has been meeting for the past two years to develop major improvements and cut costs by streamlining handling procedures and making them consistent with current industry economies and technological developments.

Over the last several years, the Committee has been reducing the indemnification benefits. This reduction has made indemnification of failing peanuts a less viable economic option and has put more responsibility on each handler to decide whether it is economical to recondition a failing lot. Peanut processing machinery has 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 established under the Agreement. The Committee concluded that handlers should bear more responsibility for reconditioning their own peanuts and in shipping quality peanuts to their customers, and that Committee and handler indemnification costs should be reduced.

The Committee met on May 23, 1996, and recommended a substantial reduction in indemnification coverage to reduce costs. Signatory handlers have indicated they would rather have the Committee eliminate the indemnification assessment currently collected from them than continue the current indemnification coverage. The Committee's indemnification payments for handler losses will decline from a record high net loss of \$21.6 million for crop year 1990, and ceilings of \$9 million for crop years 1991–1993 and \$7 million for each of the last two years, to approximately \$300,000. This will reduce signatory handlers' costs, enabling them to be more competitive in the marketplace.

The Committee has paid claims based on the initial sampling of any peanut lot failing to meet aflatoxin requirements for human consumption before the peanuts were shipped from the handler's plant to the buyer, product and appeals claims. Payments were made for blanching fees and/or remilling fees, freight charges for moving the peanuts from one production area to another for marketing, and for losses for the rejected peanuts.

Under the modified program, on an "appeal claim" the Committee will pay only for freight costs from the handler's plant to the manufacturer and return from manufacturer to the destination requested by the handler (handler's plant, blancher, or remiller). "Appeal claims" involve lots of peanuts, which had been certified as meeting all quality requirements, prior to shipment, and then rejected by the buyer on the basis of appeal aflatoxin test results. The deadline for filing "appeal" indemnification claims with the Committee will remain November 1 following the end of the crop year.

The Committee recommended that "product claims" continue to be handled as they have been in the past. That is, claims may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all of the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee will indemnify the amount of the raw peanuts in the product at \$0.35 per pound. The product is destroyed under the supervision of USDA's Processed Products Branch inspectors and the Committee pays these charges. The deadline for filing "product claims" remains November 1 of the second year following the year in which the peanuts were produced.

An estimated \$2.0 to \$2.5 million indemnification reserve (after all 1995 crop claims are paid) should be available to cover claims under the revised program. With annual costs under the program estimated at \$200,000 to \$300,000, there is enough money in reserves to cover claims for about 10 crop years. Thus, handlers will not be required to pay indemnification assessments during that period. Indemnification assessments during the 1994 and 1995 crop years totaled approximately \$3.4 million and \$1.3 million, respectively.

If the Committee had recommended maintaining the current coverage at the \$7,000,000 ceiling, an indemnification assessment rate of about \$4.00 per ton on the 1996 crop would have been necessary to finance the program. All signatory handlers, both large and small, will benefit from the substantially lower costs associated with the elimination of annual indemnification assessment obligations. Handlers who believe they may be adversely impacted by aflatoxin can obtain private insurance coverage against such losses.

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

The proposed rule concerning this action was published in the August 28, 1996, issue of the Federal Register (61 FR 44192). That proposal provided that interested persons could file comments, including information on the regulatory and informational impacts of the proposed rule on small businesses, through September 12, 1996. Six comments were received, four favoring and two opposing the proposed rule.

The comments in favor of implementing the changes set forth in the proposed rule were submitted on behalf of four handlers. They reiterated several of the justifications made in the proposed rule.

One commenter agreed that indemnification payments should be limited to appeal and product claims. In support of this, he stated that improvements in technology now allow normal aflatoxin problems to be handled at each handler's shelling facilities and should not be an extra cost to the industry.

Another commenter indicated that recent peanut shelling technology and peanut buyer demands have forced the peanut industry to new heights of peanut product safety and quality requirements. He also stated that the outdated and unfair system of indemnification for sheller aflatoxin claims needed to be changed. The proposed changes by the Peanut

Administrative Committee meet the needs of the peanut industry.

Two other commenters stated that it is time to limit indemnification payments for aflatoxin to appeal claims and product liability claims. They indicated there is no justification for those indemnification payments for normal aflatoxin problems that exist before blanching or remilling, since the industry has modern technology that can detect these problems and these costs should be paid solely by the individual sheller, not by the industry.

Two comments in opposition were submitted by two handlers. One commenter indicated that eliminating indemnification insurance is to "un-do" a system of quality control that predecessors established years ago, which has helped many small handlers survive. He agreed that peanut processing machinery and technology is available to reduce the aflatoxin content to an acceptable level on most any peanut lot, but he thinks this is an expensive procedure and that few smaller independent shellers can absorb the extra cost of reconditioning equipment necessary to accomplish this. The commenter also stated that until the industry greatly reduces or eliminates aflatoxin from occurring in peanut production, the industry should not eliminate the time proven system of handling it.

Another commenter stated that the small handler who is limited to a specific area could be severely impacted if that area happened to be dry or had other problems causing higher aflatoxin. He agreed that state of the art processing equipment is available to recondition low quality peanuts so they meet *Outgoing Quality* requirements.

The Department recognizes that the rule will place more responsibility on shellers for meeting the needs of peanut buyers. Information provided by the Committee indicates that the cost of the current indemnification program is simply too high and the industry must change to meet new world competition or face a serious decline. The Committee is providing an opportunity for shellers to control the quality of their own peanuts and eliminate their costs for indemnification assessments. Those handlers who believe they may be adversely impacted by aflatoxin can obtain private insurance coverage against such losses. Such insurance coverage is readily available to cover the current crop. We understand that some recent policies have been written for a cost at or less than the Committee's previous indemnification assessment rate. Although there may be some burden, not having to pay

indemnification assessments is a cost saving which is expected to continue for several years due to the funds available in the indemnification reserve.

Therefore, after thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is appropriate.

After consideration of relevant matter presented, including the information and recommendations submitted by the Committee, the six comments received, and other available information, it is hereby found that the final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because this final rule should be implemented as close to the beginning of the crop year as possible. The crop year began July 1, 1996. Further, handlers are aware of these program changes, which were recommended at a public meeting of the Committee on May 23, 1996, and need no additional time to take advantage of the modified program. Also, at that meeting the Committee did not recommend an indemnification assessment for 1996 crop peanuts. Further, interested persons were given an opportunity to comment on the proposed rule.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), any information collection requirements that may be contained in this final rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0067. This final rule will likely result in less reports having to be filed, particularly because there will likely be less indemnification claims filed under the reduced program coverage.

The Committee also recommended numerous relaxations to the Agreement's incoming and outgoing quality regulations for 1996 and subsequent crop peanuts, which have been proposed in a separate rulemaking action which was published in the October 4, 1996, issue of the Federal Register (61 FR 51811). Comments on that proposal must be received by October 24, 1996.

List of Subjects in 37 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 998 is amended as follows:

1. The authority citation continues to read as follows:

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

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

2. Section 998.300 is revised to read as follows:

§ 998.300 Terms and conditions of indemnification for 1996 and subsequent crop peanuts.

(a) For the purpose of paying indemnities on a uniform basis pursuant to § 998.36 of the peanut marketing agreement, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled into one of the categories listed in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200) or paragraph (j) of this section, on which the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the results of further chemical assay, after shipment.

(b) To be eligible for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements for Indemnifiable Grades as specified in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200), shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the *Outgoing quality regulation* (7 CFR 998.200) and the lot identification shall have been maintained. If the Committee concludes, based on further assays, that the lot is so high in aflatoxin that it should be handled pursuant to this section, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification.

(c) The indemnification payment shall be transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the

Outgoing quality regulation (7 CFR 998.200).

(d) Claims for indemnification may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all of the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay such claims as it determines to be valid, to the extent of the equivalent indemnification value applicable to the peanuts used in the product so withheld. On products manufactured from edible quality grades of peanuts, such claims may be filed with the Committee no later than November 1 of the second year following the year in which the peanuts were produced.

(e) Notice of claims for indemnification on peanuts of the current crop year shall be received by the Committee (by mail or legible facsimile) no later than the close of the business day on November 1, following the end of the crop year. For the purpose of this paragraph, "notice" shall be defined as the covering (executed and signed) Form PAC-5, accompanied by a copy of the applicable valid grade inspection certificate and the lab certificate showing the aflatoxin assay results which caused the request for rejection.

(f) Each handler shall include, directly or by reference, in the handler's sales contract, the following provisions:

(1) Buyer shall give the Peanut Administrative Committee (Committee) office notice of any request made to the Federal or Federal-State Inspection Service for an "appeal" inspection for aflatoxin. Results of the "appeal" inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the "appeal" sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller. Buyer must return the rejected lot to the seller within 45 days of the date on which Committee management informs buyer of the "appeal" sample test results, otherwise the buyer agrees that he/she forfeits the right to reject the lot and return it to the seller.

(2) Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the assay to the buyer. A portion of the costs of aflatoxin sampling and testing, as provided in § 998.200(c)(3), shall be for the account of the buyer and the buyer agrees to pay such costs.

(g) Any handler who fails to include such provisions in his/her sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

(h)(1) Any handler who fails to conform to the requirements of paragraph (g) of the *Incoming quality regulation* (7 CFR 998.100) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

(2) Any handler who fails to comply with the requirements of paragraph (h)(1) or (h)(2) of the *Outgoing quality regulation* (7 CFR 998.200) shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(i) Any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the *Outgoing quality regulation* (7 CFR 998.200), shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(j) Categories of cleaned inshell peanuts eligible for indemnification are as follows:

- (1) Cleaned inshell peanuts ¹
- (i) U.S. Jumbos
- (ii) U.S. Fancy Handpicks
- (iii) Valencia-Roasting Stock ²

¹ Eligible lots of cleaned inshell peanuts which are found, after shipment, to contain excessive aflatoxin, may be rejected to the handler. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border reentry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be the extent of the indemnification payment.

² Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

(2) *Reserved.*

(k) The indemnification value for peanuts indemnified shall be 35 cents per pound.

Dated: October 18, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-27455 Filed 10-25-96; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 340

[INS No. 1634-93]

RIN 1115-AD45

Revocation of Naturalization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations relating to revocation of naturalization under section 340 of the Immigration and Nationality Act (Act). This rule establishes an administrative process whereby a district director may reopen and reconsider applications for naturalization pursuant to section 340(h) of the Act. This rule will facilitate the transfer of naturalization authority contemplated by Congress from the courts to the Attorney General while retaining the protection for the individual provided under judicial naturalization.

EFFECTIVE DATE: October 24, 1996.

FOR FURTHER INFORMATION CONTACT:

Jody Marten or Thomas Cook, Naturalization and Citizenship Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514-3240. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The Immigration Act of 1990 (IMMACT), Public Law 101-649, dated November 29, 1990, amended section 340 of the Act, Revocation of Naturalization, to bring the reopening process of section 340(i) of the Act into conformity with the change to Administrative Naturalization. That