

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Parts 997 and 998**

[Docket Nos. FV97-997-1 IFR and FV97-998-1 IFR]

Peanuts Marketed in the United States; Relaxation of Handling Regulations

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes, for 1997 and subsequent crop peanuts, several provisions regulating the handling of domestically produced peanuts marketed in the United States. The relaxation includes: Eliminating need for approval of certain facilities; allowing minimum grade requirements for lots of splits to correspond with grade standards; allowing certain lots to be custom blanched; providing that under the Agreement, all lots of edible quality peanuts be eligible for indemnification benefits; providing that peanuts which have been certified as meeting the minimum grade requirements, but fail on aflatoxin, may be roasted prior to being certified as meeting the latter; and allowing rejected peanuts to be placed in "suitable containers", not just "bagged". This rule will improve efficiency and reduce program costs resulting in a similar reduction in assessment rates charged Agreement signer and non-signer handlers.

DATES: Effective January 20, 1998; comments received by March 17, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632. 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: George J. Kelhart or Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this

regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, D.C., 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 146 (7 CFR Part 998) and the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The marketing agreement and the regulations issued thereunder (7 CFR Part 998) and the non-signatory peanut handler regulations (7 CFR Part 997) regulate the quality of domestically produced peanuts.

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

This 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.

Following explanation of each change to the Agreement's regulation, the corresponding change to the non-signatory regulation is discussed.

Incoming Regulations

Farmers Stock Storage and Handling Facilities: The Committee recommended amending § 998.100 Incoming quality regulation for 1995 and subsequent crop peanuts by removing paragraph (g) *Farmers Stock Storage and Handling Facilities* which currently regulates the condition of such facilities and authorizes Committee inspection. The Committee recommended the change to save approximately \$450,000, by eliminating the positions of the seven fieldmen whose specified duties through last crop year included spending an estimated 60-65 percent of their time inspecting and approving such facilities. The vote was 17 "For" and 1 "Against", with the dissenting voter contending that the fieldmen were providing valuable services and their positions should not be eliminated and that inspection and approval of such facilities by the Committee staff was important. Handlers contend they are already paying their own employees to do facilities inspections and the cost of such duplication of effort needs to be eliminated. Also, this cost-cutting will not adversely affect quality since

peanuts must still meet the Outgoing Quality Regulation.

Elimination of the regulatory provision will allow the Committee to reduce its non-headquarters staff from seven to one compliance officer in each of the three production areas and reduce the current "fieldmen" staffing costs to zero. The compliance officers will conduct compliance audits of Agreement signers similar to AMS approved non-signer program compliance plan procedures where AMS Compliance Staff auditors check non-signers' records. A revised 1997-98 compliance plan from the Committee includes this new procedure. AMS believes this will continue to assure compliance under the Agreement.

The non-signer regulation contains no similar requirements for inspection and approval of such facilities, so no change is needed.

Outgoing Regulations

The Committee unanimously recommended that § 998.200(a) be amended to provide that minimum grade requirements for lots of "splits" (the separated halves of peanut kernels) be modified to correspond with "United States Standards For Grades Of: (1) Cleaned Virginia Type Peanuts In The Shell; or (2) Shelled Runner Type Peanuts; or (3) Shelled Spanish Type Peanuts; or (4) Shelled Virginia Type Peanuts" (7 CFR Part 51: Sections 51.1235-1242; 51.2710-2721; 51.2730-2741; and 51.2750-2763, respectively. This increase to 2.00 percent from the current 1.50 percent for unshelled peanuts and damaged kernels is needed to provide consistency with the grade standards. Under the current regulation, a handler could have a lot of peanuts which met U.S. Grade Standards for U.S. Splits, but failed to meet Agreement requirements for edible quality. It was expected that this change might reduce the number of lots which will need to be remilled to meet outgoing quality requirements. Although this reduction was roughly estimated at something less than 10 percent in an average year, this year's crop has been stressed by drought conditions and virtually all peanut producing States have expressed having problems with quality. Thus, this change could still result in significant reductions in costs for handlers.

Another modification to § 998.200(a) will remove Table 2.—INDEMNIFIABLE GRADES. The Committee had originally established this table in its regulations to qualify higher grade peanut lots for its indemnification program covered in § 998.300. However, coverage under this provision has been greatly reduced by

recent Committee action, to the point that the table is no longer deemed necessary. The Department agrees that Table 2 is not needed and its removal will simplify the Agreement regulations and therefore it is hereby removed.

Similar changes are made to the corresponding § 997.30(a) of the non-signer regulation.

The Committee unanimously recommended that § 998.200(h)(1) be amended to allow lots of peanuts which fail edible quality requirements, due to excessive fall through, to be custom blanched. However, such lots will have to be certified as meeting minimum "fall through" requirements after blanching. The change eliminates the current requirement that prior to movement of such peanuts, handlers have to submit a form to the Committee and receive authorization for movement and blanching of each such lot.

Section 997.40(d) of the non-signer regulation currently does not require such handlers to submit a request to the Department and receive authorization for movement and blanching of each such lot. Therefore, no similar change to that provision is needed. However, it is being amended to add "fall through" to the category of items allowed in the first and third sentences.

The Committee also unanimously recommended a further change to paragraph (h), specifically that subparagraphs (h)(1) and (h)(2) be further amended to provide that reject peanuts may be placed in suitable containers acceptable to the Committee. The current requirement specifies "bagged," which refers to the older standard-sized burlap bags. It does not include the many newer and more efficient containers which are easier to handle such as tote bags, corrugated containers (including those with capacities of over a ton), Super Sacks, and other various company containers used by individual peanut product manufacturers. The change will allow handlers to use more efficient containers or those desired by their customers. For purposes of this provision, most any container that handlers use other than bulk loads—i.e., those in which peanuts are not in any type of receptacle other than the vehicle transporting them—will be considered suitable.

Section 997.40(c) of the non-signer regulation currently provides for "in bulk or bags or other suitable containers." To make it consistent with the Agreement's amended regulation, the words "in bulk or" are being removed. Paragraphs (d) and (e) are also being amended by removing the word

"bagged" and replacing it with the words "placed in suitable containers."

The Committee also unanimously recommended that § 998.200 Outgoing quality regulation and § 998.300 Terms and conditions of indemnification . . . be amended to make all lots of edible quality peanuts indemnifiable, for freight reimbursement, when rejected on appeal after being certified "negative" as to aflatoxin. Under provisions specified in § 998.300, product claim lots of edible quality peanuts will now also be indemnifiable. This involves lots where a handler sustained a loss as a result of a buyer withholding from human consumption any or all of the product made from a lot of peanuts which had been determined to be unwholesome due to aflatoxin after such lot had originally been certified "negative" as to aflatoxin. This change will provide consistency by treating all edible quality peanuts equally, whether appeal claims or product claims. Although these changes should further reduce costs and will promote uniformity in the handling of indemnification of all edible quality peanuts, there is no way to accurately quantify how much these reductions would be, because the savings would be different for each handler. However, the total savings would be significantly less than the projected approximately \$200,000 total 1996 crop indemnification costs.

The non-signer enabling legislation does not provide authority for indemnification. Therefore, no similar change is being made in the non-signer regulation.

The Committee further unanimously recommended that § 998.200(h)(3) be amended to provide that peanuts which have been certified as meeting minimum grade requirements specified in § 998.200(a)(1), but fail to meet requirements for aflatoxin, may be roasted while being blanched prior to being certified as meeting the aflatoxin requirements. After roasting, such peanuts must be sampled and assayed for aflatoxin content but do not have to be re-sampled and analyzed for grade again. This simplified process is recommended by the Committee because blanched peanuts, after certification, often are placed back into blancher for additional heating. Removing the blanched peanuts short of the complete roasting process for sampling and aflatoxin analysis, and then reinserting them back into the blancher adds costs to the roasting process and usually causes additional, unintentional damage due to the extra handling of the kernels. Also, the roasting will enhance the blanching

efforts to eliminate aflatoxin, thus improving the wholesomeness, quality and value of such shelled peanuts. The savings involved in blanching and roasting in one step should far outweigh the approximately \$40 per hour costs of having an inspector present during this process to maintain needed positive lot identification. Any residual peanuts, excluding skins and hearts, resulting from this roasting process, must be red tagged and disposed of to non-edible peanut outlets. A similar change is being made to § 997.40(d) of the non-signer regulation.

The unchanged portions of the incoming and outgoing regulations currently in effect for 1996 and subsequent crop peanuts will remain in effect for 1997 and subsequent crop peanuts.

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. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

There are approximately 27 signatory and 30 non-signatory peanut handlers who are currently subject to regulations under the Agreement and non-signer program respectively and approximately 25,000 commercial peanut producers in the 16-State production area. Small agricultural service firms, which include 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 are 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. This action will be favorable to the industry by tending to improve efficiency, reducing costs and increasing returns.

The relaxations to handling regulations specified in this rule will simplify requirements and enable handlers, both large and small, to cut costs and more efficiently handle their peanut supplies, without jeopardizing safeguard requirements in the current regulations.

The relaxations include: 1. The elimination of the requirement for inspection and approval of farmers stock storage and handling facilities will save approximately \$450,000 by eliminating the positions of the seven fieldmen, who had performed this activity through last crop year. Handlers contend they already paid their own employees to do this and the duplicate cost should be eliminated;

2. Relaxing the minimum grade requirements for "splits" to correspond with U.S. grade standards might reduce the number of lots which need to be remilled this year by 10 percent due to stressed growing conditions in virtually all areas. This should result in significant reductions in costs for handlers;

3. Another relaxation is to provide that all lots of edible quality peanuts, whether appeal claims or product claims, will be eligible for handler indemnification benefits. Thus, handlers with product claim lots will now also be eligible for reimbursement of most transportation expenses on such lots. Such additional reimbursement was not publicly quantified by the Committee, but would be less than the projected approximately \$200,000 total 1996 crop indemnification costs;

4. The revised provision to allow lots which fail edible quality requirements, due to excessive fall through, to be custom blanched eliminates the current requirement that handlers have to submit a form to the Committee and receive authorization for movement and blanching of each such lot. This relaxation will eliminate unnecessary paperwork and save time for all affected handlers;

5. Relaxing the requirement that peanuts be "bagged" (i.e., placed only in older standard-size burlap bags) by allowing the use of suitable containers, will permit use of the many newer and more efficient containers or those desired by handlers' customers; and

6. Another relaxation will allow peanuts which have been certified as meeting the minimum grade requirements, but fail to meet requirements for aflatoxin, to be roasted while being blanched prior to being certified as meeting the latter requirements. This simplified process eliminates reinserting such peanuts back into the blancher, which doubles the processing costs and tends to lower the peanuts' quality and value by causing additional damage to them. Such savings should far outweigh the approximately \$40 per hour expense of having an inspector present to maintain needed positive lot identification.

The relaxed requirements will significantly improve efficiency and have enabled the Committee to cut in half for the 1997-98 and subsequent crops years its administrative costs and assessment rate charged Agreement signer and non-signer handlers to finance their respective programs. Further, the rate of assessment last season was \$0.70 per net ton of assessable peanuts. The rate for the 1997-98 crop year has been reduced to

\$0.35 per net ton by another rulemaking action, as published in the September 17, 1997, issue of the **Federal Register** (62 FR 48749). This will save regulated domestic handlers approximately \$500,000 in administrative assessment costs which should, to a great extent, also correspond to the savings from this relaxation action.

The specifics of each change and why they will tend to increase returns to handlers were covered in detail near the beginning of this rule under the discussion starting with "Incoming regulations." These changes will relax requirements on regulated domestic peanut handlers, improve their efficiency and cut costs, to benefit the peanut industry, manufacturers, and consumers, while still assuring quality of all peanuts in domestic human consumption markets.

As with all Federal marketing agreement and order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. Consistent with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Committee unanimously recommended greatly reducing reporting and recordkeeping requirements on both large and small domestic peanut handlers regulated under these two programs. It will eliminate 20 of the 21 Committee forms currently approved by OMB that might accompany peanut shipments, to only require use of the Form PAC-1. The PAC-1 is mailed to handlers on a monthly basis and is used to report receipts and acquisitions of farmers stock peanuts and to remit assessments. It is estimated this will eliminate 95 percent (or about 2,291 hours and assuming \$10 per hour, would save respondents nearly \$23,000 in costs) of the current estimated 2,417 hours of total reporting burden on Agreement signers, including small businesses, and a proportional, smaller reduction in non-signer reporting burden. A notice of the proposed revision was published in the July 31, 1997, issue of the **Federal Register** (62 FR 41021). Sixty days were allowed for comments. One comment was received, from the American Peanut Shellers Association, supporting the reduced burdens. This information collection package has been submitted to the Office of Management and Budget (OMB) for approval.

In addition, the Department has not identified any Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the peanut industry and all interested

persons were invited to attend the meeting and participate in the Committee's deliberations. Like all Committee meetings, the April 29-30, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on the issues. The 18-member Committee is composed of an equal number of peanut handlers and producers, the majority of whom are small entities.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Regulations, Indemnification and Quality Subcommittee and "New Concept" Subcommittee met on January 28, 1997, and discussed these issues in detail. On March 25, 1997, the Committee held an informational meeting to hear a presentation by the National Peanut Council's Peanut Industry Revitalization Project Steering Committee and discuss those issues there and back with their industry peers before voting on those issues at the April Committee meeting. The Committee's Administrative Budget Subcommittee also met March 25, 1997, to discuss budget recommendations. These meetings were also public meetings and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

An objective of the two domestic programs 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 volume, have signed the Agreement. The remaining 30 percent are non-signatory handlers handling the remaining 5 percent of domestic production.

Under these 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 18-member Committee, which is composed of an equal number of peanut producers and handlers, 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.

Section 608b of the Act was amended 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. Section 608b was further amended in 1993 to impose similar requirements regarding administrative assessments. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997.

Thus, the Committee's recommended changes to the Agreement regulation, as established in this rule, also are established for the Agreement non-signers. This interim final rule identifies the corresponding change to the non-signer regulation for each change to the Agreement regulation.

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: (1) Per capita peanut consumption has steadily declined a total of 11 percent; (2) harvested acreage has declined 25 percent; (3) production has declined 30 percent and farm value dropped 29 percent; and (4) imports of peanuts and peanut products have increased from insignificant quantities to 48,736 raw farmer stock tons in 1995 and 55,536 in 1996.

The study points to recent increases in the duty-free import quota for raw peanuts due to the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements under the General Agreement on Tariffs and Trade (GATT). Under Section 22 import quota provisions, the volume of U.S. peanut imports had been limited to about 2.3 million pounds, in-shell basis, annually. Thus, imports have historically represented about one-tenth of 1 percent of U.S. food use of peanuts. Under NAFTA, Mexico has been granted a minimum access level for duty-free entry of peanuts of about 10 million

pounds, in-shell basis. This level will increase about 3 percent annually through 2008, when quantitative limits will cease. Mexico's 1998 duty-free quota will total 8.4 million pounds. Under GATT, the 1995 quota was 74.5 million pounds. This year it is 86.8 million pounds, will increase to 96.7 million pounds (Argentina 81.2 and all other 15.5) in 1998, and can grow to about 155 million pounds (about 4 percent of U.S. disappearance) in 2000.

The study also projects that farm production costs and revenue will be equal by the year 2000, as will handler costs and revenue, leaving no profit.

In addition, the modification of the Federal farm peanut poundage quota regulations implemented under the Agricultural Market Transition Act of 1996 (1996 Act) has resulted in the domestic industry undergoing significant changes scheduled to continue through the year 2002. The peanut support price has been reduced from \$670 per ton in 1995 to \$610 per ton through 2002. The USDA's Farm Service Agency final rule implementing the Act was published May 9, 1997 (62 FR 25433). That rule indicates that economic impacts of the 1996 Act include expected reductions in domestic peanut producers' revenue of \$1.25 billion from 1996 through 2002. Quota lease holders could absorb a loss of about \$40 million annually because of reduced leasing rates due to the lower peanut price support. Also, capitalized value of quotas could decline \$200 to \$300 million, thus reducing land values and the tax base of rural communities.

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

World supply and demand are less important for peanuts than most U.S. farm commodities. Much of world peanut production is for non-food uses, although production for food use might increase a little if there were no U.S. import restrictions. Also, import quotas, though increased recently, still are set at relatively low levels.

Domestic peanut production in 1996 was approximately 3.66 billion pounds, with a farm value of slightly under \$1 billion. The Department's November 1 forecast pegs the 1997 peanut crop production at 3.5 billion pounds, down approximately 4 percent from last year. Harvested acreage for 1997 is forecast to be 1.384 million acres, up 4,500 acres from a year ago. The U.S. average yield per acre for the 1997 crop is forecast at 2,528 pounds, down 11 pounds per acre from the 1996 crop.

Production is expected to gradually increase from 1996 to 2002 because domestic food use is projected to rise about 1.5 percent annually. Imports are expected to remain at a relatively small percentage of total U.S. peanut use.

Estimated exports of 750 million pounds in Marketing Year (MY) 1997 are below the average for the prior 3 years, but are 11 percent more than a year earlier. Peanut oil prices are expected to average about 38 cents a pound of oil in MY 1997, 6 percent lower than MY 1996 as vegetable oil supplies return to more normal levels. Peanut meal prices for MY 1997 are expected to decline to \$175 a ton, down 25 percent from MY 1996 because of larger soybean meal supplies.

The season average price of farmer stock peanuts for MY 1997 may remain unchanged from the 28.5 cents per pound average for 1996. This was the lowest price of the last two years and reflects the adjustment to the reduced quota support level and an unexpected change in the proportions of quota and additional in 1997 production. Average prices to growers are expected to increase, but will remain below 1995 prices because of the lower quota price support level. The value of farm production is expected to gradually rise and surpass that of 1995 by 2000/01.

The Committee recommended the changes in this rulemaking to the Agreement's Incoming and Outgoing regulations for 1997 and subsequent crop peanuts at its April 30, 1997, public meeting.

Alternative Actions Considered

Although the Committee could have recommended no changes or less changes to the current regulations, it unanimously concluded that those were not satisfactory solutions. It believes that all possible simplification and cost-cutting should be done and that these regulations should focus more on outgoing quality and less on the shelling and milling processes necessary to meet the outgoing, human consumption requirements. Newer, high technology milling and blanching equipment enable handlers to recondition failing peanut lots that could not have been economically reconditioned when the regulations were first promulgated. Therefore, it is no longer necessary to impose restrictions that hinder the efficiency of handling operations and result in the loss of potentially good quality peanuts. Thus, the Committee believes these changes will tend to improve the returns to growers and handlers, while still maintaining consumer safeguard provisions in the current domestic regulations, because

all peanuts intended for human consumption must still be inspected and certified acceptable for such use.

After review of the recommendations, the Department concurs that the recommended changes will tend to improve returns to the industry and be in the public interest. Expected benefits of the changes were included in the previous discussion of each individual change.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581-0067 (for Agreement signers) and 0581-0163 (for non-signers).

After consideration of all relevant material presented, including the Committee's recommendations, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the quality regulations currently prescribed under the Agreement and the non-signers program. All written comments timely

received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements currently in effect; (2) the 1997 peanut crop year began July 1, 1997, and the changes should be effective as soon as possible to allow the industry to receive the benefits for as much of the remainder of the crop year as possible; (3) the Committee unanimously recommended these changes at a public meeting and all entities, both large and small, were able to express views on these issues; (4) this rule provides a 60-day opportunity for comment, and all written comments timely received will be considered prior to finalization of the rule.

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.

For the reasons set forth in the preamble, 7 CFR parts 997 and 998 are 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. Section 997.30 is amended by revising paragraph (a), to read as follows:

Quality Regulations

§ 997.30 Outgoing Regulation.

(a) *Shelled peanuts.* (1) No handler shall dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified "negative" as to aflatoxin and certified as meeting the following requirements:

MAXIMUM LIMITATIONS

Type and grade category	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	Sound whole kernels	Total		
Excluding lots of "splits"							
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 16/64x3/4 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%; 15/64x1 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%; 15/64x3/4 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%; 15/64x1 inch slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64x3/4 inch slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64x1 inch slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 16/64 inch round screen.	3.00%; 13/64x3/4 inch slot screen.	4.00% both screens.	.20	9.00

(2) The term *fall through*, as used in this paragraph, 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 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.

* * * * *

3. In § 997.40, paragraph (c) introductory text is amended by removing the words "bulk or", paragraph (e) is amended by removing the word "bagged" and adding in its place the words "placed in suitable containers acceptable to AMS", paragraph (d) is amended by removing the word "bagged" and adding in its place the words "placed in suitable containers acceptable to AMS", and adding after the last sentence, 5 additional sentences, to read as follows:

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

* * * * *

(d) * * * Handlers may contract with Committee approved blanchers for roasting positive lot identified shelled peanuts, which originated from

Segregation 1 peanuts, that meet the grade requirements of paragraph (a) of this section but are positive as to aflatoxin. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and a valid aflatoxin certificate. To be eligible for disposal into human consumption outlets, such peanuts after roasting, shall have had the positive lot identity maintained and be accompanied by a negative aflatoxin certificate. The residual peanuts, excluding skins and hearts, resulting from roasting under these provisions, shall be placed in suitable containers acceptable to AMS and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or that in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (c) of this section and all other applicable requirements of this regulation. Roasting under the provisions of this paragraph shall be performed only by blanchers who are approved by the Committee.

* * * * *

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.

§ 998.100 [Amended]

2. Section 998.100 is amended by removing paragraph (g), redesignating paragraphs (h) and (i) as paragraphs (g) and (h), and removing the number "1996" in the section heading and adding in its place the number "1997".

3. In § 998.200, the section heading and paragraphs (a), (h)(1) and (h)(2) are revised and a new paragraph (h)(3) is added to read as follows:

§ 998.200 Outgoing quality regulation for 1997 and subsequent crop peanuts.

* * * * *

(a) *Shelled peanuts.* (1) No handler shall dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified "negative" as to aflatoxin, and certified as meeting the following requirements:

MAXIMUM LIMITATIONS

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broker kernels	Sound whole kernels	Total		
Excluding lots of "splits"							
Runner	1.50	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00% 1 ⁶ / ₆₄ × 3/4 inch slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2.	1.50	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00%; 1 ⁵ / ₆₄ × 1 inch slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 1 ⁶ / ₆₄ inch round screen.	3.00%; 1 ⁵ / ₆₄ × 3/4 inch slot screen.	4.00% both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 1 ⁷ / ₆₄ inch round screen.	6.00%; 1 ⁵ / ₆₄ × 1 inch slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels.	2.00	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00%; 1 ⁴ / ₆₄ × 3/4 inch slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits.	2.00	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00%; 1 ⁴ / ₆₄ × 1 inch slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 1 ⁶ / ₆₄ inch round screen.	3.00%; 1 ³ / ₆₄ × 3/4 inch slot screen.	4.00%; both screens.	.20	9.00

(2) The term *fall through*, as used in this paragraph, shall mean sound split and broken kernels and whole kernels which pass through specified screens.

* * * * *

(h) * * * (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. 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 as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Lots of peanuts which have been certified as meeting fall through requirements as specified in paragraph (a) of this section, prior to blanching, shall be exempt from fall through requirements after blanching. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be placed in suitable containers acceptable to the Committee 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 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. 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 placed in suitable containers acceptable to the Committee 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 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.

(3) Handlers may contract with Committee approved blanchers for roasting positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that meet the grade requirements of paragraph (a) of this section but are positive as to aflatoxin. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and a valid aflatoxin certificate. To be eligible for disposal into human consumption outlets, such peanuts after roasting, shall have had the positive lot identity maintained and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from roasting under these provisions, shall be placed in suitable containers acceptable to the Committee 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 a Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to 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. Roasting under the provisions of this paragraph shall be performed only by blanchers who are approved by the Committee.

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Dated: January 9, 1998.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

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