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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 996

[Doc. No. AMS-FV-15-0066; FV16-996-1 FR]

Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States; Change to the Quality and Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Peanut Standards Board (Board) to revise the minimum quality and handling standards for domestic and imported peanuts marketed in the United States (Standards). The Board advises the Secretary of Agriculture regarding potential changes to the Standards and is comprised of producers and industry representatives. This rule revises the minimum quality, positive lot identification, and reporting and recordkeeping requirements under the Standards. It also makes numerous other changes to better reflect current industry practices and revises outdated language. The Board believes these changes will make additional peanuts available for sale, help increase efficiencies, and reduce costs to the industry.

DATES: Effective [INSERT DATE 30 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Steven W. Kauffman, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or E-mail: Steven.Kauffman@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States (Standards), as amended (7 CFR Part 996), as established pursuant to Public Law 107-171, the Farm Security and Rural Investment Act of 2002 (Act). The Standards regulate the quality and handling of domestic and imported peanuts marketed in the United States.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have

retroactive effect and shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act; but is intended that all such statutes shall remain in full force and effect except in so far as they are inconsistent herewith or repugnant hereto (7 U.S.C. 587).

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Act requires that USDA take several actions with regard to peanuts marketed in the United States. These include ensuring mandatory inspection on all peanuts marketed in the United States; developing and implementing peanut quality and handling requirements; establishing the Board comprised of producers and industry representatives to advise USDA regarding the quality and handling requirements under the Standards; and modifying those quality and handling requirements when needed. USDA is required by the Act to consult with the Board prior to making any changes to the Standards.

Pursuant to the Act, USDA has consulted with Board members in its review of the changes to the Standards included in this final rule. This final rule implements

the revisions to the minimum quality, positive lot identification, and reporting and recordkeeping requirements under the Standards. This final rule also makes numerous other changes to the Standards to better reflect current industry practices and to revise outdated language. The Board believes these changes will make additional peanuts available for sale, increase efficiencies, and reduce industry costs. These changes were recommended by the Board at its meetings on June 24, 2015, and November 18, 2015.

The Standards establish minimum incoming and outgoing quality requirements for domestic and imported peanuts marketed in the United States. Mandatory inspection is required to ensure that the quality regulations are met. The Standards also require an identification process so peanuts can be identified and tracked during processing and disposition. Finally, the Standards specify reporting and recordkeeping requirements for handlers and importers.

Sections 996.30 and 996.31 of the Standards outline the incoming and outgoing quality standards, respectively, for peanuts. The incoming standards currently prescribe specific requirements for segregation, moisture content, and foreign material (stones, dirt, sticks, etc.). The

outgoing standards include specific requirements for damage, foreign material, and moisture for both shelled and inshell peanuts. The outgoing standards also require peanuts to be positive lot identified and tested and certified as negative for aflatoxin. Both the incoming and outgoing standards require inspection and certification by the Federal-State Inspection Service.

Section 996.15 establishes a definition for positive lot identification (PLI). Section 996.31 requires PLI on all peanuts designated for human consumption as part of the outgoing standards. Section 996.40 establishes handling standards for peanuts and includes specifics on how PLI will be used throughout the handling process, from initial identification through the sampling and testing process. Section 996.50 outlines the process for reconditioning failing lots and establishes PLI requirements to track and identify the peanuts throughout the reconditioning process. Section 996.74 outlines the compliance requirements for the Standards and includes penalties for failing to maintain proper PLI.

Sections 996.71 and 996.73 establish the reporting and recordkeeping requirements under the Standards. These sections specify, in part, the reports required and

establish what records need to be maintained and for how long.

The Standards were last revised in 2005. In 2014, the American Peanut Shellers Association (APSA) started a review of the current Standards and developed a proposal to revise the Standards to reflect changes in the industry and to make other changes to bring the Standards up to date. These recommended revisions were shared with USDA and industry representatives and were then presented to the Board at its meeting on June 24, 2015. The Board voted to approve the recommendations from APSA in their entirety. In addition, a subcommittee was created to work with USDA to review and recommend any additional conforming changes to the Standards necessary to facilitate the revisions requested by the industry. At a meeting on November 18, 2015, the Board reviewed the modifications and conforming changes from the subcommittee and USDA, and approved them unanimously. Consequently, this final rule makes the following recommended changes.

This final rule revises the minimum quality requirements under both the incoming and outgoing standards. The industry originally thought the presence of foreign material in incoming peanuts could promote the

growth of aflatoxin. Therefore, a limit on the amount of foreign material in incoming peanuts was established. However, the industry no longer believes there to be a correlation between foreign material and aflatoxin. In addition, due to advances in technology, foreign material is easily removed from incoming peanuts, and handlers are able to remove foreign material from incoming peanuts to a level that is lower than the limit currently specified in the incoming standards. Further, most handlers are setting their own tolerances for the presence of foreign material. Eliminating the maximum amount of foreign material that incoming farmers stock peanuts may contain from the Standards provides additional flexibility by allowing individual handlers to determine the amount of foreign material they are willing to accept. As such, this action removes the current limit of 10.49 percent on the amount of foreign material that incoming farmers stock peanuts may contain.

The outgoing quality standards currently include a table that outlines, in part, requirements for damage, minor defects, foreign material, and moisture. Two of the columns of the table deal with damage and defects. The first of these columns provides the allowance for damage to

unshelled peanuts and kernels, and the second column provides the allowance for minor defects. Currently the allowance for major damage is 1.5 percent for lots excluding splits and 2 percent for lots of splits. The current allowance for minor defects is 2.5 percent, except for No. 2 Virginia peanuts, for which the allowance for minor defects is 3 percent.

Under the proposal from APSA, the two columns on damage will be merged into one column and will set one overall allowance for damage on unshelled peanuts, cleaned-inshell peanuts, and kernels at 3.5 percent. Over the years, the industry has found that growing practices such as no till farming and modern harvesting practices have increased the amount of damage to individual kernels. In addition, the shift to new peanut varieties that produce larger kernels has impacted the sampling of peanuts for damage. The larger kernels reduce the number of peanuts in the sample such that damaged kernels have a larger impact on the percentage of damage in the sample size. Increasing the allowable damage will allow additional peanuts to meet the Standards and be shipped for human consumption. In addition, relaxing the damage allowance will allow more

lots of peanuts to move without being remilled, helping to reduce handling costs.

Peanuts are also used for many different products, including outlets where cosmetic damage is not as important, such as peanut butter, where the manufacturers are willing to purchase lots with a higher percentage of damage. Most manufacturers are setting their own tolerance levels for damage based on the products they manufacture. By increasing the amount of allowable damage, more peanuts will be available to be manufactured for human consumption, helping to maximize shipments and improving returns. Therefore, this final rule relaxes the allowance for damage and defects to 3.5 percent for all unshelled peanuts, kernels, and for cleaned-inshell peanuts.

This rule will also make changes to the PLI requirements and the recordkeeping and reporting requirements under the Standards. In the Standards, the PLI requirements are used to help maintain the identity of peanuts throughout the handling process, thus maintaining the integrity of lots being shipped to human consumption outlets, lots that are subject to the reconditioning process, and lots that are disposed of in non-human consumption outlets. PLI also helps ensure that peanuts

certified for human consumption meet the outgoing standards for grade and aflatoxin. In addition, the PLI requirements are a useful tool in product traceability and helping to ensure compliance with the Standards.

The reporting and recordkeeping requirements also play a role in ensuring compliance. Handlers and importers are required to maintain all relevant documentation on the disposition of inedible peanuts. The documentation maintained must be sufficient to document and substantiate the proper disposition of all peanut lots that do not meet grade or aflatoxin quality standards. Reports and records are used to track and document the disposition of peanuts and to substantiate handler and importer compliance with the Standards.

In 2009, the peanut industry began the process of completely restructuring its tracking and reporting systems under an industry-wide food safety system, utilizing industry experts as well as guidance from the Food and Drug Administration, the Grocery Manufacturers Association, and finished product manufacturers. The industry also decided to work toward meeting the Global Food Safety Initiative (GFSI) standards that were being mandated by many major food manufacturers. GFSI certification requires, in part,

that a company shall be able to trace all raw material product lots, including packaging, from its suppliers through all stages of processing and dispatch to its customers. The industry reports that in 2010, the industry had its first audits performed against the GFSI standards, and many in the industry are now certified under a GFSI scheme.

The purpose of this effort was to reduce the need for multiple audits while providing ongoing assurance of compliance within the industry with food safety initiatives. Under these new industry procedures, all raw peanuts are lot coded, and there is a traceability system in place to track them throughout the handling process. Handlers currently trace all peanuts from the warehouse to final disposition, including edible, blanched, and oil stock. Further, lots are segregated throughout the handling process in order to maintain identity should there be a recall notice issued.

In reviewing the Standards, the APSA thought it is important to maintain PLI on all lots meeting outgoing requirements. This preserves the integrity of these lots and provides assurance to buyers that the peanuts have met all requirements, have not been commingled with lower grade

peanuts, and are ready to be utilized for human consumption. In addition, all peanut manufacturers require the official grade and aflatoxin certificate before taking possession of the peanuts to confirm that the analytical and physical tests required by law have been conducted.

However, given the industry's new requirements for tracking and traceability, the APSA found the remaining PLI requirements in the Standards to be redundant and no longer necessary. When the Standards were implemented in 2002, the current industry traceability systems had not yet been developed, and PLI was an important tool in maintaining compliance. The new traceability systems are used by the industry to help maintain the identity of peanuts throughout the handling process, the same way PLI is used. These systems are also used to track peanuts that are to be reconditioned or disposed of in non-human consumption outlets, such as for seed or animal feed. The industry reports that each peanut handler has designed a traceability system that is specifically integrated into their operations, and the industry believes that these systems largely perform all the same functions as PLI. Further, these systems were also designed to meet the new demands under food safety requirements, such as the Food

Safety and Modernization Act, and the food safety and handling requirements set by the manufacturers. The industry believes having to utilize PLI in addition to its own tracking systems requires additional time and recordkeeping to follow peanuts that already have documented traceability.

The APSA proposal, as approved by the Board, recommends revision to the Standards to reflect current industry traceability programs. The industry believes that these changes will reduce handling and inspection costs and help improve the efficiency of handling operations. Consequently, this final rule will add language to § 996.73 of the Standards to define the necessary requirements for an industry-based traceability system and will provide allowances for systems meeting these requirements to be used in place of PLI prior to inspection and certification. The existing PLI system will also remain in place as a requirement for any handler who does not have a system in place that meets the requirements for an industry-based traceability system and for any handler who uses PLI in conjunction with their own traceability system. However, PLI will still continue to be required for all peanuts meeting the outgoing standards.

This final rule will also revise the reporting and recordkeeping requirements under the Standards. All handlers and importers are currently required to submit to USDA a monthly report documenting their monthly farmers stock acquisitions. Under these changes, the requirement to submit this monthly report will be eliminated. The industry stated that the information contained within the form was already being submitted to USDA on a daily basis as part of the farmers stock inspection process. Further, industry representatives stated that this data is maintained as part of the traceability systems now in place. Therefore, the industry supported the removal of this requirement.

Additional changes were recommended to recognize the reporting and recordkeeping done by the industry to meet the tracking and traceability requirements now required of the industry for food safety initiatives. In addition to records relating to peanuts meeting the outgoing standards, handlers and importers are required to maintain all relevant documentation on the disposition of inedible peanuts as part of their food safety traceability requirements. Given the traceability and recordkeeping requirements recommended to be added to the Standards and

the recordkeeping requirements demanded under food safety requirements, the industry questioned the continued need for USDA to have access to all such records under the Standards. Industry representatives stated that they no longer see the need for USDA to require regular access to records other than those pertaining to peanuts meeting the outgoing requirements. Consequently, pursuant to the Board-approved recommendation, this final rule will modify the reporting requirements to specify that USDA will be permitted to inspect any peanuts meeting outgoing standards and any and all records pertaining to peanuts meeting outgoing quality regulations. However, pursuant to the Act, the Secretary shall work to provide adequate safeguards regarding all quality concerns related to peanuts. Therefore, this change will not preclude USDA from having access to all materials and records necessary should there be a situation necessitating an investigation or review to ensure compliance. The documentation maintained must still be sufficient to document and substantiate the proper disposition of all peanuts failing grade or aflatoxin quality standards.

Additionally, USDA would like to clarify that under this modified reporting requirement, USDA will continue to

have access to all materials and records regarding any and all peanuts originally intended for human consumption. This applies whether the peanuts meet outgoing quality requirements or not.

The APSA proposal as approved by the Board also recommended revising the Standards to clarify that handlers and importers are not producing a finished product and that the peanuts require further processing prior to human consumption. This includes amending the definition for peanuts in the Standards to indicate that the peanuts covered under the Standards are raw peanuts and intended for further processing by manufacturers prior to human consumption. The definitions for inshell and shelled peanuts will also be revised to reflect that the peanuts covered by the Standards are in their raw, natural state. The definition of peanuts will continue to provide that green peanuts, which are raw, for consumption as boiled peanuts are not subject to regulation under the Standards. However, these green peanuts are sold mostly by producers, not by handlers and importers, and make up a small share of the peanut market. The change to the definition for

peanuts will also state that peanuts intended for wildlife are not subject to regulation under the Standards.

This change will also eliminate all references to roasting in the Standards to further clarify that handlers and importers are not producing a finished product. At one time, roasting was used to reduce levels of aflatoxin and was included in the Standards for that purpose. However, roasting is no longer used to treat aflatoxin. The Board supported these changes to reduce any confusion that handlers and importers under the Standards are delivering a finished product ready for human consumption.

Finally, this final rule will also make numerous other changes throughout the Standards to update language and to reflect current industry practices and changes. Such changes include a change to the crop year, eliminating language relating to the old quota system, and updating outdated information, such as incorrect addresses, titles, and other contact information. It will also remove the requirement that peanuts testing at or above 301 ppb of aflatoxin can only be disposed of through crushing or export, as cleaning technology has improved to the point that peanuts testing at or above this level may possibly be cleaned to meet the outgoing standards.

The proposed changes approved by the Board also included a recommendation to remove the lot size limit of 200,000 pounds on peanuts presented for outgoing inspection. However, the 200,000 pound limit is required by USDA and the inspection service to ensure an accurate sampling protocol. Therefore, the 200,000 pound lot limit will be maintained.

USDA is also adding an additional change under this final rule that will revise the requirements for imported peanuts under § 996.60(a). This change modifies how importers submit their entry information to USDA. This section currently references the "stamp and fax" entry process, which is being replaced by the International Trade Data System, a system that will automate the filing of import and export information. This change will revise this section to reflect the new electronic entry process.

The Board believes these changes will bring the Standards closer in line with current industry practices, make additional peanuts available for sale, help reduce costs, and make operations more efficient. These changes are consistent with the Standards and the Act.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms, including handlers and importers, are defined as those having annual receipts of less than \$7,500,000 (13 CFR 121.201).

There are approximately 7,500 peanut producers; 65 peanut handlers, operating approximately 70 shelling plants; and 25 importers subject to regulation under this peanut program.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition can be obtained from the 2012 Agricultural Census, which is the most recent information on the number

of farms categorized by size. There were 3,066 peanut farms with annual agricultural sales valued at less than \$500,000 in 2012, representing 47 percent of the total number of peanut farms in the U.S. (6,561). According to the National Agricultural Statistics Service (NASS), peanut production for the 2014 and 2015 crop years averaged 5.756 billion pounds. The average value of production for the two-year period was \$1.088 billion. The average grower price over the two-year period was \$0.25 per pound. Dividing the two-year average production value of \$1.088 billion by the approximate number of peanut producers (7,500) results in an average revenue per producer of approximately \$145,000, which is well below the SBA threshold for small producers. Based on information and reports received by USDA, more than 50 percent of handlers may be considered small entities. Further, the estimated value of peanuts imported into the United States in 2014 was approximately \$64 million. Based on that number, the majority of importers would meet the SBA definition for small agricultural service firms. Consequently, a majority of handlers, importers and producers may be classified as small entities.

The current 10 custom blanchers, 4 custom remillers, 3 oil mill operators, and 1 USDA and 17 USDA-approved private chemical (aflatoxin) laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71. These requirements are applied uniformly to these entities, whether large or small.

This final rule will revise the minimum quality, positive lot identification, and reporting and recordkeeping requirements under the Standards. This action will also make numerous other changes to the Standards to better reflect current industry practices and to revise outdated language. The Board believes these changes will make additional peanuts available for sale, help increase efficiencies, and reduce costs to the industry.

This final rule is issued under the Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States, as amended (7 CFR Part 996), as established pursuant to Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

It is not anticipated that this action will impose additional costs on handlers, producers, or importers, regardless of size. Rather, these changes should help the industry reduce costs by helping to increase efficiencies. The industry believes the requirement that they continue to use PLI in addition to its own internal traceability systems creates redundancy and additional costs. By recognizing its internal traceability programs as an alternative to PLI, this should improve efficiencies and reduce costs. In addition, this action should also make additional peanuts available for sale, helping to maximize shipments and improving industry returns.

This final rule is expected to benefit the industry. The effects of this rule are not expected to be disproportionately greater or less for small handlers, producers or importers than for larger entities.

USDA has considered alternatives to these changes. The Act requires USDA to consult with the Board on changes to the Standards. An alternative considered was to continue the Standards in their current form. However, the industry believes these changes will increase efficiencies, make additional peanuts available for sale, and help update the Standards. Therefore, because of the anticipated

benefits of these changes, this alternative was rejected. USDA has met with the Board, which is representative of the industry, and has included nearly all of its recommendations in this final rule.

The Act specifies in § 1601(c)(2)(A) that the Standards established pursuant to it may be implemented without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). However, USDA has considered the reporting and recordkeeping burden on handlers and importers under this program. Handlers and importers are only required to complete one form, the monthly acquisition of farmers stock peanuts. Under this final rule, this requirement will be removed, reducing the reporting burden. Recordkeeping requirements will remain the same. Accordingly, this rule will not impose any additional reporting or recordkeeping requirements on either small or large handlers or importers.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Board's meetings were widely publicized throughout the peanut industry, and all interested persons were invited to attend and participate in Board deliberations on all issues. Like all Board meetings, the June 26, 2015, and the November 18, 2015, meetings were public meetings, and all entities, both large and small, were able to express views on these issues.

Section 1601 of the Act also provides that amendments to the Standards may be implemented without extending interested parties an opportunity to comment. However, due to the nature of the proposed changes, interested parties were provided with a 60-day comment period.

A proposed rule concerning this action was published in the **Federal Register** on January 19, 2016 (81 FR 2775). Copies of the rule were mailed to all Board members, and a press release was issued regarding the proposed rule to notify the industry. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending March 21, 2016, was provided to allow interested persons to respond to the proposal.

Fifteen comments were received during the comment period in response to the proposal. The commenters included growers, shellers, manufacturers, congressional representatives, and an interested consumer. Fourteen of the comments were in support of the proposed rule. One comment was in opposition to the proposed changes to the outgoing quality requirements. Most of the points made by the commenter in opposition were discussed at the public meetings on June 26, 2015, and November 18, 2015, prior to the Board's vote.

All 14 of the positive comments expressed support for finalizing the proposed rule as issued. Five of these comments referenced support of the proposal's recognition of modern business management, food safety progress and technological change. Two commenters noted the changes will better reflect current industry practices while revising outdated language and reducing regulatory burden on the industry. One comment asserted that the changes will eliminate waste and costs to the industry. Another expressed that under the change to the outgoing requirements, users of peanuts can still request the desired level of damage by specification in their contracts. One commenter stated that food safety will not

be affected by these changes since the outgoing standards for aflatoxin are unchanged.

The one negative comment received was from a manufacturer and opposed the proposed changes to the outgoing quality requirements. Specifically, the comment opposed the changes that will merge the previously separate categories for damage and minor defects for unshelled peanuts and kernels into one overall allowance for damage and increases that allowance to 3.5 percent, stating that the current requirements for damage and defects aligned with their requirements.

The commenter expressed concerns that the changes to the outgoing quality standards may hinder their ability to control the type of peanut being supplied from shellers and could result in additional inspections and added costs. However, the modification to the outgoing standards will not alter the customer's ability to specify conformity regarding damage or defect. The manufacturer's contract with the supplier can still specify the types of damage and defect, thereby maintaining the desired transparency and ensuring the visual and sensory product quality required by the manufacturer. The Federal-State Inspection Service can certify peanuts at the damage level requested, so this

change should not result in the need for additional inspections.

Further, peanut customer requirements can vary depending on the end use of the peanuts. This is why the Board recommended increasing the allowable damage under the Standards. Some segments of the peanut industry do not require the same threshold for damage and defect. The proposed changes will allow for additional peanuts to be utilized for manufacturing in segments of the industry where cosmetic damage to the peanut is not as important.

The proposed changes to the outgoing quality requirement are designed to help improve the efficiency of handling operations and make additional peanuts available for all customers within the peanut industry. This was discussed during the public Board meetings on June 26, 2015, and November 18, 2015, prior to the Board's vote. During the meetings, Board members discussed the implication of adjusting the damage level to 3.5 percent and noted that the customer can still request a more stringent level than the Standards require. In fact, some manufacturers may already require tighter specifications for damage than currently allowed.

The commenter was also concerned with how these changes may affect aflatoxin levels and that the changes may result in more lots failing as to aflatoxin. All peanuts for human consumption will still be chemically analyzed by a USDA laboratory or a USDA-approved laboratory and certified "negative" as to aflatoxin. The criteria for the outgoing standard regarding aflatoxin was not modified as part of the proposed changes and still requires a certificate of analysis indicating that the level of aflatoxin does not exceed 15 parts per billion.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 996

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

For the reasons set forth in the preamble, 7 CFR part 996 is amended as follows:

PART 996 - MINIMUM QUALITY AND HANDLING STANDARDS FOR
DOMESTIC AND IMPORTED PEANUTS MARKETED IN THE UNITED STATES

1. The authority citation for 7 CFR part 996
continues to read as follows:

Authority: 7 U.S.C. 7958.

2. Section 996.3 is revised to read as follows:

§ 996.3 Crop year.

Crop year means the calendar year in which the peanuts
were planted as documented by the applicant for inspection.

3. Section 996.9 is revised to read as follows:

§ 996.9 Inshell peanuts.

Inshell peanuts means peanuts, the kernel or edible
portions of which are contained in the shell in their raw
or natural state which are milled but unshelled.

4. Section 996.10 is revised to read as follows:

§ 996.10 Inspection Service.

Inspection Service means the Federal Inspection
Service, Specialty Crops Program, Agricultural Marketing
Service, USDA, or the Federal-State Inspection Service.

5. Section 996.12 is revised to read as follows:

§ 996.12 Outgoing inspection.

Outgoing inspection means the sampling, inspection,
and certification of either: shelled peanuts which have

been cleaned, sorted, sized, and otherwise prepared for further processing; or inshell peanuts which have been cleaned, sorted, and otherwise prepared for further processing.

6. In § 996.13 revise the introductory text to read as follows:

§ 996.13 Peanuts.

Peanuts means the seeds of the legume Arachis hypogaea and includes both inshell and shelled peanuts produced in the United States or imported from foreign countries and intended for further processing prior to consumption by humans or animals, other than those intended for wildlife or those in green form for consumption as boiled peanuts.

* * * * *

7. Section 996.15 is revised to read as follows:

§ 996.15 Positive lot identification.

Positive lot identification is a means of identifying those peanuts meeting outgoing quality regulations as defined in § 996.31 and relating the inspection certificate issued by the Inspection Service, as defined in § 996.10, to the lot covered so that there is no doubt that the peanuts in the lot are the same peanuts described on the inspection certificate.

§ 996.17 [Removed and Reserved]

8. Section 996.17 is removed and reserved.

9. Section 996.19 is revised to read as follows:

§ 996.19 Shelled peanuts.

Shelled peanuts means the kernels or portions of kernels of peanuts in their raw or natural state after the shells are removed.

§ 996.30 [Amended]

10. Section 996.30 is amended by removing paragraphs (c) and (d).

11. Section 996.31 is amended by revising the table following paragraph (a) and paragraph (b) (2) to read as follows:

§ 996.31 Outgoing quality standards.

(a) * * *

MINIMUM QUALITY STANDARDS—PEANUTS FOR HUMAN CONSUMPTION
[Whole kernels and splits: Maximum limitations]

Type and grade category	Unshelled peanuts and damaged kernels and minor defects (percent)	<i>Total fall through</i> Sound whole kernels and/or sound split and broken kernels	Foreign materials (percent)	Moisture (percent)
Excluding Lots of "splits"				
Runner	3.50	6.00%; 17/64 inch round screen	.20	9.00

Virginia (except No. 2)	3.50	6.00%; 17/64 inch round screen	.20	9.00
Spanish and Valencia	3.50	6.00%; 16/64 inch round screen	.20	9.00
No. 2 Virginia	3.50	6.00%; 17/64 inch round screen	.20	9.00
Runner with splits (not more than 15% sound splits)	3.50	6.00%; 17/64 inch round screen	.20	9.00
Virginia with splits (not more than 15% sound splits)	3.50	6.00%; 17/64 inch round screen	.20	9.00
Spanish and Valencia with splits (not more than 15% sound splits)	3.50	6.00%; 16/64 inch round screen	.20	9.00
Lots of "splits"				
Runner (not less than 90% splits)	3.50	6.00%; 17/64 inch round screen	.20	9.00
Virginia (not less than 90% splits)	3.50	6.00%; 17/64 inch round screen	.20	9.00
Spanish and Valencia (not less than 90% splits)	3.50	6.00%; 16/64 inch round screen	.20	9.00

(b) * * *

(2) Not more than 3.50 percent peanuts with damaged or defective kernels;

* * * * *

12. In § 996.40, paragraph (a), the last sentence of paragraph (b) (2), and paragraphs (b) (5) and (6) are revised to read as follows:

§ 996.40 Handling standards.

(a) Identification: Each lot of shelled or cleaned-inshell peanuts intended for human consumption shall be identified by positive lot identification prior to being shipped or otherwise disposed of. Positive lot identification (PLI) methods are tailored to the size and containerization of the lot, by warehouse storage or space requirements, or by necessary further movement of the lot prior to certification. Positive lot identification is established by the Inspection Service and includes the following methods of identification. For domestic lots and repackaged import lots, PLI includes PLI stickers, tags or seals applied to each individual package or container in such a manner that is acceptable to the Inspection Service and maintains the identity of the lot. For imported lots, PLI tape may be used to wrap bags or boxes on pallets, PLI stickers may be used to cover the shrink-wrap overlap, doors may be sealed to isolate the lot, bags or boxes may be stenciled with a lot number, or any other means that is

acceptable to the Inspection Service. The crop year means the calendar year in which the peanuts were planted as documented by the applicant. All lots of shelled and cleaned-inshell peanuts shall be shipped under positive lot identification procedures. However, peanut lots failing to meet quality requirements may be moved from a handler's facility to another facility owned by the same handler or another handler without PLI so long as such handler maintains a satisfactory records system for traceability purposes as defined in § 996.73.

(b) * * *

(2) * * * Both Subsamples 1-AB and 1-CD shall be accompanied by a notice of sampling or grade certificate, signed by the inspector, containing, at least, identifying information as to the handler or importer, and the positive lot identification of the shelled peanuts.

* * * * *

(5) Handlers and importers may make arrangements for required inspection and certification by contacting the Inspection Service office closest to where the peanuts will be made available for sampling. For questions regarding inspection services, a list of Federal or Federal-State Inspection Service offices, or for further assistance,

handlers and importers may contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1536-S, (STOP 0240), Washington, DC, 20250-0240; Telephone: (202) 720-5870; Fax: (202) 720-0393.

(6) Handlers and importers may make arrangements for required chemical analysis for aflatoxin content at the nearest USDA or USDA-approved laboratory. For further information concerning chemical analysis and a list of laboratories authorized to conduct such analysis contact: Science and Technology Program, AMS, USDA, 1400 Independence Avenue, SW. STOP 0270, Washington, DC 20250-0270; Telephone (202) 690-0621; Fax (202) 720-4631.

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13. In § 996.50:

- a. Revise paragraph (a);
- b. Remove paragraph (b) (2);
- c. Redesignate paragraph (b) (1) as paragraph (b) (2); redesignate paragraph (b) introductory text as (b) (1) and revise it;
- d. Remove paragraphs (e);

e. Redesignate paragraphs (f), (g), (h), and (i) as paragraphs (e), (f), (g), and (h), respectively; and

d. Revise newly redesignated paragraphs (e) and (f).

The revisions read as follows:

§ 996.50 Reconditioning failing quality peanuts.

(a) Lots of peanuts which have not been certified as meeting the requirements for disposition to human consumption outlets may be disposed for non-human consumption uses: Provided, That each such lot is positive lot identified using red tags, identified using a traceability system as defined in § 996.73, or other methods acceptable to the Inspection Service, and certified as to aflatoxin content (actual numerical count), unless they are designated for crushing. However, on the shipping papers covering the disposition of each such lot, the handler or importer shall cause the following statement to be shown: "The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption."

(b) (1) Sheller oil stock residuals shall be positive lot identified using red tags, identified using a traceability system as defined in § 996.73, or other

methods acceptable to the Inspection Service, and may be disposed of domestically or to the export market in bulk or bags or other suitable containers. Disposition to crushing may be to approved crushers. However, sheller oil stock residuals may be moved from a handler's facility to another facility owned by the same handler or another handler without PLI so long as such handler maintains a satisfactory records system for traceability purposes as defined in § 996.73.

* * * * *

(e) Lots of shelled peanuts moved for remilling or blanching shall be positive lot identified and accompanied by valid grade inspection certificate, Except That, a handler's shelled peanuts may be moved without PLI and grade inspection to the handler's blanching facility that blanches only the handler's peanuts. Lots of shelled peanuts may be moved for remilling or blanching to another handler without PLI if the handler uses a traceability system as defined in § 996.73, Except That, any grade inspection certificates associated with these lots would no longer be valid. The title of such peanuts shall be retained by the handler or importer until the peanuts have been certified by the Inspection Service as meeting the

outgoing quality standards specified in the table in § 996.31(a). Remilling or blanching under the provisions of this paragraph shall be performed only by those remillers and blanchers approved by USDA. Such approved entities must agree to comply with the handling standards in this part and to report dispositions of all failing peanuts and residual peanuts to USDA, unless they are designated for crushing.

(f) Residual peanuts resulting from remilling or blanching of peanuts shall be red tagged, identified using a traceability system as defined in § 996.73, or identified by other means acceptable to the Inspection Service, and returned directly to the handler for further disposition or, in the alternative, such residual peanuts shall be positive lot identified by the Inspection Service and shall be disposed of to handlers who are crushers, or to approved crushers, Except That, a handler may move the residual peanuts without PLI to a facility for crushing owned by the handler. Handlers who are crushers and crushers approved by USDA must agree to comply with the terms and conditions of this part.

* * * * *

14. In § 996.60:

- a. Revise paragraph (a);
- b. Remove paragraphs (b) and (c); and
- c. Redesignate paragraph (d) as paragraph (b).

The revision reads as follows:

§ 996.60 Safeguard procedures for imported peanuts.

(a) Prior to arrival of a foreign-produced peanut lot at a port-of-entry, the importer, or customs broker acting on behalf of the importer, shall submit information electronically to the United States Customs and Border Protection, which includes the following: the Customs Service entry number; the container number(s) or other identification of the lot(s); the volume of the peanuts in each lot being entered; the inland shipment destination where the lot will be made available for inspection; and a contact name or telephone number at the destination.

* * * * *

15. In § 996.71:

- a. Remove paragraph (a);
- b. Redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively;
- c. Revise newly redesignated paragraph (a); and
- d. Revise the last sentence in newly redesignated paragraph (b).

The revisions read as follows:

§ 996.71 Reports and recordkeeping.

(a) Each handler and importer shall maintain a satisfactory records system for traceability purposes as defined in § 996.73.

(b) * * * USDA and USDA-approved laboratories shall file copies of all aflatoxin certificates completed by such laboratories with the Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 1st Street South, Winter Haven, Florida 33880; Telephone (863) 324-3375, Fax: (863) 291-8614, or other address as determined by USDA.

16. Section 996.73 is revised to read as follows:

§ 996.73 Verification of reports.

(a) For the purpose of checking and verifying reports kept by handlers and importers and the operation of handlers and importers under the provisions of this Part, the officers, employees or duly authorized agents of USDA shall have access to any premises where peanuts may be held at any time during reasonable business hours and shall be permitted to inspect any peanuts that meet outgoing quality regulations, so held by such handler or importer and any and all records of such handler with respect to the

acquisition, holding, or disposition of all peanuts meeting outgoing quality regulations, which may be held or which may have been disposed by handler.

(b) Reports shall be maintained by the handler for nonconforming products to assure traceability throughout the supply chain. The traceability system must include documented records, which enable a full product history to be produced in a timely manner and must ensure product can be traced forward (raw material to distribution) and backwards from distribution to the warehouse feeding the shelling plant, and ensure that all associated tests and all relevant records have been completed. The traceability system shall include identification of all raw materials, process parameters (for specific lot), packaging and final disposition. The handler shall be able to identify the warehouse in which the peanuts were stored immediately prior to shelling. Traceability must be maintained throughout production runs with specific lot codes, and there shall be complete linkage from raw material receipt through final disposition.

17. In § 996.74:

a. Remove paragraph (a) (1);

b. Redesignate paragraphs (a) (2) through (7) as paragraphs (a) (1) through (6), respectively;

c. Revise newly redesignated paragraphs (a) (3) and (5); and

d. Revise paragraph (b).

The revisions read as follows:

§ 996.74 Compliance.

(a) * * *

(3) Commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use without meeting outgoing quality regulations;

* * * * *

(5) Fails to maintain and provide access to records, pursuant to § 996.71, and the standards for traceability and nonconforming product disposition pursuant to § 996.73, on the reconditioning or disposition of peanuts acquired by such handler or importer; and on lots that meet outgoing quality standards; or

* * * * *

(b) Any peanut lot shipped which fails to meet the outgoing quality standards specified in § 996.31, and is not reconditioned to meet such standards, or is not

disposed to non-human consumption outlets as specified in § 996.50, shall be reported by USDA to the Food and Drug Administration and listed on an Agricultural Marketing Service website.

18. Section 996.75 is revised to read as follows:

§ 996.75 Effective time.

The provisions of this part, as well as any amendments, shall apply to current crop year peanuts, subsequent crop year peanuts, and prior crop year peanuts not yet inspected, or failing peanut lots that have not met disposition standards, and shall continue in force and effect until modified, suspended, or terminated.

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Elanor Starmer
Administrator
Agricultural Marketing Service

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