

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 999**

[Docket No. FV98-999-1 FR]

Revised Quality and Handling Requirements and Entry Procedures for Imported Peanuts for 1999 and Subsequent Import Periods**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with several modifications, the provisions of a proposed rule relaxing certain quality requirements; modifying entry procedures; revising handling requirements; reducing the reporting burden; and establishing a new reporting period for peanuts imported into the United States. Seven comments were received and are addressed in this final rule. Changes to the quality and handling requirements make the import requirements consistent, as required by law, with regulations covering domestically-produced peanuts under Marketing Agreement No. 146 (Agreement). Changes to import procedures and reporting requirements by the Agricultural Marketing Service (AMS) will improve efficiency of the importation process, ease the reporting burden, and provide importers with more time to meet peanut import regulation requirements. This final rule continues safeguard measures which prevent non-edible imported peanuts from being used in human consumption outlets in the United States. This rule will benefit peanut importers, handlers, and consumers by helping to ensure that all peanuts in the domestic marketplace comply with the same quality standards.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-6862, or fax: (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber at the same address and fax number, telephone: (202) 720-2491. You may also view the marketing agreements and orders small business compliance guide at the following website: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This final rule amends the peanut import

regulation (7 CFR 999.600) issued June 11, 1996, and published in the **Federal Register** (61 FR 31306, June 19, 1996), which regulates the quality of peanuts imported into the United States. Amendments to the regulation were issued December 31, 1996 (62 FR 1269, January 9, 1997) and September 19, 1997 (62 FR 50243, September 25, 1997).

The import regulation is effective under subparagraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c3) (Act), as amended November 28, 1990, and August 10, 1993, and section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7271). These statutes provide that the Secretary of Agriculture (Secretary) shall require that all peanuts in the domestic and export markets fully comply with all quality standards under Marketing Agreement No. 146 (7 CFR part 998) (Agreement), issued pursuant to the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601-674). The handling requirements in this rule are the same as, or similar to, those recommended by the Peanut Administrative Committee (Committee or PAC), the administrative agency that oversees the Agreement's quality assurance program.

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the regulations, importers of foreign-produced peanuts must: Follow certain entry procedures with the U.S. Customs Service (Customs Service); obtain certification that such peanuts meet edible quality requirements or are disposed to non-edible peanut outlets; and report disposition of peanuts to AMS within an established time period. This rule finalizes several proposed changes to the current regulation to relax quality requirements, modify entry procedures, and relax reporting requirements. 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.

The proposed rule was published in the **Federal Register** of August 31, 1998 (63 FR 46181). Over 350 copies of the proposed rule were mailed to: (1) Embassies of exporting countries and

the National Institute for Technical Standards (NIST) which forwards such notices to the World Trade Organization; known exporters, importers, and customs house brokers; (2) the domestic peanut industry entities including grower associations, handlers, manufacturers, blanchers, and warehouse operators; and (3) Customs Service ports and headquarters offices, the Food and Drug Administration (FDA), Federal-State Inspection Service (inspection service) offices, and Federal and private aflatoxin laboratories. The rule was available on the Internet at the **Federal Register** website and at the homepage of AMS' Marketing Order Administration Branch—which offered a direct link for submitting comments electronically. Finally, AMS issued a press release announcing the proposed rule on August 27, 1998.

A 30-day comment period was provided for interested parties to comment on the recommended changes to quality requirements and import procedures and on regulatory impact of the recommended changes. A 60-day comment period was provided for interested parties to comment on proposed changes to the reporting and recordkeeping requirements.

Comments Received

Seven comments were received on the proposed changes to importation procedures. Six of the commenters represented major sectors of the domestic peanut industry: the Peanut Administrative Committee, the three grower associations, a state peanut commission, and a domestic peanut handler association whose members also import peanuts. One importer filed a comment. The comments generally supported the proposed changes to the import regulation, particularly the addition of positive lot identification requirements and changes to make the import regulation consistent with Agreement regulations. The comments recommended changes to, and in a few cases opposed, specific technical and procedural requirements in the peanut regulation. The comments are addressed below.

A growers' association representative commented on Recommendation 2 concerning the revised definition of paragraph (a)(16) *Conditionally released*. He commented that the proposed definition and the wording in proposed new paragraph (f)(3) "may imply that imported peanuts could be forwarded to buyers, remillers or blanchers without being inspected, certified or positive lot identified." The commenter suggested that the regulation be modified to require that all lots be

sampled before conditional release by the Customs Service.

While AMS appreciates the commenter's concerns that imported lots could be sent to buyers, remillers or blanchers before inspection, AMS does not believe that sampling before conditional release, in and of itself, will guarantee that all lots are inspected. The stamp-and-fax procedure—which occurs before the sampling process—is the procedure which helps guarantee notification of the inspection service and assures subsequent sampling and inspection of the peanuts.

Requiring sampling before conditional release by the Customs Service could result in overflow situations at ports when quotas open. It also could substantially increase inspection costs for some importers. For instance, at quota opening, a port facility may not be able to hold the large number of containers that have been landed at the port. Experience from 1997 shows that some containers waited for several days at dockside, exposed to the weather, while various government clearances were issued. AMS does not want its sampling and inspection requirements to delay onward movement of peanuts.

Further, importers ship the conditionally released peanuts inland for inspection, or ship the lots to Customs bonded warehouses that are closer to inspection offices. Among other things, this lowers inspection costs. The stamp-and-fax process enables this movement with the assurance that the inspection service has been notified and will follow up with an inspection.

The commenter does raise an important point that should be incorporated into the final rule. The commenter suggested that the proposed conditional release definition implies that peanuts may be sent directly to remilling or blanching facilities without first being inspected and positive lot identified (PLI). However, the Agreement regulations specify that any lots moved to a remiller or blanching operation must be accompanied by a valid grade certificate (with PLI). This requirement was not established in Part 999.600 because AMS did not contemplate that importers would risk the costs involved in shipping peanuts to the U.S. unless they were reasonably certain that the peanuts would meet outgoing quality requirements.

However, it is possible that some imported peanuts may not be of the highest quality or may deteriorate while in storage—before initial inspection is conducted. In such cases, the importer may be inclined to send the stored lot directly to reconditioning before

obtaining an initial inspection, thus, avoiding initial inspection costs. Indeed, since publication of the proposed rule, two instances of this practice have come to the attention of AMS.

After review of the comment, AMS concurs with the commenter's suggestion for two reasons. First, movement of an uninspected lot from a storage facility directly to a remiller or blancher is movement that is likely not under Customs Service bond (as was the initial shipment to the bonded warehouse). Secondly, AMS compliance monitoring and oversight is more difficult to maintain because there is no valid paperwork to tie the reconditioned lot directly back to a container or lot specified on a stamp-and-fax entry. Initial inspection and PLI establishes needed lot identity, and should be carried out before the lot is broken down into two or more parts during reconditioning.

Therefore, to assure that imported peanuts are inspected prior to reconditioning, this final rule removes the phrase “* * * and, if necessary, reconditioning.” from the proposed definition of *Conditionally released* in paragraph (a)(16). The definition will now read “*Conditionally released* means released from U.S. Customs Service custody for further handling, sampling, inspection, chemical analysis, or storage.” For further clarification, the following sentence will be inserted as the new fourth sentence in new paragraph (d)(4) on Positive Lot Identification: “All lots forwarded to a reconditioning facility must be accompanied by valid PLI certification.”

The manager of the Peanut Administrative Committee (Committee—responsible for daily oversight of the domestic Agreement program) filed a comment on Recommendation 5 requesting a minor change in the grade requirements of the revised “Minimum Grade Requirements” table proposed in paragraph (c)(1). He requested the modification to make the import requirements consistent with domestic industry practice. The manager acknowledged that when the Committee recommended, for the domestic program, removing Table 2 and incorporating the last three categories (Runner, Virginia and Spanish/Valencia “splits with not more than 15 percent sound splits”) into Table 1, the Committee “inadvertently” failed to recommend modification of the tolerance for Foreign Material in the three categories which are moved. The foreign material content in the three moved categories was .10 percent in old

Table 2 but should be relaxed to .20 percent to be consistent with the foreign material contents of the other peanut categories already listed in the Minimum Grade Requirements table. The manager commented that the foreign material content for all categories in the revised table should be the same, i.e., .20 percent. It is our understanding that this matter will be reviewed by the Committee and considered at its next meeting. If recommended and implemented for the domestic program, a corresponding change would be made in the import regulation. Further, this change was not proposed for comment in this proposed rulemaking action.

Two commenters addressed Recommendation 7 that proposed a maximum size for farmers stock lots. The commenters correctly stated that the proposed maximum size of 24,000 pounds was based on dryer wagons used in the domestic industry to move farmers stock peanuts from fields to buying points. They pointed out that proposed size is, indeed, too small for semi-trailer trucks used to transport farmers stock peanuts from Mexico. They suggested that the maximum size should be 50,000 pounds, which is the approximate load capacity of a semi-trailer. One commenter stated that, when collecting farmers stock samples from the semi-trailers at incoming inspection, the inspection service uses different probe patterns specifically for the larger volume trailers.

After review and consultation with the inspection service, AMS agrees that the 24,000 pound maximum weight is incorrect. AMS concurs with the recommendation from the two commenters that the maximum size of farmers stock lots should be 50,000 pounds (22,680 kilograms). This change is made to the proposed new second sentence added to paragraph (d)(3)(C)(ii).

Two commenters questioned the accuracy of a statement in the discussion of Recommendation 8 on positive lot identification. Page 46184 of the preamble reads, in part:

“It shall be noted that under the Agreement and import programs, a failing lot that is reconditioned must be re-certified for both grade and aflatoxin content after reconditioning. It does not matter whether the original lot fails for grade or aflatoxin analysis: both analyses must be conducted a second time. The reconditioned lot is considered to be a new lot because the size and quality is different from the original lot, and the previous lot identity has been lost.”

The accuracy of this statement has been confirmed. Reconditioned lots must receive both grade and aflatoxin

certifications. This is a requirement of the Agreement program. No regulatory text needs to be changed.

Two commenters requested a modification of the "source" documents proposal added to paragraph (f)(2) in Recommendation 17. The proposal would have required that "source" documents be used to prove disposition of failing peanuts to non-edible outlets. Source documents are documents originating from the business entity carrying out the actual disposition of the peanuts. One commenter stated: "* * * trying to obtain documents from entities not associated with the normal activities of the peanut business will be difficult and in some cases impossible." The commenters pointed out that bills-of-lading filed by Committee-approved blanchers and remillers are acceptable to the Committee as sufficient proof of proper non-edible disposition (most often to oilmills). The commenters also pointed out that the same standard should be applied to importers under the import regulation. This change will not alter the volume of reports required under the information collection burden, but it can ease the difficulty importers might have had in obtaining the information to be reported.

Committee-approved blanchers and remillers are: American Blanching in Fitzgerald, GA; Cargill Peanut Products in Dawson, GA; Clint Williams Co. in Madill, OK; Coastal Cold Storage in Albany and Donalsonville, GA; Doster Warehouse, Inc. in Rochelle, GA; Peanut Processors, Inc. in Dublin NC and Sherman, TX; Seabrook Enterprises, Inc. in Edenton, NC and Sylvester, GA; Tidewater Blanching Corp. in Suffolk, VA; Tom's Foods, Inc. in Columbus, GA; and Universal Blanchers in Blakely, GA, Ozark, AL, and Dublin, TX. In addition, any domestic peanut sheller may be contracted to remill imported peanuts, provided that sheller agree to comply with import program reporting requirements, including certification as to the disposition of residual peanuts from the remilling operation.

After careful review, AMS concurs with the comments filed on this proposal. Committee-approved blanchers and remillers are the same entities used by importers. Experience shows that they are the primary, if not the only, entities filing bills-of-lading on imported peanuts sent to oilmills. The importer is responsible for assuring the filing of bills-of-lading by any blancher or remiller used by the importer. The receiving entity, such as an oilmill or feedlot, would not have to file proof of crushing or feed use.

Likewise, bills-of-lading filed by the importers and other entities, such as

bonded warehouses, also are acceptable as valid certification of non-edible disposition. The regulation provides a safeguard against edible use by requiring that shipments of non-edible peanuts be positive lot identified and red tagged for non-edible use only. The bill-of-lading must also show the weight of the non-edible peanuts, the name and location of the entity receiving the peanuts, and transfer certificates or inspection certificate numbers which tie the residuals back to failing lots. When applicable, the volume reported must reflect residual lots commingled prior to such shipment. Therefore, the proposed amendment to require source documents is withdrawn in this final rule.

Two commenters opposed Recommendation 19 which proposed, in new paragraph (f)(5), a 60-day extension of the reporting period. Both commenters believe that lengthening the reporting period to 180 days (Recommendation 18) should be sufficient for importers to meet program requirements. One commenter suggested that an extension of the reporting period beyond 180 days would be necessitated by management decisions that have nothing to do with congestion in shelling and reconditioning facilities. The commenter's analysis is correct. However, the extension is not offered only to alleviate congestions that occur at remilling and blanching facilities. Domestic peanut handlers are not restricted by reporting deadlines under the Agreement and non-signer peanut programs. The Act specifies that, to the extent practicable, peanut importers should be provided similar opportunities to make appropriate management decisions regarding disposition of imported peanuts. Extending the deadline an additional 60 days beyond the revised 180 day reporting period should help importers in this regard.

The original reporting time period was established at 30 days, with an extension period of 60 days at the request of the importer. The initial 30-day period was too short and extensions were necessary for nearly all peanut lots imported during 1997 and 1998. Even with the new 180 day reporting period established in this rulemaking, AMS believes that, on occasion, importers will need additional time to dispose of some lots. AMS is not concerned that the extended reporting period will jeopardize safeguard procedures. Importers, as well as domestic peanut handlers, understand that the longer peanuts remain in storage the more chance there is for deterioration of product and the higher the risk of

failure to ultimately meet quality requirements.

Also, under this rule, AMS would not automatically grant extensions at the end of the 180-day reporting period. Extensions must be requested in writing and provide information specific to the lot, including proof that positive lot identification has been maintained. AMS will not lose track of imported peanuts held in storage for extended periods.

One of the commenters suggested that the total 240-day reporting period is unfair because "a domestic producer has only 24 hours to recondition a load of peanuts * * *". A domestic producer's submission of farmers stock peanuts at a buying point is not comparable to importers obtaining final, outgoing inspection on milled peanuts. The commenter evidently is referring to the period time following submission raw, farmers stock peanuts for grading at a buying point. Under recently revised USDA Farm Service Agency (FSA) procedures, farmers stock peanuts graded as less profitable Segregation 3 peanuts, subject to certain conditions, may be cleaned by the producer and resubmitted, as a new farmers stock lot, for Segregation determination. The Segregation grade determines the support price that FSA will purchase the peanuts, if so demanded by the producer. The "24 hour rule," as it is known in the domestic peanut industry, relates to FSA procedures and may impact prices paid to producers under its peanut price support program. Finally, domestic handlers are not subject to some other "24 hour rule" when preparing Segregation 1 peanuts for edible market. That is, the "24 hour rule" is not applicable to imported farmers stock peanuts. AMS believes the 60-day extension period, as proposed, is reasonable and necessary to maintain conformity with the Agreement program. The comments on this issue are not adopted.

Two commenters questioned a phrase in the discussion of Recommendation 20 regarding treatment of peanuts which are landed in the U.S. in excess of the quota. The new paragraph states that such peanuts may be either exported, held in bonded storage for the next quota year, or "entered as admissible." The commenters questioned the phrase "entered as admissible." This phrase was inserted to cover an importer's option to pay tariff charges on the peanuts entered in excess of the quota. The Department believes that the discussion of new paragraph (f)(6) should be clarified by restating that peanuts which are landed in the U.S. in excess of the quota may be either

exported, held in bonded storage for the next quota year, or entered under tariff charges. Peanuts entered under tariff charges are subject to the stamp-and-fax procedure and inspection requirements—as are all peanuts entered for consumption.

The importer commented that incoming inspection of imported farmers stock peanuts should be sufficient for meeting import quality requirements. AMS already has established that imported peanuts intended for edible consumption must be certified as meeting outgoing quality requirements and contain not more than 15 ppb aflatoxin content.

The importer suggested that country of origin designation should not be included on outgoing certificates of lots originating from imported farmers stock. The inspection service enters the country of origin on the inspection certificates, so there is no additional burden on importers. AMS already has established that country of origin designation enables AMS to carry out its compliance responsibilities. Customs Service requirements also apply.

The importer commented on farmers stock peanuts imported under bond as non-quota peanuts for the purposes of shelling and re-export. The importer complained that the “shells, foreign material, and oilstock” from such shelling should not have to be re-exported with the shelled peanuts. AMS believes the commenter is referring to merchandise that is entered as Temporary Importation Under Bond, found in Customs Service regulations 19 CFR 10.31 through 10.40. This, however, is not an AMS requirement.

Two commenters questioned the last sentence in redesignated paragraph (f)(8) *Early arrival and storage*, pursuant to which the Secretary may require reinspection of a lot at the time the lot is declared for entry. This requirement was already in the regulation. The commenters appear to interpret this statement as a requirement that lots held in storage for more than one month prior to quota opening must be reinspected at the time of entry declaration. This is not the case. The intent of paragraph (f)(8) is just the opposite—inspection certificates on lots held in storage for more than one month prior to quota opening are good at the time of entry. The sentence questioned by the commenters simply refers to provisions in the preceding paragraph that USDA (the Secretary) has the right to require reinspection on any imported lot at any time during the importation process. In the case of lots held in storage for long periods before quota opening, AMS thought it appropriate to

remind importers that such lots, with cause, may be required to be re-inspected.

Finally, no comments were received that addressed the proposed rule's Regulatory Flexibility Analysis on the impact on small business or the reduction in the Reporting and Recordkeeping Burden.

Discussion

The peanut import regulation was issued June 11, 1996. At that time, three duty free peanut quotas for 1996 had been filled and no peanuts were entered under duty for the remainder of 1996. Therefore, the peanut import regulation had its first practical application on January 1, 1997, when the Mexican peanut quota opened, and again on April 1, 1997, when Argentine and “other country” quotas opened. By international agreements, these three duty free peanut quotas increase each year, allowing more foreign-produced peanuts duty free access to U.S. markets. For the 1999 peanut quota year, the Mexican quota will total approximately 8.7 million pounds (3.95 million kilograms). Argentina's 1999 peanut quota will total approximately 89 million pounds (40.4 million kg.) and the quota for all other countries will be approximately 17.7 million pounds (8 million kg.). The total volume will be about a 10 percent increase over the combined 1998 peanut quotas.

The Committee met April 29 and 30, 1997, and recommended relaxations to the quality and handling requirements of the domestic peanut program. Those relaxations have been finalized by the Department of Agriculture (USDA) and made effective for domestically-produced peanuts. Where applicable, those changes are proposed for imported peanuts in this rulemaking. The Committee met a second time on May 27, 1998, and unanimously recommended no further changes in the domestic program's quality requirements or handling procedures. In addition, after review of the entry and certification process, AMS proposed additional modifications to the import regulation to increase the efficiency of the importation procedure and relax reporting requirements.

Based on the comments received and discussed above, this rulemaking action finalizes the following modifications to § 999.600.

(1) This action removes a phrase in the definition of *Negative aflatoxin content*, in Section 999.600, paragraph (a)(10). The phrase, “and 25 parts-per-billion (ppb) or less for non-edible quality peanuts,” is removed because that action level is no longer used for

non-edible peanuts. This revision makes the requirements under these regulations consistent with those under the Agreement. Molds such as *Aspergillus flavus* (*A.flavus*) are present naturally in soil. Aflatoxin is a carcinogen which may develop from *A.flavus*, which is more likely to be found on stressed peanut plants and damaged or defective kernels than on sound, whole kernels.

Also, in paragraph (a)(15), Marketing Agreement No. 146 was referred to as the Peanut Marketing Agreement No. 146. The word “peanut” is not a part of the title of the Agreement and is removed from the definition to make it technically correct.

(2) This final rule changes the definition of *Conditionally released* in § 999.600, paragraph (a)(16), to conform with Customs Service terminology. The previous definition stated that peanuts were conditionally released for further handling “before final release.” The phrase “final release” is not consistent with Customs Service terminology and should be removed to avoid confusion. This rule defines conditionally released as “released from U.S. Customs Service custody for further handling, sampling, inspection, chemical analysis, and storage.” These activities are conducted to meet the requirements of the import regulation. If inspection and certification are not obtained prior to application for entry, or if peanuts are not held in Customs Service bonded storage facilities when inspected, the peanuts shall be conditionally released for such inspection and needed reconditioning. Conditional release provides more time for importers to obtain inspection certifications and to report compliance with the import regulation.

The definition in the proposed rule included an ending phrase “and, if necessary, reconditioning.” Based on comments received and discussed under the “Comments” section, above, this phrase is removed from the definition.

(3) This rule removes a redundant sentence in paragraph (b)(1) of § 999.600. The second sentence stated that “only Segregation 1 peanuts may be used for human consumption.” This sentence is re-stated at the end of the paragraph and is more appropriately placed at the end of the paragraph.

(4) Paragraph (c)(1)(i) of the *Outgoing regulation* in § 999.600, currently states that “no importer shall ship or otherwise dispose” of imported peanuts unless the peanuts meet certain import requirements. The introductory sentence is amended by removing the words “ship or otherwise.” This change makes the text consistent with the

revised text of corresponding paragraph (a) of § 998.200 of the Agreement regulations.

This modification has the effect of removing text which allowed forwarding of very high quality imported peanuts to buyers before receipt of quality certifications. However, the impact of this modification is not expected to be significant. Given the quality of imported peanuts, importers have been reluctant to forward lots to buyers prior to receipt of both grade and aflatoxin certifications. The risk of having to have the lot returned for reconditioning is greater than the benefit of shipping a few days early. The delays are not excessive as aflatoxin analyses are usually completed within two or three days, and the results faxed back to importers. Finally, grade and aflatoxin certifications often are completed before other Federal agency clearances are received. Therefore, this modification will not have an impact on the importation process or on peanut importers. This modification is made in conjunction with Recommendation 6.

(5) To be consistent with a recent change in the Agreement regulation's "Other Edible Quality" table, this final rule relaxes the tolerance for "Unshelled and damaged kernels" (from 1.50 to 2.00 percent) in the "lots of splits" categories specified in Table 1, "Minimum Grade Requirements" of paragraph (c)(1)(i). The new requirement now matches the tolerance for "Unshelled and damaged kernels" as specified in the U.S. Grade Standards for Peanuts. Table 1 shows the current tolerance for unshelled and damaged kernels as 1.50 percent (the second column under "Lots of splits"). The tolerance will be relaxed to allow for 2.00 percent unshelled and damaged kernels in split lots. The relaxation in tolerance of one half of one percent will reduce the number of imported peanut lots that need to be reconditioned to meet outgoing quality requirements. This will save importers reconditioning costs and storage costs. This relaxation already has been made effective for domestically-produced peanuts.

(6) This modification removed the text of paragraph (c)(1)(ii) and the first six grade categories in Table 2—Superior Quality Requirements. The Committee established Table 2 in the Agreement regulations several years ago to qualify higher grade peanut lots for its indemnification program. However, the indemnification coverage has been greatly reduced by recent Committee actions, and the first six grade categories are no longer certified under the Agreement. Thus, those grade categories

are removed from the import regulation in this rulemaking action.

The final three grade categories in Table 2, covering domestically-produced peanuts with not more than 15 percent sound split kernels, still have a small domestic marketing niche and have been moved to Table 1 under the Maximum Limitations category in the Agreement regulations. To be consistent with that modification, the last three imported "with splits" categories covering Runners, Virginias, and Spanish and Valencia with "not more than 15 percent sound splits" are moved to the Minimum Grade Requirements table in paragraph (c)(1)(i) of the import regulation. Also, to be consistent with the other maximum tolerances in the "Unshelled peanuts and damaged kernels" column, and in the "Minor defects" column, the percentage tolerances for the three transferred categories are increased (relaxed) from 1.25 to 1.50 percent and from 2.00 to 2.50 percent, respectively.

Recommendations 5 and 6 have the effect of relaxing the minimum quality requirements of the import regulation, and, together, simplify grade requirements by providing only one set of peanut quality requirements for human consumption use. While these changes remove a provision that allows shipment of high quality lots to buyers immediately after grading, given the nature of peanut quality and importation processes, the changes are not expected to delay shipments or negatively affect the handling of imported peanuts.

To effectuate the above three changes, paragraph (c)(1)(i) is modified by removing the words "ship or otherwise." The text and the first six grade categories of Table 2 in paragraph (c)(1)(ii) also are deleted from the regulation, and the last three grade categories are moved to the table in paragraph (c)(1)(i). Paragraph (c)(1)(iii) is redesignated as paragraph (c)(1)(ii) and a conforming change is made to that paragraph by deleting the second sentence which specifies that samples must be taken from Superior Quality peanut lots prior to shipment. Finally, because Table 2 is deleted, it is not necessary to refer to the "Minimum Grade Requirements" table as Table 1. Conforming changes are made in paragraph (c)(1)(i), introductory paragraph (e), and in paragraph (e)(3).

(7) Paragraph (d)(3)(ii) is changed to specify a maximum lot size for farmers stock peanuts. The import regulation currently specifies the maximum lot size for farmers stock, cleaned-inshell and shelled peanuts as 200,000 pounds (90,720 kilograms). However, the

200,000 pound size limit is applied only to shelled peanuts under the Agreement, and is based on an understanding between the Committee and the inspection service, reached some years ago. The maximum lot size for domestically-produced, farmers stock peanuts is limited to one conveyance, or two or more conveyances with a combined weight not exceeding 24,000 pounds (10,886 kilograms). The smaller lot size is established for farmers stock peanuts because that is the standard size of wagons used to transport domestically produced farmers stock peanuts from the field to buying points. Peanuts in this form have not undergone extensive cleaning and sorting processes and, generally, contain more foreign material and *A.flavus* mold than lots of milled peanuts. Smaller lot sizes help increase the effectiveness of inspection by reducing sampling variability and increasing the likelihood that the collected sample is representative of the entire lot. The 200,000 pound limit for shelled peanuts is the maximum volume on which random sampling procedures can be systematically and accurately implemented.

The proposed rule suggested the maximum farmers stock lot size to be 24,000 pounds. However, two comments requested that the maximum lot size for farmers stock peanuts be increased to 50,000 pounds. Their argument is included in the "Comments" section above. AMS believes this change has merit. Therefore, under this final rule, foreign-produced peanuts imported in farmers stock form will be inspected in single conveyances or combined conveyances not exceeding a total of 50,000 pounds. Only a small percentage of the peanuts imported during 1997 and 1998 were imported in farmers stock form, and all complied with this maximum lot size. This inspection practice will help exporters plan their shipments and will not have a negative impact on future imports of farmers stock peanuts. For these reasons, the second sentence of paragraph (d)(3)(ii) is modified to provide a maximum lot size of 50,000 pounds (22,680 kilos) for farmers stock peanuts.

Paragraph (d)(3)(i)(A) is changed to reflect closing of the inspection office in Yuma, Arizona. The introductory sentence in paragraph (d)(3)(i)(B) is changed to more accurately reflect the sampling service provided by some inspection service offices.

(8) This final rule strengthens the lot identification requirements for shelled peanuts by adding new paragraph (d)(4) of the import regulation. The Agreement regulation requires Positive Lot

Identification (PLI), generally using tags which are sewn on each bag or super sack of domestically-produced shelled peanuts. The PLI tag is applied after shelling, at the time of packaging and inspection. The previous import regulation did not require PLI tags sewn at the time of first inspection when several hundred thousand pounds of peanuts arrived at a port-of-entry at one time. Such a requirement would be a burden on importers because of the large volume and lack of equipment, space, and time needed to sew tags on individual bags. However, better lot identification for imported peanuts is needed to insure integrity of the peanut import program.

Lot identification practices currently applied to imported peanuts by the Federal-State Inspection Service (inspection service) provide that lots, or pallets within a lot, be identified by a tag which is affixed to the lot or pallet. Such identification does not prevent the individual bags, sacks, or cartons in the lot from being tampered with or exchanged with other bags, sacks, or cartons. The inspection service cannot insure integrity of a lot that is only "lot identified." Simple lot identity does not guarantee that peanuts drawn in a second sample under an appeal process come from the same peanut lot or containers from which the first sample was drawn.

This rule provides a more reliable PLI to be applied to shelled peanuts by the inspector at the time of first inspection. This may include: (1) Wrapping PLI tape around the top layer of bags or boxes in such a way that no peanuts could be removed or added; (2) shrink wrapping pallets or multiple bags with a PLI sticker applied to the wrapped pallets or bags; (3) stamping or stenciling and numbering individual bags or boxes; (4) affixing a PLI seal to the door of a shipping container so that it cannot be opened without breaking the seal; or (5) other methods acceptable to the inspection service that clearly identify the lot, is securely affixed to the lot, and prevents peanuts from being removed or added to the lot.

These PLI methods represent substantially less burdensome and less costly procedures than PLI tags sewn on individual bags. For instance, stenciling bags with a spray paint is a faster and much less expensive method of lot identity that represents an acceptable alternative to sewing tags on individual bags. The inspection service office in Suffolk, Virginia, used stenciling of imported peanuts in bags during the 1997 and 1998 quota years. These methods also do not require special training or equipment and can be

carried out by inspection service personnel throughout the U.S. These methods do not require substantial extra time or material at the time of first inspection. Increased costs to the importer will be in the form of a few extra minutes to wrap pallets or stencil bags, and would vary with the size and containerization of each lot. These PLI methods may increase average storage costs when warehouse space for inspection is very limited or when an unusual amount of movement of lots is required during lengthy warehouse storage. However, increased costs should not be significant in comparison to overall costs of importation. Also, importers benefit from improved lot identity if they request an appeal inspection on the lot or if the Customs Service demands redelivery of the lot.

The inspection service currently works with domestic peanut handlers and storage warehouses to determine the most appropriate PLI or lot identity method to be used. The same cooperative relationship should apply to importers. Several factors dictate which PLI method should be used: (1) Size of the lot; (2) storage space on the wharf or in the warehouse; (3) required further movement of the lot prior to receipt of certification; and (4) other needs of the importer, wharf or warehouse operators, or the Customs Service. Any request for extension of the reporting period, or appeal inspection, must include the PLI number or designation of the lot needing additional reporting time.

AMS believes that these increased lot identity practices outweigh the possible minimal increases in handling or inspection costs associated with better lot identification. Tighter lot identity requirements are consistent with practices currently used by the inspection service to PLI domestically-produced peanuts. PLI also helps importers maintain the integrity of lots, should questions arise from the Customs Service after conditional release.

AMS believes that positive lot identification of inspected lots is essential in maintaining the integrity of imported shelled lots after first inspection. Lots failing grade and aflatoxin certifications can be appealed pursuant to current paragraph (d)(5). In the appeal process, the lot is sampled a second time. Without PLI, there is no guarantee that peanuts sampled under an appeal inspection are the same peanuts as those which failed initial inspection. Therefore, a sentence will be added to current paragraph (d)(5) to provide that peanut lots which show evidence of tampering or PLI violation, will not be eligible for an appeal inspection.

These PLI methods will be applied to peanut lots at the first inspection. If a lot subsequently fails either grade or aflatoxin analysis, the lot may be sent to a remilling or blanching operation for reconditioning. In such cases, PLI of the lot from the warehouse to the reconditioning site and during reconditioning does not have to be maintained. However, the importer must maintain information which ties the reconditioned lot to the original lot. This information must be provided to the inspection service upon inspection after reconditioning. Thus, inspection surveillance of the lot does not have to be maintained during reconditioning. This lot identity procedure is consistent with the handling requirements for domestically-produced peanuts under the Agreement.

PLI requirements after reconditioning also are updated in this final rule to make the treatment of reconditioned imported peanuts consistent with current industry practice for domestically-produced peanuts. Under Agreement requirements, failing lots that are reconditioned by remilling or blanching are positive lot identified by sewing tags on bags and by taping and tagging bulk bins. For shelled peanuts, the tag is sewn into the closure of the bag. In plastic bags, the tag is inserted prior to sealing so that the official stamp is visible. This is the most efficient PLI procedure and is currently carried out by the remiller or blancher at the end of the remilling and blanching process. The inspection service certifies the reconditioned lot based on the PLI tags applied to bags and bins. Bulk shipments and bulk bins are positive lot identified by sealing the conveyance and, if in other containers, sealed by means acceptable to the inspection service. This rule ensures that the same PLI procedures are applied to imported peanuts which are reconditioned by remilling or blanching. Costs for these PLI measures are covered in the remilling and blanching charges, and, thus, will not be expected to increase costs for importers. Indeed, some blanching operations used this PLI method on imported peanuts during 1997 and 1998.

These PLI requirements and procedures are established in the import regulation by adding a new paragraph (d)(4) and redesignating original paragraphs (d)(4) and (5) as (d)(5) and (6), respectively. Also, references to lot identity in paragraphs (c), (d), (d)(1) and (g)(6) are amended to read "Positive Lot Identification."

It should be noted that under the Agreement and import programs, a failing lot that is reconditioned must be

re-certified for both grade and aflatoxin content after reconditioning. It does not matter whether the original lot fails for grade or aflatoxin analysis; both analyses must be conducted a second time. The reconditioned lot is considered to be a new lot because the size and quality is different from the original lot, and the previous lot identity has been lost. This procedure was in effect and properly carried out for reconditioned imported peanuts in 1997 and 1998. Comments received indicate some confusion among handlers with the accuracy of this paragraph. As discussed previously in the Comments Received section, above, the paragraph does conform with the requirements of the Agreement, and, in general, FSA limitations can apply in some cases. A clarification is included in the Comments Received section, above.

A minor clarification is added to redesignated paragraphs (d)(5)(ii) and (iii). These paragraphs refer to a "notice of sampling" as the inspection service's grade certification of shelled peanuts. The inspection service now commonly uses the "Milled Peanut Inspection Certificate," AMS form FV-184-9A, to certify the grade quality of shelled peanuts. That form's title is added to paragraphs (d)(5)(ii) and (iii).

It should also be noted that containers of imported lots of shelled peanuts may be subdivided prior to inspection. During the 1997 and 1998 quota years, some containers of shelled peanuts, when off-loaded and made available for inspection, revealed wet or moldy bags. The importers, suspecting such bags would fail quality requirements, isolated the wet and moldy bags apart from other bags in the container to reduce possible contamination of good peanuts. This practice is acceptable and can be done at a Customs Service bonded warehouse without inspection service oversight. If the moldy bags are held separately in a Customs Services bonded warehouse and then re-exported without leaving Customs Service custody, those moldy bags do not have to be reported to AMS—except that the difference in the volume reported on the stamp-and-fax form and the volume inspected must be reported to the inspection service.

However, if the moldy bags are combined into a separate lot and identified on an inspection certificate, or moved out of Customs custody, the bags are subject to import requirements and must be reported as a separate peanut lot. If such a lot fails quality requirements, it may be reconditioned, disposed to an non-edible peanut outlet pursuant to import requirements, or re-

exported pursuant to Customs Service procedures. These dispositions must be reported to AMS.

Four of the seven comments received agreed with implementation of positive lot identification procedures.

(9) The second to the last sentence in original paragraph (d)(4)(iii) provides that laboratories shall provide aflatoxin assay results to the importer. Upon review, USDA determines that this sentence is duplicative of provisions in original paragraph (d)(4)(v). Thus, this rule removes the second to last sentence of original paragraph (d)(4)(iii).

(10) Several changes in the regulatory text are made regarding reporting of aflatoxin certifications to AMS. Original paragraph (d)(4)(iv)(A) provides that importers "should" contact one of the laboratories to arrange for chemical analyses of imported peanut lots. However, because chemical analysis is required under the regulation, the word "should" does not convey the mandatory nature of the requirement that aflatoxin analysis must be conducted on all imported peanut lots intended for human consumption. Thus, the first sentence of redesignated paragraph (d)(5)(iv)(A) is revised to state that importers "shall" contact one of the laboratories to arrange for chemical analyses.

Original paragraph (d)(4)(v) is revised to include the requirement that importers "shall cause" aflatoxin certifications to be reported to AMS. The last sentence in original paragraph (d)(4)(v)(B) is revised and moved to redesignated paragraph (d)(5)(v) for more appropriate placement of the instructions.

(11) The list of aflatoxin testing laboratories shown in original paragraph (d)(4)(iv)(A) is updated in this rulemaking action. The laboratory in Ashburn, Georgia formerly operated by AMS is now operated privately as a PAC-approved laboratory. The USDA laboratory in Dothan, Alabama is now operated by the Alabama-Federal State Inspection Service. In addition, three new laboratories in Headland, Goshen, and Enterprise, Alabama have been certified by AMS and approved by the PAC as Alabama-Federal State laboratories. The PAC-approved laboratory in San Antonio, Texas is dropped from the list as that laboratory no longer certifies the aflatoxin content of peanut lots. The name of the AMS office that operates USDA laboratories and certifies the private laboratories has been changed from Science and Technology Division to Science and Technology Programs.

Since publication of the proposed rule, AMS has been notified of a

location change and two new laboratories. The Pert laboratory in Sylvester, Georgia has moved to Colquitt, Georgia. A Pert laboratory has been opened in Blakely, Georgia and a Leek laboratory has been opened in Headland, Alabama. Contact information for these laboratories is added to paragraph (d)(4)(iv)(A). In addition, area code numbers have been updated in this paragraph and in inspection offices in paragraph (d)(3)(i)(A).

The import regulation refers to private aflatoxin testing laboratories as "PAC-approved" because those laboratories are approved by the Committee to perform chemical analyses on domestically-produced peanuts. These PAC-approved laboratories also may be referred to as "designated" laboratories. Whether a laboratory is referred to as "PAC-approved" or "designated," only those laboratories listed in redesignated paragraph (d)(5)(iv)(A) may conduct aflatoxin content analysis on imported peanuts.

(12) Another Committee recommendation to modify the Agreement regulations provides that shelled peanut lots failing quality requirements because of excessive "fall through" may be blanched. Paragraph (e) of the import regulation prescribes the corresponding requirement that imported shelled peanuts failing quality requirements because of excessive damage, minor defects, moisture, or foreign material may be reconditioned by remilling and/or blanching. This rule adds peanut lots failing "fall through" requirements to those lots that can be reconditioned by blanching. After blanching, all such lots must be sampled and certified as meeting minimum "fall through" requirements prior to disposition to edible peanut outlets.

This change is made in paragraph (e) of § 999.600 by adding a new second sentence to the introductory paragraph providing that peanuts which fail minimum grade requirements because of excessive "fall through" may be blanched. For consistency, the second to last sentence in introductory paragraph (e) also is revised to include minimum "fall through" requirements as a condition for human consumption.

(13) A final change to be consistent with Agreement regulations prescribes that shelled peanut lots meeting the minimum grade requirements specified in the Minimum Grade Requirements table, but which fail aflatoxin requirements, may be roasted during the blanching process. After roasting, the peanuts must be sampled and assayed for aflatoxin content, and, if meeting

aflatoxin requirements (15 ppb or less), may be disposed of to human consumption outlets. The lot does not have to be re-inspected for grade quality because the lot will have already met grade requirements. This modification is a relaxation of requirements and is an optional process for importers who intend to roast imported peanuts. It will save time, reduce costs, and reduce possibilities for damage or split kernels.

This process was recommended by the Committee for domestic peanuts because blanched peanuts, after sampling and certification, often are placed back into the blancher to complete the roasting process. This adds costs to the roasting process and can cause additional splits or kernel damage due to the extra handling of the peanuts. Also, roasting enhances the blanching efforts to eliminate aflatoxin, thus improving the wholesomeness of the peanuts.

Inspection service oversight of the blanching process is necessary to maintain positive lot identity. However, the Department believes that the savings involved in blanching and roasting in one step and prevention of additional damage and splits due to excessive handling are benefits that would outweigh the costs of inspection service oversight. Any residual peanuts, excluding skins and hearts, resulting from the roasting process, must be red tagged and disposed of to non-edible peanut outlets, and so reported to AMS. This rule will add a new paragraph (e)(4) in § 999.600. Original paragraph (e)(4) would be redesignated as (e)(5).

Paragraph (f) *Safeguard procedures* of § 999.600 outlines the steps that importers must follow when entering peanuts into U.S. commercial markets. The stamp-and-fax process helps assure that AMS will be notified of all peanut entries. This rule modifies or removes several requirements of the original safeguard procedures and reporting requirements to help streamline the entry process, ease reporting burdens, and provide more time for importers to obtain human consumption certification. The changes were proposed after AMS' review of the peanut importation process during the 1997 and 1998 quota periods. Where applicable, the changes are made with concurrence of the Customs Service.

(14) Under the "stamp-and-fax" procedure, importers notify the inspection service of pending peanut shipments by faxing or mailing a copy of the Customs Service entry documentation to the inspection service office that will sample the imported peanut shipment. The first sentence of paragraph (f)(1) provides that such

documentation must be sent "prior to arrival" of the peanuts at the port-of-entry. However, experience shows that it may not be possible to send a completed stamp-and-fax document to the inspection service "prior to arrival" of the shipment at the port-of-entry. While it is in the importer's interest to give the inspection service advance notice of inspection, it is not essential that this be done before arrival of the shipment at a port. Thus, the first sentence of paragraph (f)(1) is changed to read "Prior to, or upon, arrival* * *."

The Customs Service will not release imported peanut lots without entry documentation stamped by the inspection service. Further, the inspection service will not sample and inspect peanuts that are not covered in a stamp-and-fax entry document.

(15) This final rule revises paragraph (f)(1) to change the information that was originally required on the stamp-and-fax document. This rule adds the Customs Service entry number(s) for the peanut shipment(s) covered in a stamp-and-fax document. The entry number is basic Customs Service entry information and appears on Customs Form 3461 (Entry/Immediate Deliver) which is commonly used as the stamp-and-fax document. During the 1997 and 1998 quota periods, the inspection service recorded the entry number on the grade certificates, enabling AMS to monitor imported lots and communicate with the Customs Service regarding importers' compliance with program requirements.

Experience of the last two import years shows that different Customs Service forms may be used in the stamp-and-fax process. In most cases, Customs Form 3461 has been used. USDA's Animal and Plant Health Inspection Service (APHIS) Form 368 (Notice of Arrival) also may be used as a stamp-and-fax document. In these cases, the importer or customs broker filing the stamp-and-fax document must add the inland destination and contact number before sending the document to the inspection service.

The original provision specifies that the destination location, including city and street address, be included on the stamp-and-fax form. The street address is not necessary as long as the city and receiving entity is identified. A telephone contact number also must be included. Experience shows that the receiving entities are usually cold storage warehouses.

The previous provision specified that the stamp-and-fax document include the date and time that the peanut shipment will be inspected at the inland

destination. However, a date and time for inspection is not always known at the time of entry, and it is not necessary that this information be included on the stamp-and-fax document. The purpose of the stamp-and-fax is to assure that the inspection service is aware of every peanut lot being imported.

Arrangements for the time and date of the inspection often are made by the cold storage warehouse after arrival of the imported lot at the inland destination.

Therefore, this rule establishes that the information required on stamp-and-fax documents include: the Customs Service entry number; the container number or other identification of the lot; the volume (weight) of peanuts in each lot; and the location, contact name and number where the lot will be in storage or made available for inspection. Paragraph (f)(1) is changed accordingly.

(16) The "stamp-and-fax" process is further modified by removing the fifth sentence in paragraph (f)(1) that requires importers to send a copy of the stamp-and-fax entry document to the Secretary. AMS can obtain information on peanut entries from the inspection service and from the Customs Service on data tapes. That information effectively replaces the need for stamp-and-fax entry documents to be reported by importers to AMS' headquarters office. The change is made in the fifth sentence in paragraph (f)(1) by removing the words "and send a copy of the document to the Secretary." A similar change also is made in the first sentence in paragraph (f)(2) by removing the words "entry document" from that sentence. This modification does not change the requirement that importers must file the stamp-and-fax with the inspection service office as provided in paragraph (f)(1).

Another change regarding the stamp-and-fax reporting is made in paragraph (f)(1). The last sentence provides that the importer shall cause a copy of the entry document to accompany the peanut lot and be presented to the inspection service "at the inland destination." The intent of this requirement was to help inspection service offices account for all peanut lots for which those offices have authorized entry by stamp-and-fax. However, the provision could have been interpreted as meaning that all peanut lots must be shipped inland for inspection. This is not the intent of the provision. Peanuts may be inspected and certified for human consumption while at the port-of-entry, free trade zone, or bonded warehouse adjacent to the port of entry. If inspected at the port or free trade zone and certified as

edible, the lot does not have to be seen again by the inspection service and may be transported to its intended destination. Uninspected lots and failing lots which are sent inland for inspection or reconditioning must be accompanied by Customs Service entry documentation relevant to the lots, which must be presented to the inspection service at the time of inland inspection.

The last sentence in paragraph (f)(1), therefore, is modified to provide that the entry documentation be presented at the time of sampling—whether that sampling is at the port of entry or at an inland destination. The last sentence of paragraph (d)(3)(i) also is revised to conform with this clarification.

(17) The import regulation's reporting requirements are specified in paragraph (f)(2) of § 999.600. Importers are required to file with the Secretary entry documents, including all grade and aflatoxin certifications, showing that imported peanut lots meet quality and disposition requirements of the regulation. Certifications filed by importers enable AMS to monitor all imported peanut shipments and ensure compliance with the regulation's quality and disposition requirements. The reporting requirements can be burdensome if, as now happens, large volumes of peanuts are entered simultaneously when a country's peanut import quota is opened.

The inspection service performs all inspections of imported peanuts, and AMS has access to all of those grade certificates. In addition, AMS' Science and Technology Programs' laboratories conduct chemical analysis of imported peanut lots, and, thus, AMS has access to aflatoxin certificates issued by those laboratories. Through memoranda of understanding with these offices, AMS' Marketing Order Administration Branch (MOAB), which administers the import regulation, can obtain copies of grade and aflatoxin certificates issued by the inspection service and the USDA laboratories. Therefore, it is not necessary that importers file inspection service grade certifications and AMS laboratory aflatoxin certifications on lots which meet requirements. Those certifications can be provided to MOAB by the inspection service and laboratories. Filing of aflatoxin certifications provided by PAC-approved private laboratories is addressed below.

Experience shows that if importers do not have to file certifications on peanut lots which meet import requirements, a large portion of the reporting burden would be removed. Importer would continue to be required to report failing

lots and disposition of those failing lots. AMS believes such a modification of the reporting requirements will not reduce the effectiveness of the regulation's safeguard procedures or AMS' program oversight, because its compliance efforts focus on failing peanut lots. Therefore, AMS revises paragraph (f)(2) of § 999.600 to provide that importers file with AMS only certificates of imported peanut lots failing quality or aflatoxin requirements.

This rulemaking action updates the kind of information required to be filed by importers, or others on behalf of importers.

Importers who choose to use PAC-approved laboratories for aflatoxin certification must either file those certifications themselves or direct the private laboratory to file the certifications with AMS. Similarly, it is the responsibility of the importer to either file, or direct the filing of, documentation covering such non-edible peanut dispositions. The first sentence of paragraph (f)(2) is revised to require that importers "shall file, or cause to have filed" documentation showing disposition of peanut lots which fail to meet quality requirements. The phrase "cause to have filed" enables importers to direct the entity to file the documents on behalf of the importer.

This optional reporting procedure reduces importers' direct reporting burdens because they do not have to file the certificates themselves. The cost, if any, of reporting aflatoxin certifications to AMS is included in the cost of testing. Thus, while importers are responsible for the reporting charges, the additional reporting costs should be less than the costs of individual importers filing the certificates themselves. The certifications do not have to be reported individually or on a scheduled basis, but do have to be filed by the reporting deadline relevant to each imported lot. A laboratory may file certificates from many importers in one mailing.

As noted above, this rulemaking continues importers' responsibility for reporting, or causing the reporting of, final disposition of all failing peanut lots. Proper disposition of a failing peanut lot includes: (1) Edible certification through an appeal inspection; (2) edible certification after reconditioning; (3) disposition to a non-edible peanut outlet such as crushing, animal feed, or seed use; (4) dumping in a landfill or otherwise destroying the peanuts; or (5) re-exportation to another country.

The proposed rule recommended that paragraph (f)(2) be modified to require

"source" documents as proof of non-edible disposition. As discussed above in the Comments Received section, two commenters pointed out: (1) The difficulty of obtaining source documents from entities not directly regulated by the import regulation, and (2) that the Agreement regulation does not require source documents, but accepts bills-of-lading from Committee-approved blanchers and remillers as proof of non-edible disposition. After reviewing the reporting requirements under the Agreement, AMS believes the comments have merit. Thus, entities such as remillers, blanchers, and bonded warehouses may file, on behalf of importers, bills-of-lading certifying that failing quality peanuts were shipped to a non-edible peanut outlet.

Documentation filed showing disposition to animal feed must include, as required by paragraph (e)(2)(ii), an aflatoxin certificate showing that the peanuts do not exceed 300 ppb aflatoxin content. Failing lots and commingled residuals that are re-exported must be documented with a completed Customs Service form, specific to the peanuts being shipped, verifying exportation from the U.S.

Thus, the third sentence of proposed new paragraph (f)(2) is modified in this final rule to read as follows: "Proof of non-edible disposition may include bills-of-lading, transfer certificates, and other documentation showing shipment from the importer, blancher, remiller, warehouse, or other entity, to crushing, feed or seed use, burying, or other non-edible disposition. Such documentation must include the weight of peanuts being disposed and the name and telephone number of the disposing entity. Proof of export must include U.S. Customs Service documentation showing exportation from the United States."

Further, some importers have requested appeal analyses on failing peanut lots. An appeal inspection involves resampling and reinspection by the inspection service and/or aflatoxin testing laboratory. If the failing lot is determined to meet requirements upon an appeal analysis, the importer must file both the initial failing certificate(s) and the appeal certificate(s) showing the same peanut lot ultimately was certified as meeting quality requirements on appeal.

Experience with the 1997 and 1998 imports also shows that most failing lots were reconditioned by blanching. After reconditioning, the lots are reinspected and, in most cases, certified for edible consumption. In reporting reconditioning of a failing peanut lot, the importer must account for pickouts

and other poor quality kernels that are removed from the lot during the reconditioning process. For example, if a 40,000 pound container of peanuts fails grade requirements, the lot may be blanched. If the resulting lot, weighing 30,000 pounds, is certified as edible, the importer must file: (1) The first failing grade certificate; (2) the first passing aflatoxin certificate ("negative" to aflatoxin); (3) the second passing grade certificate; (4) the second passing aflatoxin certificate; and (5) proof of shipment (such as a bill-of-lading) of the non-edible residuals to an oilmill or to a port facility (with Customs documentation showing actual exportation).

The volume of residual peanuts may not exactly equal the difference between the two weights because of "disappearance" during the reconditioning and reinspection process. Such disappearance can include bag weight, skins, moisture from the blanching, other loss of kernels, and differences in weighing scales, which, to the extent practical, must be documented.

Fees charged for disposition of failing peanuts must be borne by the importer.

AMS has found that grade and aflatoxin certificates are the primary documentation for monitoring edible and non-edible disposition of imported peanuts. Tying a disposition back to an original imported peanut lot is difficult without reference to grade and aflatoxin certificate numbers. Thus, for compliance purposes, it is necessary that all reporting of non-edible disposition include the grade and aflatoxin certificate numbers of the original failing lot(s).

Residuals from the remilling or blanching of several imported peanut lots belonging to the same importer may be commingled into a larger, residual lot. Proof of disposition of a commingled residual lot must include: (1) The name and telephone number of the disposition outlet; (2) lot numbers from which the residuals were removed; and (3) the total weight of the disposed residual lot. The report must be sufficient to account for all of the residual peanuts and identify the lots from which the residuals were taken. Residuals from imported peanut lots cannot be commingled with domestically-produced residual peanuts because of the separate compliance and recordkeeping responsibilities for domestic peanuts (to the Committee) and imported peanuts (to AMS). Certification of PLI issued by the inspection service may be used to verify commingling of multiple residual peanut lots.

During the 1997 and 1998 quotas, some customs brokers, warehouse operators, and blanchers failed to identify the importer of record when requesting inspections. If the warehouse or blancher is shown as the applicant for the inspection and the importer's name withheld, AMS has difficulty matching up certificates and verifying that the importer has satisfied reporting requirements. For AMS recordkeeping purposes, the applicant requesting inspection must provide the name of the importer to the inspection service. A provision to this effect is added to the first sentence of paragraph (f)(2).

Because of the extent of these revisions, the first half of paragraph (f)(2) is revised. Crushing, feed, seed, or burying are added as examples of non-edible disposition outlets. The address to which disposition documentation must be filed remains unchanged. Finally, original paragraph (d)(4)(v)(B), which provided that importers file aflatoxin certificates "regardless of the test result" is removed to conform with reduced reporting of only failing lots.

(18) Paragraph (f)(3) of the peanut import regulation establishes the period for importers to obtain inspection and certification of their imported peanut lots and report disposition to AMS. The original reporting period was 23 days after Customs Service release of the peanut lot. However, based on the experience of the 1997 and 1998 import quotas, the 23-day period does not provide enough time for importers to meet requirements for all lots and report disposition to AMS. Indeed, the 23-day reporting period was extended for the 1997 reports only in a separate rulemaking (62 FR 50243, September 25, 1997). Therefore, original paragraph (f)(3) and the reporting period is completely revised.

Because of the high demand for foreign-produced peanuts, the 1997 Argentine and "other country" quotas were filled on the day of opening. Among other things, this caused a flood of imported peanuts into clearance channels at the same time. For the most part, the inspection service and aflatoxin labs were able to provide timely sampling and inspection of imported peanuts. However, some importers encountered problems obtaining wharfage and storage space in bonded warehouses and other delays in other clearance processes. Large volume importers had particular difficulty coordinating the paperwork required by different Federal government offices, the quality inspections, and needed reconditioning to meet requirements of the import regulation, 7 CFR 999.600.

Therefore, the period for reporting compliance with the import regulation is extended in this rulemaking. An extended period helps alleviate problems encountered with the large numbers of lots entered under Argentine and "other country" quotas on April 1 each year. The extended period also is helpful for imports of Mexican peanuts, some of which are farmers stock peanuts needing the extra steps of shelling, sorting, and sizing before certification for edible use.

The reporting period is established in this rule as 180 days from the date of release of a lot by the Customs Service. Lengthening the reporting period is accomplished by providing that all Customs Service releases of peanuts be designated as "conditional" releases. The 180-day period is established as the conditional release period for Customs Service purposes.

A peanut lot which is inspected and certified as edible in advance of a quota's opening day may be conditionally released and subject to the 180-day conditional release/reporting period. However, importers are able to dispose of those peanuts after receipt of the required edible certifications and after conditional release of the lots by the Customs Service.

Uninspected peanut lots may be conditionally released under bond, provided that, within 180 days, those peanuts be inspected and reported to AMS as meeting requirements of the import regulation.

Inspected peanut lots that fail to meet quality requirements may be conditionally released for reconditioning and reinspection. Reconditioning and reinspection must be completed and reported to AMS within the 180-day conditional release period. Disposition of the non-edible, residual peanuts or pick-outs from reconditioning processes also must be reported within the 180-day period. Positive lot identification must be maintained on these peanuts.

If AMS finds that, after the 180-day conditional release period expires, an uninspected or failing peanut lot has not been reported as meeting import requirements, AMS will request the Customs Service to issue a Notice of Redelivery to the importer. Subsequent to that request, the Customs Service has 30 days to issue, under the terms of the basic importation bond, a valid demand for redelivery. Upon receiving the Notice of Redelivery, the importer has 30 days to redeliver the unreported or failing peanuts to the Customs Service.

Original paragraph (f)(3) provided for a 60-day extension of the redelivery demand period to enable an importer

additional time to meet a redelivery demand. That provision is removed from paragraph (f)(3) and inserted in new paragraph (f)(5). The preamble in the proposed rule incorrectly stated that extension was removed, rather than redesignated to another paragraph. A conforming change is made by removing the second sentence in paragraph (f)(4).

Original paragraph (f)(4) also is revised to restate the redelivery demand process. The paragraph also continues to include the consequences of an importer's failure to comply with import regulation, i.e., assessment of liquidated damages equal to the value of the peanuts involved, under the terms of the Basic Importation and Entry Bond. Further, failure to fully comply with quality and handling requirements or failure to notify the AMS of disposition of uninspected or failing imported peanuts, as required under this section, may result in a compliance investigation by AMS. Finally, revised paragraph (f)(4) includes the proviso that falsification of reports submitted to AMS also is a violation of Federal law and is punishable by fine or imprisonment, or both.

(19) AMS believes that the need for extension of the 180-day conditional release and reporting period is significantly reduced because of the longer reporting period proposed in this rulemaking. However, new paragraph (f)(5) provides for extension of the reporting period, should an importer be unable to dispose of a particular peanut lot within 180 days. This rule establishes an extension of an additional 60 days, giving importers a total of 240 days to meet requirements of the import regulation.

Unusual circumstances could necessitate an extended delay in disposition of an imported peanut lot. There have been a few instances over the last two years where failing lots were set aside and not reconditioned until months after the initial inspections. Disposition of farmers stock peanuts which require shelling and final outgoing inspection also may require an extended period of time to complete shelling and final inspections. In such instances, the importers needed an extension of the reporting period. Under this proposal, the length of the extension, up to 60 days, must be specified in the extension request and be made by the importer in writing by the end of the conditional release period. The extension request also must specify the lot's Customs Service entry number, PLI designation, volume or weight, and current location. Requests for extension are made to AMS at the address provided in paragraph (f)(2).

(20) This action adds a new paragraph (f)(6) to clarify a procedural question that arose during the 1997 quota period. Not all peanut lots that arrive in the U.S. are entered for consumption. Because of the expected overfill of the Argentine quota, some importers placed peanuts in bonded storage and did not file consumption entry documents (including a stamp-and-fax) until after quota allotments were determined by the Customs Service. The peanuts in excess of quota had to be either exported to another country, held in bonded storage for the next year's quota, or entered under tariff charges. Peanuts that are held in bonded storage and subsequently exported from the U.S. without a stamp-and-fax communication, need not be reported to the inspection service or to AMS. However, if a peanut lot is included in a stamp-and-fax document, but is subsequently exported without being entered by the Customs Service, the importer must notify the inspection service of the export decision and provide proof of export. The inspection service must be able to account for all lots reported on stamp-and-faxes.

With the addition of new paragraphs (f)(5) and (f)(6), original paragraphs (f)(5) and (f)(6) are redesignated as paragraphs (f)(7) and (f)(8), respectively, and references to those paragraphs are changed accordingly.

In addition, minor additions are made in paragraphs (f)(7) and (8) to clarify the original provisions of those paragraphs. In paragraph (f)(7), the words "and aflatoxin" are inserted between "inspection certificate(s)" to clarify that the Secretary may reject a current aflatoxin certificate as well as grade certificate. The word "may" also is removed from the sentence to clarify the authority of the Secretary to require reinspections of suspect peanut lots. In paragraph (f)(8), the second sentence is changed by adding the words "the storage" before the word location to clarify the requirement that importers advise AMS of the storage location of peanuts held in bonded storage for longer than one month prior to quota opening.

(21) A clarification is made to paragraph (g)(1) *Additional requirements*. The second sentence stated that all peanuts presented for entry for human consumption must be certified as meeting import requirements. The phrase "presented for entry" can be misleading in that, as discussed above, many peanuts presented for entry are not subsequently imported. This rule changes the sentence by replacing the phrase "presented for entry" with the term

"intended for human consumption." This clarifies the purpose for importation. Also, the phrase "prior to such disposition" is added to the end of the sentence to further state that all peanuts imported for edible use meet those requirements prior to movement to the receiver or buyer.

(22) Finally, several minor changes are made to paragraph (g)(6) to clarify and simplify provisions regarding costs incurred in meeting the requirements of the import regulation. The changes include clarification that the inspection service and aflatoxin testing laboratories bill "applicants" making the request for inspection and chemical analysis, not only the importer, as originally stated. Applicants include customs brokers, storage warehouses, and other entities acting on behalf of importers. The list of the types of chargeable services is modified for clarity and simplicity. PLI certifications replace "certifications of lot identification" to be in conformance with Recommendation 8, above.

The Department makes these amendments and modifications to the peanut import regulation, § 999.600 to update and streamline the provisions of that regulation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this final rule were submitted to the Office of Management and Budget (OMB) for approval. The information collection requirements in the original peanut import regulation were approved by OMB on September 3, 1996, and assigned OMB number 0581-0176.

This paperwork burden analysis applies to only AMS' peanut import regulation burden in § 999.600, and does not include or supersede other reporting requirements for imported peanuts that may be established by APHIS, the Food and Drug Administration (FDA), the Customs Service, or other agencies.

The original burden statement for the peanut import regulation was developed and approved before the regulation was put into effect. The reporting burden is based on importers, or others acting on behalf of importers, filing copies of documents necessary to show compliance with program requirements. There are no forms to be completed and filed. The import program's original reporting and recordkeeping estimates were not broken down in OMB's 0581-0176 burden statement—making it difficult to apply comparisons for the individual changes proposed in this regulation. Also, because the duty free

quota has increased by approximately 21 percent since the original burden statement was approved, savings calculated in this rule are based on 1999 quota volumes.

The proposed rule incorrectly addressed the average time needed to file the different documents required under the import regulation. Stamp-and-fax documents are filed separately and, thus, are estimated to take 5 minutes for each submission. The average reporting time for filing individual certificates is estimated in this final rule as 3.5 minutes because importers may accumulate relevant documents and submit them at one time. The response time, therefore, is estimated 3.5 minutes for each response. These estimates are used in the discussions of the recommended changes immediately below.

The original reporting burden estimated 25 respondents filing 5,000 responses, for a total of 300 burden hours—an average of 12 reporting hours per importer. The original recordkeeping burden was estimated at 25 respondents and a total of 125 burden recordkeeping hours—an average of 5 recordkeeping hours per importer.

This final rule revises the original information collection burden based on: (1) Experience of the 1997 and 1998 peanut quota periods; (2) a two-year increase in peanut quota volume from 94.8 million to 115.4 million pounds for 1999, as established by trade agreements; (3) an estimated 2,650 lots entered (based on lot sizes of 40,000 pounds for most lots and 200,000 pounds for a small number of lots); (4) reduced information collection requirements; (5) reduced response time from 5 minutes per response to 3.5 minutes; (6) reduced number of respondents (importers) from 25 to 15; and (7) generally good peanut quality, with an estimated 10 percent of the lots failing initial quality requirements.

Reporting burden: The following changes reduce the AMS paperwork reporting burden on peanut importers.

Recommendation 16: This modification removes from paragraph (f)(1) the requirement that importers must send copies of each stamp-and-fax document to AMS headquarters. The intent of the original requirement was to ensure AMS headquarters has knowledge of all peanut imports for monitoring and compliance purposes. However, this change requires that the inspection service and aflatoxin testing laboratories provide copies of all inspection certificates issued on imported peanuts (Recommendation 17). In addition, AMS receives periodic

database printouts of all peanut entries from the Customs Service. Together, these reports are sufficient documentation for AMS headquarters' purposes. Therefore, it is not necessary that importers send copies of their stamp-and-fax documents to AMS headquarters.

Savings: The burden of filing stamp-and-fax documents with AMS' headquarters is completely eliminated by this final rule. The original burden for reporting stamp-and-fax documents was factored into the total program burden of 5,000 hours. Based on the 1999 quota of 115.4 million pounds, projected entries of 2,650 lots, and 5 containers listed on each stamp-and-fax document, approximately 530 stamp-and-fax documents will be filed. This number of responses will be saved because AMS headquarters does not have to be notified. At 5 minutes per filing, the estimated burden for reporting stamp-and-fax documents in 1999 will total 44 hours.

Recommendation 17: This rule reduces the number of inspection certificates which importers must report to AMS. Previously, importers filed copies of both passing and failing grade and aflatoxin certificates issued on all imported peanut lots. Those certificates are issued by the inspection service and by AMS and private laboratories. The certificates can be made available to AMS by those entities, thus relieving importers of a significant direct reporting burden.

Because AMS' compliance efforts focus on failing lots, this rule establishes that importers be required to file only certificates covering failing peanut lots. AMS receives copies of passing certificates from the inspection service and laboratories as a check on all lots entered. Approximately 2,650 peanut lots are expected to be imported under 1999 peanut quotas. For burden-reporting purposes, this rule estimates that 10 percent of the imported lots will fail one or both inspections. Thus, approximately 265 lots can be expected to fail quality requirements and will have to be either reconditioned to meet requirements, disposed of to non-edible peanut outlets, or re-exported. The other 90 percent of the lots (2,385 lots) can be expected to meet quality requirements, and will not have to be reported by the importers.

Recommendation 17 makes two clarifications. First, the name of the importer will be entered on filed inspection certificates, which are completed by the inspection service. Often the business requesting the inspection is not the importer, but another entity acting on behalf of the

importer. This rule clarifies that in such cases, the importer's identity should be placed on the certificate. This does not increase the reporting burden because the name is entered by the inspector, not the importer. The second proposed recommendation would have required that "source" documents be used when reporting disposition of failing lots. However, based on comments received and further review by AMS, the recommendation has been withdrawn. The new, amended provision specifies the same requirement as the original regulation, i.e., bills-of-lading and other transport certificates to be submitted by the importer or contractors of the importer. The provision requires that contact information of the disposing entity be specified in the documents filed. An adjustment in the proposed burden is not needed because the use of source documents would not have increased the volume of paperwork required to be reported. However, removal of the source document requirement may ease the difficulty importers might have had in obtaining "source" documents.

Savings: If importers are not required to file certificates on lots meeting program requirements, the savings in 1999 will be approximately 4,770 responses (2,385 lots, times 2 certificates per lot) and 398 hours saved (4,770 times 5 minutes per response). The new reporting burden under Recommendation 17 is an estimated 4 responses for each of the 265 imported lots failing requirements, or 1,060 total responses. At 3.5 minutes per filing, the total reporting burden for filing disposition of failing lots only in 1999 is projected to be 62 hours. The new average will be 70 responses and 4 hours per importer. If this regulation was not effectuated, the 1999 reporting burden on importers would have been approximately 5,830 responses filed, and, based on 5 minute reporting time per response, roughly 485 burden hours. Thus, Recommendation 17 results in an estimated savings of 4,770 responses and 423 burden hours in 1999.

Recommendation 18: A small portion of the 5,000 hours under the original reporting burden accounts for importers filing requests for extension of the reporting period. Recommendation 18 extends the reporting period from 23 days after entry to 180 days after conditional release by the Customs Service. The 23-day period proved to be too short for reporting most imported lots, forcing importers to request extensions on nearly all lots imported during 1997 and 1998. Extension of the reporting period to 180 days alleviates the need to file requests for extension

for almost all imported peanut lots. In addition, extension of the reporting period also enables importers to collect certificates as the lots are certified, and file all certificates on failing lots at one time, thus saving the burden of reporting lots individually. After deadline extensions were granted by AMS during the 1997 and 1998 quota periods, importers filed outstanding reports in groups.

Savings: Extending the reporting period from 23 days to 180 days means importers do not have to request as many extensions and they are able to combine the failing lot certificates into fewer reports. Savings from the reduction in the reporting burden is factored into the estimate of Recommendation 17.

Recommendations 10, 15, and 20 clarify reporting requirements but do not change the burden. Recommendation 10 clarifies that importers may designate other entities (aflatoxin testing laboratories, customs import brokers, warehouses, blanchers, crushers, etc.) to file certificates and reports on their behalf. This reporting is done as a part of the business contract between the importer and the service-provider at little or no cost to the importer, thus relieving the importer of the reporting burden. Recommendation 15 clarifies the information that is needed on stamp-and-fax documents. This change in information does not increase the time needed to complete the stamp-and-fax document or the reporting burden. Recommendation 20 clarifies that if peanuts are not covered in a stamp-and-fax document and are not inspected—but are subsequently exported—those peanuts should not be reported.

Total average savings, reporting burden: The modifications in this final rule represent an annual savings of approximately 5,300 responses and 467 reporting hours.

The savings is only a few minutes for small importers who import a few containers of peanuts. A large importer of 8 million pounds of peanuts—200 lots with 20 lots failing requirements—has the following reporting burden in 1999 (vs. the original burden estimate in parentheses): 40 (80) stamp-and-fax notices; 0 (360) certificates on passing lots; 80 (80) certificates on failing lots; 0 (40) deadline extensions; total 120 (560) reports filed; 8 (46.6) hours reporting burden. These are rough estimates for general comparison purposes only.

Recordkeeping burden: In addition to the reporting requirements, Section 999.600 requires that importers retain copies of certifications and entry

documentation for not less than two years after the calendar year of acquisition. Customs Service document retention requirements are five years. While importers no longer file grade and aflatoxin certificates on passing lots, they must store that information for AMS and the Customs Service. The original recordkeeping burden totals 125 hours, based on 25 respondents retaining records—an average of 5 recordkeeping hours per importer. The revised recordkeeping burden, based on the 21 percent increase in the quota volume is 151 hours. With only 15 record keepers, the average recordkeeping hours per importer is 10 hours.

Cumulative new burden: This rulemaking establishes a new total annual reporting and recordkeeping burden for OMB number 0581–0176 of 1,590 responses and 257 hours. This compares to the original burden of 5,000 responses and 425 hours. The new burden averages 106 annual responses and 17 burden hours for each peanut importer. The burden hours per importer is increased because the estimated number of importers is sharply reduced from the original estimate.

Comments to this amended Paperwork Reduction Act burden were requested in the proposed rule (63 FR 46191, August 31, 1998). Comments were to be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget and to AMS. The comment period was 60 days, ending October 30, 1998. Two comments were received on one proposed reporting requirement change (“source” documents) and, as previously discussed, that proposed change has not been made to section 999.600. That one reporting requirement remains as previously approved. This final rule does not alter the number of responses or reporting burden hours from those in the proposed rule. The new reporting and recordkeeping burden for OMB No. 0581–176 has been submitted to OMB and has been approved under that number.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this peanut import regulation on small entities and whether the proposed changes to the regulation disproportionately or unfairly effect small entities. The purpose of the RFA is to fit regulatory actions to the scale of the business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened.

An initial regulatory flexibility analysis was prepared and published with the proposed rule (63 FR 46191, August 31, 1998). A comment period of 30 days was provided for comments to the proposal and the initial regulatory flexibility analysis. No comments were received that made specific reference to the analysis or questioned the impact of the proposed changes on small business entities. Accordingly, AMS has prepared the following final regulatory flexibility analysis.

The import regulation is required by law—subparagraph (f)(2) of Section 108B of the Agricultural Act of 1949, as amended, and the Federal Agriculture Improvement and Reform Act of 1996. Subparagraph (f)(2) mandates that the Secretary shall require that “all peanuts in the domestic and export marketplace fully comply with quality standards under Marketing Agreement 146.” Handling requirements similar to those established under the Agreement also are established in the import regulation, to the extent necessary to assure comparability of quality standards. The import regulation was issued June 11, 1996 (61 FR 31306, June 19, 1996) with the intent to minimize the regulatory burden on importers. An amendment was issued December 31, 1996, (62 FR 1269, January 9, 1997), to conform to changes in the Agreement regulations and to add necessary storage reporting requirements.

Experience of the 1997 and 1998 peanut quota periods shows that approximately 15 business entities imported peanuts and were subject to this import regulation. Importers appeared to cover a broad range of business entities, including fresh and processed food handlers, and both large and small commodity brokers who buy agricultural products on behalf of others. Small agricultural service firms 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. Less than one third of the importers appear to be small business entities. The majority of peanut importers are large business entities under this definition. AMS is not aware of any peanut producers (farmers) who imported peanuts during these quota years.

The 1997 and 1998 peanut quota years were the first two years that imported peanuts have been regulated under 7 CFR 999.600. Analysis of the regulatory impact of the regulation is

complicated by several factors. Peanuts are imported from at least half a dozen countries and can be imported in inshell, shelled, or cleaned-inshell forms. This makes it difficult to compare the costs of importation with purchase price of the product. The costs of importation can vary greatly, with significant cost factors being transportation distance, shipment method, wharf fees, demurrage costs, storage charges, and the quality of the peanuts imported.

The amendments to the import regulation effectuated by this rulemaking action were recommended for the following reasons. Five changes conform with changing Agreement requirements (relaxing tolerances for unshelled and damaged kernels; removing grade requirements for certain peanut categories: allowing lots with excessive fall-through peanuts to be blanched; and allowing failing lots to be roasted during blanching without requiring grade reinspection). Seventeen changes recommended by AMS update, clarify, and reduce the importation procedures and reporting requirements specified in the regulation. Of the 17 changes, three relax reporting requirements by removing nearly 90 percent of the documents that must be filed and extending the reporting period to ease the time pressures for those documents that must be filed. This final rule improves oversight of imported peanut lots, increases quality assurance, and corrects misunderstandings of importation procedures.

All of the changes in this rule are intended to apply uniformly to both large and small importers. None are intended to, or are expected to, disproportionately affect small importers. The changes should have the following regulatory impact on importers.

Recommendation 1 makes two changes in definitions. The first change removes reference to an out-of-date aflatoxin level for non-edible peanuts in paragraph (a)(10) defining *Negative aflatoxin content*. The level of 25 ppb should have been removed in previous rulemaking. No imported peanuts have been graded against this old quality level. Recommendation 1 also removes the word "Peanuts" from the title of Marketing Agreement No. 146 as specified in paragraph (a)(15) defining *PAC-approved laboratories*. The term "Peanuts" is not a part of the title of the Agreement.

Recommendation 2 changes the definition of *Conditionally released* in paragraph (a)(16) by removing the words "before final release" and adding reference to reconditioning. The "final

release" term does not conform with Customs Service terminology. This change does not alter the intent or meaning of the definition. There is no regulatory impact on importers.

Also, the phrase "and, if necessary, reconditioning," is removed from the definition, based on comments received. The effect is to require that imported lots be inspected and PLI prior to reconditioning. AMS is aware of only a few instances during 1997 and 1998 (over 4,000 lots imported) when an importer requested reconditioning before knowing the results of grade and aflatoxin inspections. While, in these very few instances, this change requires inspection of peanuts when the importer may not want inspection, it is a safeguard measure that helps assure positive lot identity for AMS and Customs Service purposes, and improves AMS monitoring ability. It also is in the best interest of the importer.

Recommendation 3 removes a redundant sentence in paragraph (b)(1) relating to use of Segregation 1 peanuts for human consumption only. This reference appears twice in the same paragraph.

Recommendations 4 and 6 are inter-related and make the import regulation consistent with changes in handling and quality requirements to the Agreement. These changes simplify both the import and Agreement regulations.

Recommendation 6 removes Table 2, Superior Quality Requirements—Peanuts for Human Consumption from paragraph (c)(1)(ii). Previously, peanut lots meeting the higher quality requirements of Table 2 could be shipped to buyers prior to receiving aflatoxin analyses on the lots.

Recommendation 4 is a conforming change that has the effect of requiring importers to receive aflatoxin analyses on all lots prior to forwarding the peanuts to buyers. While these changes can represent a tightening of handling requirements, the effect on importers is minimal. Under limited circumstances, the provisions may reduce, by a few days, the storage time for such high quality peanuts. AMS does not have information on the number of imported lots that would have been affected by the changes had they been in effect for the last two quota seasons. AMS also does not have financial data on storage costs and has no information on whether those costs are applied on a daily or weekly basis. However, in conversations between AMS and importers and customs brokers during 1997 and 1998, importers did not indicate that they shipped superior quality lots without waiting for aflatoxin

certification. Also, importers did not contact AMS about the timeliness of aflatoxin certifications. Given overnight mail and facsimile services, aflatoxin analyses are routinely reported within two days. Finally, importers who arranged for arrival, inspection, and bonded storage prior to quota opening had quality and aflatoxin certifications ready when the peanuts were released by the Customs Service. Thus, delays and any regulatory impact due to these changes are expected to be negligible.

Not all categories of peanuts are removed from Table 2. Three "with split" categories of peanuts are moved from Table 2 to Table 1 to retain the small marketing niche in the domestic market for lots with high percentages of split kernels. This change was made to the Agreement regulations in 1998 and is included in this regulation to conform with that change. Any impact on importers will be positive as it will allow lots with higher split kernel content to continue to be imported. AMS does not maintain data on the number of peanut lots that were imported under the "with splits" categories. Data on the last two years imported peanut lots cannot be used to reliably indicate quality of future shipments or the impact of this relaxation.

Recommendation 5 relaxes tolerances in Table 1 for "unshelled and damaged kernels by one half of one percent in split lots. The change is made to be consistent with a change already made to the Agreement regulations. It reduces the number of lots that must be reconditioned to meet edible quality requirements. Reconditioning a lot to remove excessive damaged kernels can significantly increase costs by adding additional transportation costs, remilling or blanching charges, and additional inspection fees. Data on the last two years' imported peanut lots cannot be used to reliably indicate the impact on future shipments because the quality of imports varies significantly from year to year and country to country.

Recommendation 7 sets the maximum limit on the volume of farmers stock peanuts that may comprise one lot. Paragraph (d)(3)(ii) is modified. The 24,000 pound volume limit in the proposed rule was based on the size of dryer wagons used to transport domestic farmers stock peanuts. The proposed rule's RFA incorrectly stated that the 24,000 pound limit approximates the volume of farmers stock peanuts transported in semi-trailer trucks. This is not correct. Based on comments received from an importer, and after review, AMS is amending the proposal

by increasing the maximum lot size for imported farmers stock peanuts to 50,000 pounds. This volume more accurately reflects the weight of farmers stock peanuts in standard sized semi-trailer trucks. The inspection service adjusts incoming inspection probe patters when collecting samples from the larger sized trucks. Only a small percentage of imported peanuts were in farmers stock form during 1997 and 1998 and all were within this maximum lot size. The impact of Recommendation 7, as now modified, would be positive for peanut importers.

Recommendation 8 adds new paragraph (d)(4) to strengthen lot identification requirements for imported peanuts. In some situations, the proposed modified positive lot identification procedures could take additional warehouse personnel and space, as well as inspection service time. However, warehouse labor is needed to lay out all bags for sampling, so costs in addition to those normally charged will not be significant. Additional inspection time will vary from a few minutes to wrap PLI tape around containers or stacked bags to 30 minutes or more to reassemble bags on pallets and shrink-wrapping pallets or stenciling individual bags with spray paint. The PLI requirements may increase costs for some, but not all, imported lots. Inspection service sampling and grading costs currently are \$43 an hour. Inspections generally take from one to three hours, including travel time, to and from the inspection. Any increased costs to importers will be proportionate to the number of lots inspected and is not expected to unfairly affect small importers.

The modified PLI methods make the import regulation more consistent with domestic program PLI requirements, and is consistent with the intent of the Act. Importers, as well as domestic peanut producers, handlers and manufacturers benefit from quality assurances and the integrity of the product—due, in large part, to enforced PLI procedures. The benefits of quality assurance and product integrity far outweigh the small increased costs that the modified PLI methods may entail.

Recommendation 9 removes a redundant sentence in paragraph (d)(4)(iii) which provided that laboratories provide aflatoxin assay results to importers. This reference is repeated in paragraph (d)(4)(v). There is no regulatory impact from this change.

Recommendation 10 makes minor changes in three paragraphs regarding the mandatory nature of aflatoxin testing and reporting test results. The regulation clearly states throughout that

chemical analysis is required on imported peanuts. Paragraph (d)(4)(iv)(A) clarifies that importers “shall,” rather than “should,” contact a laboratory to arrange for chemical testing. Also under Recommendation 10, the clarification that laboratories can be designated by the importer to report test results to AMS is moved from paragraph (d)(4)(v)(B) to paragraph (d)(5)(v) for better placement of that instruction. These changes identify an optional reporting procedure and have no regulatory impact on importers.

Recommendation 11 amends redesignated paragraph (d)(5)(iv)(A) by updating the list of aflatoxin testing laboratories certified to conduct chemical analyses on imported peanuts. There is no regulatory impact.

Recommendation 12 adds a new sentence to introductory paragraph (e) to provide a blanching option for shelled peanuts failing quality requirements because of excessive “fall through.” The change is consistent with an amendment of the Agreement regulations. The change represents a relaxation in imported requirements by providing more opportunities for reconditioning certain failing peanut lots. Reconditioned offers the possibility of increasing the per ton value of the lot from approximately \$150 for non-edible use to over \$500 for edible peanuts. AMS does not have data on the possible positive impact had this relaxation been in effect under previous quotas. The future impact will be relative to the quality of imported peanuts—which is not possible to reliably predict.

Recommendation 13 also relaxes requirements by adding a new paragraph (e)(4), pursuant to the same change in Agreement regulations. The modification allows lots meeting grade, but failing aflatoxin requirements to be blanched until roasted and then re-inspected only for aflatoxin content. The impact of this relaxation can be significant if the importer has many such failing lots which the buyer wants roasted. Savings are accrued because the peanuts do not have to be removed from the blanching process for inspection and then returned to the blanching process for the remaining portion of the roasting process. The original grade certificate is recognized and the only additional inspection charges will be for sampling and aflatoxin analyses. AMS does not have data on the actual costs that could be saved in this process and cannot estimate the number of imported peanuts that may be affected by it in the future.

Recommendations 14, 15, and 16 relax requirements relating to the stamp-and-fax entry process in paragraph

(f)(1). Recommendation 14 removes the terms which specify that the stamp-and-fax document be filed “prior to arrival” at the port-of-entry. Experience shows that importers may not have all of the needed information until after arrival of the peanuts. Recommendation 15 amends paragraph (f)(1) by reducing slightly, the information required on stamp-and-fax documents. Information on subsequent inspections of the arriving peanuts is not necessary for the purposes of the stamp-and-fax. One needed piece of information, the Customs Service entry number applicable to the lot, is added. In total, these changes reduce the reporting burden by a few words. The needed information was included on the stamp-and-fax documents during 1997 and 1998, but was not so specified as part of the entry information in original paragraph (f)(1). Recommendation 16 removes the requirement in paragraph (f)(1) that a copy of the stamp-and-fax document be forwarded to AMS headquarters. This reduces one reporting requirement for importers. These three relaxations make the entry procedure consistent with the reporting needs of AMS. The regulatory impact is minimal but does reduce requirements on importers.

Recommendation 17 reduces the number of lots that have to be reported by requiring that only certificates on failing lots be filed by importers. If imported peanut quality is the same in 1999 as the average in 1997 and 1998, roughly 90 percent of the lots should not have to be reported to AMS headquarters. This should save an estimated 398 reporting hours. The revision is in paragraph (f)(2).

Recommendation 18 extends the reporting period specified in paragraph (f)(3) from 23 days after entry to 180 days after conditional release by the Customs Service. The extended reporting period allows importers more time to make good business decisions regarding imported lots, particularly failing lots that must be either reconditioned, sold at substantially lower costs, or re-exported. Also, with an extended reporting period, importers should not have to request extensions of reporting periods and could file all failing certifications and dispositions at one time. This should save the time of filing individual reports as each lot is certified, disposed of, or re-exported.

Recommendation 19 provides for up to a 60-day extension of the proposed 180-day reporting period. There is no time limit on domestic peanut disposition. However, because of Customs Service required liquidation of entry documentation, there must be

some time limit for importers to obtain clearances on failing lots and report to AMS. A total 240-day reporting period represents a compromise between the open-ended domestic requirements and Customs Service liquidation schedules. The impact of this requirement will be minimal, as continued storage costs or successive reconditioning attempts eventually reduce profit margins and force business decisions on lots pending eight months after conditional entry. A new paragraph (f)(5) is added.

Recommendations 20, 21, and 22 make minor changes that will have no regulatory impact on importers. Recommendation 20 clarifies that if a container or shipment is re-exported without conditional entry by the Customs Service, it does not have to be reported to AMS and inspected. Such situations were not foreseen in the original import regulation and are included for clarity in new paragraph (f)(6) in this regulation.

Recommendation 21 makes a minor wording change in paragraph (g)(1) regarding peanuts that are "intended" to be entered but are not entered. Recommendation 22 clarifies that the entities billed for inspections are those requesting inspections. Customs house brokers and storage warehouses often request inspections, and are the entities billed for services provided. However, costs of the inspections are borne by the importer. These three recommendations clarify original provisions and do not change the regulatory aspects of the rule or the reporting burden already authorized by OMB.

The changes established in this final rule should result in an overall reduction in the information reporting burden of the peanut import regulation, currently assigned as OMB number 0581-0176. The most significant reduction in the reporting burden provides that importers file copies of grade and aflatoxin certificates only on failing lots, rather than all lots (Recommendation 17). Using the quality of 1997 and 1998 imported peanuts as a guide, this proposal should reduce that reporting requirement by as much as 90 percent. The recordkeeping requirement is increased by an estimated 21 percent because the 1999 duty-free tariff quota is 21 percent higher than the 1997 quota on which the original recordkeeping burden was based. Thus, this final rule establishes an annual reporting and recordkeeping burden of 1,590 responses and 257 hours. This is a reduction from the original burden of 5,000 responses and 425 hours.

Finally, the Department has not identified any relevant Federal rules

that duplicate, overlap, or conflict with this final rule. Besides meeting AMS import quality requirements, clearance of each imported peanut lot also must be obtained from the Customs Service, FDA, and APHIS. Program requirements of those entities do not overlap the quality requirements of this regulation. AMS has consulted with the Customs Service to assure that the proposed changes are consistent with its entry procedures.

Based on available information, the Administrator of the AMS has determined that this final rule imposes very minimal additional costs on affected importers, but should save considerable reconditioning, storage, and reporting expenses. The benefits of maintaining a high quality product should exceed any additional costs which may be incurred in meeting these requirements. On balance, the proposed changes are expected to reduce program costs incurred by importers.

The proposed rule concerning this action was published in **Federal Register** (63 FR 46181) on August 31, 1998. Copies of the rule were mailed to over 350 foreign and domestic peanut entities. A press release was issued and the proposal was made available through the Internet. The proposed rule provided for 30-day comment period which ended September 30, 1998. Seven comments were received and are addressed above. Several proposed changes have been modified in this final rule.

After consideration of all relevant material presented, it is found that finalizing the proposed rule as published in the **Federal Register** (63 FR 46181, August 31, 1998), with appropriate modifications, will tend to effectuate the declared policy of the Act.

It is also found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The changes need to be effective when the 1999 Mexican peanut import quota opens on January 1, 1999, so that all peanut importers are treated equally during 1999, as required by international trade agreements; (2) the rule relaxes requirements currently in place; (3) all known peanut importers and related industry sectors were sent copies of the proposed rule and they, as well as all other interested persons, were given 30 days to file comments on the recommended changes; and (4) all comments received have been considered and no changes have been made to increase the requirements proposed.

List of Subjects in 7 CFR Part 999

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

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

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

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

Authority: 7 U.S.C. 601-674, 7 U.S.C. 1445c-3, and 7 U.S.C. 7271.

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, or 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.

(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 U.S. 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 Programs, Agricultural Marketing Service, USDA.

(14) *USDA laboratory* means laboratories of the Science and Technology Programs, 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 Marketing Agreement No. 146 (7 CFR part 998), that chemically analyze peanuts for aflatoxin content.

(16) *Conditionally released* means released from U.S. Customs Service custody for further handling, sampling, inspection, chemical analysis, and storage.

(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. 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) 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 non-edible 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 non-edible 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 this section, 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 Positive Lot Identified and certified by the inspection service as meeting the following requirements:

(1) *Shelled peanuts.* (i) No importer shall dispose of shelled peanuts to human consumption markets unless such peanuts are Positive Lot Identified pursuant to paragraph (d)(4) of this section, certified as "negative" to aflatoxin, pursuant to paragraph (d)(5)(v)(A) of this section, and meet the requirements specified in the following table:

BILLING CODE 3410-02-P

MINIMUM GRADE REQUIREMENTS -- PEANUTS FOR HUMAN CONSUMPTION

Whole Kernels and Splits: Maximum Limitations

Excluding lots of "splits"							
Type and grade category	Unshelled peanuts and damaged kernels	Unshelled peanuts, damaged kernels and minor defects	Fall through			Foreign materials	Moisture
			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%
Runner with splits (not more than 15% sound splits)	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	.10%	9.00%
Virginia with splits (not more than 15% sound splits)	1.50%	2.50%	3.00% ¹⁷ / ₆₄ inch round screen	3.00% ¹⁵ / ₆₄ inch slot screen	4.00% both screens	.10%	9.00%
Spanish & Valencia with splits (not more than 15% sound splits)	1.50%	2.50%	3.00% ¹⁶ / ₆₄ inch round screen	2.00% ¹⁵ / ₆₄ inch slot screen	4.00% both screens	.10%	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 / ₆₄ x ³ / 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 / ₆₄ x 1 inch slot screen	4.00% both screens	.20%	9.00%
Spanish & Valencia (not more than 4% sound whole kernels)	2.00%	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) The term "fall through," as used in this section, shall mean sound split and broken kernels and whole kernels which pass through specified screens.

(2) *Cleaned-inshell peanuts.* Peanuts declared as cleaned-inshell peanuts may be presented for sampling and outgoing inspection 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 I 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 Positive 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 in this section. The importer shall make arrangements with the inspection service for sampling, inspection, Positive 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 a 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 forms 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 at the time of sampling 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: (941) 291-5820, ext 260,
Albany, GA, tel: (912) 432-7505,
Williamston, NC, tel: (252) 792-1672,
Columbia, SC, tel: (803) 253-4597,
Suffolk, VA, tel: (757) 925-2286,
Portales, NM, tel: (505) 356-8393,
Oklahoma City, OK, tel: (405) 521-3864,
Gorman, TX, tel: (817) 734-3006.

(B) The following offices, in addition to the offices listed in paragraph (d)(3)(i)(A) of this section, provide outgoing sampling for certification of shelled and cleaned in-shell peanuts:

Eastern U.S.

Mobile, AL, tel: (334) 415-2531,
Jacksonville, FL, tel: (904) 359-6430,
Miami, FL, tel: (305) 870-9542,
Tampa, FL, tel: (813) 272-2470,
Presque Isle, ME, tel: (207) 764-2100,
Baltimore/Washington, tel: (301) 317-4387,

Boston, MA, tel: (617) 389-2480,
Newark, NJ, tel: (201) 645-2636,
New York, NY, tel: (718) 991-7665,
Buffalo, NY, tel: (800) 262-4810,
Philadelphia, PA, tel: (215) 336-0845.

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: (956) 787-4091.
El Paso, TX, tel: (915) 540-7723,
Houston, TX, tel: (713) 923-2557.

Western U.S.

Nogales, AZ, tel: (520) 281-4719,
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, PO Box 96456, room 2049-S, Fruit and Vegetable Programs, AMS, USDA, Washington, DC, 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 maximum lot size of farmers stock peanuts shall be one conveyance, or two or more conveyances not exceeding a combined weight of 50,000 pounds (22,680 kilograms). Shelled peanut 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) Positive Lot Identification (PLI) shall be applied to all shelled and cleaned-inshell peanut lots during or immediately after first inspection by the inspection service or under the

guidance of the inspection service. Positive Lot Identification of a lot may be accomplished by: Wrapping PLI tape around bags or boxes on pallets; shrink wrapping pallets or multiple bags and applying a PLI sticker; stenciling and numbering of individual bags or boxes; affixing PLI seals on shipping container doors; or by other methods acceptable to the inspection service that clearly identifies the lot, is securely affixed to the lot, and prevents peanuts from being removed or added to the lot. Such positive lot identification methods may be dictated by the size and containerization of the lot, by warehouse storage or space requirements, or, by necessary further movement of the lot prior to receipt of certification. All lots forwarded to a reconditioning facility must be accompanied by valid PLI certification. Failing lots that are reconditioned shall be positive lot identified by sewing tags on bags or affixing a seal and taping bulk bin containers after such reconditioning or by other means acceptable to the inspection service that clearly identifies the peanuts in the lot, is securely affixed to the lot, and which prevents peanuts from being removed or added to the lot.

(5) *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 Positive 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 Milled Peanut Inspection Certificate or 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 Milled Peanut Inspection Certificate or a Notice of Sampling. All costs involved in the sampling, shipment and assay analysis of subsamples required by this section shall be borne by the importer.

(iv)(A) To arrange for chemical analysis, importers shall contact one of the following USDA or PAC-approved laboratories:

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

Science and Technology Programs, AMS, 1211 Schley Ave., Albany, GA 31707, Tel: (912) 430-8490/8491, Fax: (912) 430-8534
Science and Technology Programs, AMS, 610 North Main St., Blakely, GA 31723, Tel: (912) 723-4570, Fax: (912) 723-3294

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

Science and Technology Programs, AMS, 715 North Main St., Dawson, GA 31742, (PO Box 272), Tel: (912) 995-7257, Fax: (912) 995-3268

Science and Technology Programs, AMS, 308 Culloden St., Suffolk, VA 23434, (P.O. Box 1130), Tel: (757) 925-2286, Fax: (757) 925-2285

Federal-State Inspection Service Laboratory, 1557 Reeves St., Dothan, AL 36303, (PO Box 1368, zip 36302), Tel: (334) 792-5185, Fax: (334) 671-7984

Federal-State Inspection Service Laboratory, 201 Broad St., Headland, AL 36345, (PO

Box 447, zip 36345-0447), Tel: (334) 693-2729, Fax: (334) 693-2183

Federal-State Inspection Service Laboratory, 103 Greenville Ave., Goshen, AL 36035, (PO Box 204), Tel: (334) 484-3340, Fax: (334) 484-3340

Federal-State Inspection Service Laboratory, 805 North Main St., Enterprise, AL 36330, (PO Box 310926), Tel: (334) 347-6525

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

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

J. Leek Associates, Inc., 139 South Lee St., Ashburn, GA 31714, Tel: (912) 567-3703, Fax: (912) 567-8055

J. Leek Associates, Inc., 402 SE 3rd Street, Anadarko, OK 73005, Tel: (405) 247-3266, Fax: (405) 247-3270

J. Leek Associates, Inc., PO Box 475, Blakely, GA 31723, Tel: (912) 723-9155, Fax: (912) 723-2980

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

J. Leek Associates, Inc., PO Box 333, Headland, AL 36345, Tel: (334) 693-9320, Fax: (334) 693-0491

Pert Laboratory South, 721 East Pine Street, Colquitt, GA 31737, (PO Box 396), Tel: (912) 758-9293, Fax: (912) 758-8286

Pert Laboratories, 145 Peanut Drive, Edenton, NC 27932, (PO Box 267), Tel: (252) 482-4456, Fax: (252) 482-5370

Southern Cotton Oil Company, 600 E. Nelson Street, Quanah, TX 79252, (PO Box 180), Tel: (940) 663-5323, Fax: (940) 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 Programs, AMS, USDA, PO Box 96456, room 3507-S, Washington, DC 20090-6456, Tel (202) 720-5231, or Fax (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 importer shall file, or cause to be filed, with the Secretary, all USDA Form CSSD-3, or equivalent chemical assay forms issued on failing peanuts. The importer shall cause the results of all chemical assays issued by PAC-approved laboratories to be filed with the Secretary. 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 Section § 999.600 with regard to aflatoxin." The certificate of any non-edible peanut lot also shall specify the aflatoxin count in ppb.

(6) *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. Lots that show evidence of PLI violation or tampering, as determined by the inspection service, are not eligible for appeal inspection.

(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 minimum grade requirements specified in the table in paragraph (c)(1)(i) of this section (excessive damage, minor defects, moisture, or foreign material) or are positive to aflatoxin may be reconditioned by remilling and/or blanching. Peanuts that fail minimum grade requirements because of excessive "fall through" may be blanched. After such reconditioning, peanuts meeting the minimum grade requirements in the table, including minimum "fall through" requirements, and which are negative to aflatoxin (15 ppb or less), may be disposed for edible use. Residual peanuts resulting from milling or reconditioning of such lots shall be disposed of as prescribed as follows:

(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 Positive 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 non-edible peanut markets pursuant to paragraph (e)(1) of this section, crushed or exported. Such peanuts 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 minimum grade requirements specified in the table in paragraph (c)(1)(i) of this section, 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 minimum grade requirements in the table shall be disposed pursuant to paragraphs (e)(1) or (2) of this section.

(4) Shelled peanuts that are certified as meeting minimum grade requirements specified in the table in paragraph (c)(1)(i) of this section and which are positive to aflatoxin may be roasted during blanching. After roasting, such peanuts certified as meeting aflatoxin requirements (15 ppb or less), and which are positive lot identified, may be disposed to human consumption outlets without further grade analysis. The residual peanuts, excluding skins and hearts, resulting from roasting process, shall be red tagged and disposed of to non-edible outlets pursuant to paragraphs (e)(1) or (2) of this section.

(5) All certifications, lot identifications, and movement to non-edible 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, or upon, 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: The Customs Service entry number; the container number(s) or other identification of the lot(s); the volume of peanuts in each lot being entered; the inland shipment destination where the lot will be in storage or made available for inspection; and a contact name or telephone number at that destination. The inspection office shall sign, stamp, and return the entry document to the importer. The importer shall cause a copy of the relevant entry documentation to accompany each peanut lot and be presented to the inspection service at the time of sampling.

(2) The importer shall file, or cause to have filed, with the Secretary, copies of failing grade and aflatoxin certificates and non-edible disposition documents which identify the importer and the disposition outlet for failing quality peanuts. Such reports shall be sufficient to account for all peanuts failing quality requirements of this section: *Provided, That:* importers shall cause all certificates of peanuts meeting aflatoxin requirements issued by PAC-approved laboratories to be filed with the Secretary. Proof of non-edible disposition may include bills-of-lading, transfer certificates, and other documentation showing shipment from the importer, blancher, remiller, warehouse, or other entity, to crushing, feed or seed use, burying, or other non-edible disposition. Such documentation must include the weight of peanuts being disposed and the name and telephone number of the disposing entity. Proof of re-export must include U.S. Customs Service documentation showing exportation from the United States. These documents 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) 205-6623. Overnight and express mail deliveries should be addressed to USDA, AMS, FV, Marketing Order Administration Branch, 1400 Independence Avenue, SW, Room: 2525-S, Washington, DC, 20250, Attn: Report of Imported Peanuts. Regular mail should be sent to FV, AMS, USDA, PO Box 96456, Room

2525-S, Washington, DC 20090-6456, Attn: Report of Imported Peanuts.

(3) All peanuts imported into the United States subject to this part shall be conditionally released by the U.S. Customs Service for a period of 180 days following the date of Customs Service release, for the purpose of determining whether such peanuts meet the quality requirements for human consumption or non-edible disposition and reporting such certification or non-edible disposition to the Secretary.

(4) If the Secretary finds during, or upon termination, of the conditional release period that a lot of peanuts is not entitled to admission into the commerce of the United States, the Secretary shall request the Customs Service, within 30 days after close of the conditional release period, to demand return of said lot of peanuts to Customs Service custody. Failure to comply with a redelivery demand within 30 days of the date of the redelivery demand, may result in the assessment against the importer of record and surety, jointly and severally of liquidated damages equal to the value of the peanuts involved. 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) An extension of the 180-day conditional release period may be granted by the Secretary upon request of the importer. Extension shall not exceed an additional 60 calendar days. Requests for extension shall be specific to each peanut lot and shall include the lot's Customs Service entry number, the positive lot identification, weight or volume, and current storage location. Requests for extension of the conditional release period shall be made in writing pursuant to paragraph (f)(2) of this section.

(6) Peanuts for which an import application is filed with the Customs Service but which are subsequently exported without sampling or inspection by the inspection service, need not be reported to the Secretary.

(7) *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 and aflatoxin certificates and require the importer to have the peanuts reinspected to establish whether or not such peanuts may be disposed of for human consumption.

(8) *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 showing the volume of peanuts placed in storage and the storage location, including 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)(7) 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 peanuts eligible for importation into the United States. However, all peanuts intended for human consumption use must be certified as meeting the quality requirements specified in paragraph (c) of this section, prior to such disposition.

(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 in this section. 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)(5) 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 141.20 and 141.113: *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) Payment of the cost of transportation, sampling, inspection, certification, chemical analysis, and Positive Lot Identification, as well as remilling and blanching, and further inspection of remilled and blanched lots, and disposition of failing peanuts, shall be the responsibility of the importer. Whenever an applicant presents peanuts for inspection, the applicant shall furnish any labor and pay any costs incurred in moving, opening containers for sampling, and the shipment of samples as may be necessary for proper sampling and inspection. The inspection service shall bill the applicant for fees covering quality inspections and other certifications as may be necessary to certify edible quality or non-edible disposition. USDA and PAC-approved laboratories shall bill the applicant separately for aflatoxin assay fees. The importer also shall pay Customs Service costs as required by that agency.

(7) Each person subject to this section shall maintain true and complete records of activities and transactions specified in this section. 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: December 16, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-33933 Filed 12-23-98; 8:45 am]

BILLING CODE 3410-02-P