

to be plainly marked with the lot stamp number, would create a problem in the near future due to industry changes in container packaging configurations and pallet sizes. This relaxation would allow the industry flexibility for future pallet size and container configurations.

Many products, outside the produce industry, are received by retailers on 48- by 40-inch pallets. The kiwifruit industry almost exclusively used the "LA Lug" container which fits on the 35- x 42-inch or 53- by 42-inch pallets until recent years. The "LA Lug" configuration does not create a center tier when stacked on these pallets. When kiwifruit shippers use 35- by 42-inch or 53- by 42-inch pallets, receivers must unload the pallets and restack the fruit on metric pallets, causing more damage to the fruit and more labor costs to the receiver. Because of retail buying patterns and the retail demand for operational consistency in pallet usage, the produce industry has been moving away from using the 35- by 42-inch or 53 x 42 inch pallets and has been moving towards using a standard grocery-industry metric pallet measuring 48- by 40-inches. The committee anticipates that the retail usage of the metric pallet will continue to increase because: (1) Retailer and handler trucking and transportation costs for produce stacked on metric pallets are less than for produce stacked on 35- by 42-inch and 53- by 42-inch pallets, (2) retailer labor and disposal costs are less when metric pallets are utilized, and (3) receiving areas are steadily being remodeled to handle metric pallets. In the 1995/1996 season, approximately one percent of the industry's 9.3 million trays equivalents were packed in "shoe" box containers. The "shoe" box container (12 x 20 inches) is one of two new containers which is stacked in eight columns on a 48- by 40-inches metric pallet, and is configured in a manner which leaves one side of each container exposed. The other container that fits on the metric pallet is the "mum" box container. The "mum" box container (13.3 x 16 inches) is stacked nine columns on a pallet with the center column inaccessible to lot stamp numbering after the containers are placed on the pallet during block inspection. In block inspection, the inspection occurs after the pallets have been packed, strapped, and been placed in storage. In-line inspection is performed during the packing process, prior to palletization and storage.

The industry's usage of block and in-line inspection methods is fairly evenly split with approximately 50 percent of the handlers using in-line inspection and 50 percent using block inspection.

The majority of block inspections are conducted in the northern part of California while in-line inspections are conducted primarily in the southern part of California.

The committee's recommendation to relax the container marking requirement would not significantly lower the number of containers being inspected or bearing the lot stamp number. Of the 81 containers stacked on a metric pallet during block inspection, nine containers (the center tier—approximately 11 percent of the pallet) would not be lot stamp numbered. The center tiers of all pallets would be randomly inspected by the Federal or Federal-State Inspection Service for all marketing order requirements. When the industry utilizes in-line inspection, both the "shoe" and "mum" containers are accessible to lot stamp number marking and inspection, as they are being stacked on the pallet.

There is unanimous support in the industry to reduce the lot stamp number container marking requirement.

Several other alternatives were suggested during the public meeting. One alternative discussed by the committee was to require all containers to continue to be lot stamp numbered. Maintaining the requirement for lot stamp numbers to be placed on all containers would increase handler labor costs, slow handler operations, increase handler restraining costs, as well as increase inspection costs. It was the consensus of the committee that such a requirement would be cost prohibitive as each block-inspected pallet would have to be manually pulled apart to enable the lot stamp number to be placed on the nine-column center tier containers.

Another alternative suggested was to eliminate the block-inspection method and require all handlers to use the in-line inspection method. During in-line inspection, containers would be stamped with the lot stamp number prior to being stacked on the pallet. This would have a serious financial impact on the industry, especially among small growers and handlers, due to a large increase in inspection costs. This suggestion was unacceptable to the industry as it would be cost prohibitive and could force small growers and handlers out of business.

Another alternative examined was to establish regulations prohibiting the use of any containers that would create an inaccessible center when stacked on pallets. This alternative was not acceptable as it would not allow the industry to make necessary container changes to meet changing retailer needs and would be an excessive restriction.

This proposed rule, which would relax the lot stamp number requirement, would impact all handlers in the same manner and was viewed by the committee as the least restrictive and best solution. Relaxing the lot stamp number requirement would solve the problems caused by changes in pallet sizes and container configurations as well as spare the industry future financial hardship. It would allow the industry flexibility for future pallet size and container configurations.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

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

2. In § 920.303, paragraph (d) is revised to read as follows:

§ 920.303 Container marking regulations.

* * * * *

(d) All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector; except for individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

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Dated: January 24, 1996.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 96-2064 Filed 1-31-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 999**[Docket No. FV94-999-2PR]****Specialty Crops; Import Regulations; Peanut Import Regulations****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule.

SUMMARY: This proposed rule would establish minimum quality, identification, certification and safeguard requirements for imported farmers stock, shelled, and cleaned-inshell peanuts. The rule is issued under section 108B(f)(2) of the Agricultural Act of 1949, as amended. The provisions of paragraph (f)(2) require all peanuts in the domestic market to fully comply with all quality standards under Peanut Marketing Agreement No. 146 (Agreement). Thus, this rule would establish the same quality requirements and handling procedures for imported peanuts as those in effect for domestically produced peanuts. This action would benefit peanut handlers, importers and consumers by helping to ensure that all peanuts in the marketplace comply with the same quality standards.

DATES: Comments must be received by March 4, 1996. Pursuant to the Paperwork Reduction Act, comments to the information collection burden must be received by April 1, 1996.

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

FOR FURTHER INFORMATION CONTACT: Tom Tichenor or Rick Lower, Marketing Specialists, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; tel: (202) 720-6862 or (202) 720-2020; fax (202) 720-5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under paragraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c-3), as amended November 28, 1990; Pub. L. 101-624, hereinafter referred to as the Act. Paragraph (f)(2) of section 108B of the Act provides that the Secretary of Agriculture (Secretary) shall require that

all peanuts in the domestic market fully comply with all quality standards under Marketing Agreement No. 146 (7 CFR part 998), issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

This proposed rule would add a new § 999.600 governing the importation of peanuts" under 7 CFR part 999—Specialty Crops; Import Regulations. Proposed § 999.600 establishes minimum quality, identification, certification and safeguard requirements for foreign produced farmers stock, shelled and cleaned-inshell peanuts presented for importation into the United States. The quality requirements are the same as those specified in § 998.100 Incoming quality regulation and § 998.200 Outgoing quality regulation established pursuant to the Agreement. Whenever the regulations specified in the Agreement are changed, the regulations in § 999.600 would be changed accordingly. Safeguard procedures enable the Department to monitor and assure importers' compliance with the requirements of this regulation.

The intent of paragraph (f)(2) of section 108B of the Act is to ensure that all peanuts in the domestic marketplace comply with the same quality standards.

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform, and is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms, which include importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5 million. This proposed import regulation is based on regulations established under the Agreement, which regulates the quality of domestically produced peanuts. The majority of entities that are signers of

the Agreement cannot be classified as small businesses, and it is anticipated that peanut importers affected by this regulation will be comprised primarily of signatories to the Agreement. Although small business entities may incur additional costs in meeting these proposed import regulations, the benefits accrued from the assurance of good quality peanuts should outweigh any additional costs to such entities. Inspection and testing fees would be uniformly applied to importers, regardless of size. Finally, this action is required by statute.

The Department is unable to estimate, at this time, the number or size of importers, or domestic peanut handlers acting as importers, who may choose to import peanuts under the relaxed quota. The Department estimates that there are as many as 50 domestic peanut handlers with storage and milling facilities that can be used to prepare peanuts for human consumption markets.

In the past, the importation of peanuts has been limited to 1.71 million pounds annually. However, the Schedule of the United States annexed to the North American Free Trade Agreement (NAFTA), implemented on January 1, 1994, provided duty free entry for up to approximately 7.43 million pounds of qualifying peanuts from Mexico. For 1995, the duty-free access increased to approximately 7.65 million pounds. By calendar year 2008, access will be unlimited. In addition, the United States Schedule to the Uruguay Round Agreements negotiated under the General Agreement on Tariffs and Trade (GATT) relaxes the peanut import quota to 74.5 million pounds in 1995, with additional annual increases to 124 million pounds by the year 2000.

Various qualities of peanuts are entered into the United States from countries such as Argentina, Mexico, Nicaragua, India, and the People's Republic of China. However, until the People's Republic of China accedes to the World Trade Organization, no benefits of the increased access will be available to it. Foreign produced peanuts are produced under varying weather conditions and using different cultural practices. Consistent with the Agreement's regulatory provisions, each lot of peanuts entered into the U.S. would be required to be officially sampled and graded by the Federal or Federal-State Inspection Service (inspection service). Incoming inspection for farmers stock peanuts and outgoing inspection for edible quality shelled peanuts and cleaned-inshell peanuts would be required for imported peanuts. A list of inspection service

offices is provided in paragraph (d)(2)(i) of this regulation.

Some peanuts contain defects or other damage which cause them to be of low quality or have poor taste which could affect the demand for peanuts. Producers, handlers and manufacturers in the domestic peanut industry believe that even an isolated quality problem could adversely affect consumer confidence, which would be detrimental to the domestic peanut industry.

The Agreement imposes quality standards for domestically produced inshell and shelled peanuts. Peanut lots are graded based on the percentage of unshelled peanuts, percentage of kernels with damage and minor defects, percentage of loose shelled kernels, percentage of foreign material, and percentage of moisture content. In addition, an integral part of these quality standards is the extent of the presence of *Aspergillus flavus* mold (the principal cause of aflatoxin, which is a carcinogen). This mold is more likely to be found on damaged or defective kernels than on sound, whole, good quality kernels. A chemical analysis for aflatoxin is required on shelled peanut lots not meeting superior quality requirements. Shelled lots that exceed certain superior quality requirements are exempt from the aflatoxin chemical analysis requirements.

U.S. Customs Service requirements and USDA safeguard procedures: Importer obligations would include filing documents notifying the U.S. Customs Service (Customs Service) and the USDA of different actions taken concerning foreign produced inshell and shelled peanuts. Customs Service importation procedures and requirements are set out in title 19 of the Code of Federal Regulations (19 CFR). The Customs Service regulations applicable to peanut handling and processing include, but are not be limited to: bond requirements (19 CFR part 113); transfer from port of entry to another Customs Service office location (19 CFR part 112); entry of merchandise for consumption (19 CFR part 141); warehouse entry, and withdrawal from warehouse for consumption (19 CFR part 144); establishment of bonded warehouses (19 CFR parts 19.13 and 19.2); and manipulation in bonded warehouses (19 CFR part 19.11); transfer of ownership (19 CFR parts 141.113 and 141.20); failure to recondition (19 CFR part 113.62(e)); and redelivery of merchandise 19 CFR part 113.62(d). For Customs Service purposes, the term "consumption" means "use in the United States." Customs Service entry procedures would not be superseded by this import regulation.

When arriving at a port of entry, foreign produced peanuts may be entered for "warehouse" or entered for "consumption," or may be transported to another Customs Service port of entry to be entered there for warehouse or consumption. Peanuts transported from one Customs Service port of entry to another Customs Service port of entry must be transported by a carrier designated by the Customs Service under 19 U.S.C. 1551. Peanuts entered for warehouse are stored in a Customs Service bonded warehouse. Such peanuts remain in Customs Service custody until they are withdrawn from warehouse, entered for consumption, or released from Customs Service custody. Peanuts entered for consumption, and peanuts withdrawn from warehouse for consumption, are released from Customs Service custody for edible or non-edible use. Release of peanuts, in both cases, would be a conditional release, pending certification that the peanuts conform to Customs Service entry requirements and meet the handling and quality requirements of this proposed regulation. The Customs Service can demand redelivery of peanuts that are subsequently determined to be inadmissible.

The importer, or import broker acting on behalf of the importer, would be required to file with the Customs Service required entry documentation for each foreign produced peanut lot to be entered. Under USDA safeguard procedures established in this proposed rule, each importer would also be required to file completed entry documentation (Customs Service Form 3461 or other equivalent form) with the inspection service office that would perform the sampling of the lot for inspection to provide that office with advanced notice of requested inspection. The entry documentation would be filed by mail or facsimile transmission (fax). The filing would occur prior to arrival of the shipment at the port of entry in order to expedite entry procedures. The inspection service office would stamp, sign, and date the entry document and return it to the importer or broker by fax or mail. The importer/broker would then submit the stamped copy to the Customs Service. This "stamp-and-fax" procedure is similar to a procedure in place for other imported agricultural commodities under AMS jurisdiction. Failure to file with the Customs Service a copy of the entry documentation stamped by the inspection service would result in a delay or denial of entry. The importer/broker would also send a completed copy of the document

to the AMS to initiate USDA's monitoring process.

The names, addresses and contact numbers of inspection service offices that perform peanut sampling and/or grade inspections are provided in paragraph (d)(3) of this proposed rule. Inspection service offices at other locations may be contacted to sample the imported peanut lot. In such cases, the collected peanut samples would be shipped to an inspection service office with equipment and personnel qualified to perform grade inspection. Samples of lots meeting minimum grade requirements would also be sent to an approved laboratory (listed in paragraph (d)(4) of this rule) for aflatoxin analysis. The lot would have to remain in storage pending grade and aflatoxin certification.

It would then be the importer's responsibility to provide, in the mailed or faxed documentation, sufficient information to identify the peanut lot being entered and to ensure that arrangements are made for sampling and inspection. The information would include the container identification, weight of the peanut lot, the city, street address, and building number (if known) receiving the peanut lot, the requested date and time of inspection, and a contact name or number at the destination. If the destination is changed from that listed on the stamp-and-fax document, it would be the importer's responsibility to immediately advise inspection service offices at both the original destination and the new destination of such change. Shipments which are not made available pursuant to the entry document, or are not properly displayed for sampling purposes, would be reported to the Customs Service.

Falsification of reports submitted to the AMS is a violation of Federal law punishable by fine or imprisonment, or both.

A bond secured by surety or U.S. Treasury obligations is required to be posted by the importer with the Customs Service to guarantee the importer's performance. Peanuts would be determined inadmissible because the importer failed to follow Customs Service importation procedures, the peanuts failed to meet quality requirements, or because the handling procedures (including lot identification and certification) specified in these proposed regulations were not followed.

Redelivery could be demanded for failure to comply with the quality, handling, and reporting requirements of this import regulation, including: arrival at the inland destination with a broken Customs Service or inspection service

seal; failure to maintain lot identity; failure to receive required inspection; commingling of peanut lots not of like quality or condition; disposition of non-edible peanuts to an edible peanut outlet or an improper, non-edible peanut outlet; and failure to fully report the disposition of foreign produced peanuts. Disposition reports would include grade, aflatoxin, and identification certifications and bills of lading, sales receipts, and other documentation showing the peanuts were disposed to a non-edible peanut outlet, exported, or destroyed.

A redelivery demand must be made by the Customs Service within 30 days of release of the peanuts. Redelivery to the port of entry is normally required within 30 days after the redelivery demand is issued. The Customs Service may authorize a longer redelivery period and may authorize an appropriate extension of the redelivery period for good cause.

Because the Customs Service requires one week to prepare and issue a redelivery demand notice, this proposed import rule would establish that importers must report disposition of lots of peanuts to the AMS within 23 calendar days of the date of release. Although a 23-day deadline may be considered burdensome by some, this deadline is necessary because of the Customs Service 30-day requirement. Thus, the importer would have 23 days to perform necessary shelling, cleaning, sorting, sizing or other handling functions necessary to obtain edible certification or to dispose of the peanuts to a non-edible peanut outlet. If the AMS did not receive certification of the lot's edible quality or non-edible disposition by the 23rd calendar day, or if the importer fails to comply with quality or handling requirements of this import regulation, the AMS would notify the Customs Service. The Customs Service would then demand redelivery of the lot. Peanuts entered for warehouse (and which remain in Customs Service custody in a bonded warehouse) would not be subject to these time constraints until they are withdrawn for consumption. If notified by the importer, AMS would extend a deadline to correspond with an extension granted to the importer by the Customs Service.

The importer would cause a copy of the entry documentation applicable to each peanut lot to be forwarded with the peanuts to the lot's inland destination. If the shipment is sealed by Customs Service or the inspection service, the seal must remain intact and would be broken only by an authorized official at the destination point.

The identification requirements in this proposed regulation are similar to the Agreement's lot identification requirements. Lot size would be limited to 200,000 pounds to comply with Agreement requirements and random sampling provisions of the inspection service. Boatload shipments exceeding 200,000 pounds would be entered under two or more Customs Service entry documents. For instance, five containers averaging 40,000 pounds each (the industry standard) would be entered on one entry document. Lot size and identification arrangements would be made consistent with the port of entry inspection service office and would be established cooperatively between the inspection service, Customs Service offices and the importer at the port of entry. This would facilitate subsequent lot identification, inspection, and reporting of large imported shipments.

Foreign produced peanuts placed in storage could be commingled only with like-quality, foreign produced peanuts belonging to the same importer. Similarly, failing quality peanuts could be commingled with other such foreign produced peanuts prior to clean up or non-edible disposition. However, reports concerning commingled lots would have to be reported within the 23-day reporting period of the earliest-entered lot commingled. For example, if two 100,000 pound shipments were released for consumption entries on consecutive Mondays, and commingled in storage prior to outgoing inspection, at least 100,000 pounds from the commingled lot would have to be withdrawn from storage, inspected and reported as meeting edible or non-edible disposition requirements of this proposed rule within 23 days of the first lot's consumption entry date. Further, the remaining commingled peanuts would have to be withdrawn, inspected, properly disposed and reported within the next week—before the end of the second lot's 23 day reporting period.

The objective of the lot identification requirements is to help ensure that individual peanut lots would be disposed as required and that defects in poor quality peanut lots would not be blended out by commingling poor quality peanuts with higher quality peanuts. The lot identification requirements in this proposed import regulation are the same as those specified for domestically produced peanuts.

All USDA required sampling, quality certification, and lot identification would be conducted by the inspection service. Chemical analysis would be conducted by USDA or approved laboratories. Foreign produced peanuts

stored in bonded warehouses are subject to Customs Service audits. Importers would reimburse the inspection service, laboratories, and the Customs Service for services provided and costs incurred with regard to the importation of the importer's peanuts.

Release for importation: Depending on condition (shelled or inshell) and containerization, foreign produced peanuts could be either: (1) Sampled, inspected, and held at the port of entry until certified by the inspection service as meeting the edible quality requirements of this rule; or (2) conditionally released at the port of entry and entered under Customs Service entry procedures for later inspection and certification.

Under option (1), foreign produced shelled or cleaned-inshell peanuts which are cleaned, sorted, sized, and otherwise prepared for edible consumption prior to entry, could be sampled and inspected at the port of entry. The importer would present such peanuts in containers or bags that would allow appropriate sampling of the lot pursuant to inspection service requirements. After sampling, such lots would be held at the port of entry, under lot identification requirements of the inspection service, pending results of the inspection and chemical analysis. If determined to meet the applicable edible quality requirements in paragraph (c) of this proposed rule, the shelled or cleaned-inshell peanuts could be entered for consumption without further inspection. Reports of such entries would not have to be filed with AMS.

Shelled or cleaned-inshell peanuts, sampled and held at the port of entry, which fail edible quality requirements would, at the importer's discretion, be: (1) exported; (2) entered for clean up, and if satisfactorily remilled or blanched, used for edible consumption; or (3) entered for non-edible consumption. Failing peanuts that are exported would not have to be reported to AMS because the peanuts were not entered into the U.S. The importer would fully report all actions taken on each lot entered for clean up or non-edible disposition within 23 days of the lot's consumption entry filing date.

Under option (2), foreign produced shelled or cleaned-inshell peanuts which are cleaned, sorted, sized, and otherwise prepared for edible consumption prior to entry, would be conditionally released at the port of entry and transported inland for sampling, inspection, and certification. Farmers stock peanuts would have to be shipped inland for sampling and inspection because specialized sampling

facilities are not available at ports of entry.

Categories of peanuts submitted for importation:

Farmers stock peanuts. Such peanuts would be required to undergo incoming inspection at a prearranged buying point prior to arrival at a shelling or storage destination. All required inspections, shelling, and dispositions of released farmers stock peanuts would be completed and reported within the required 23 day reporting deadline.

Foreign produced farmers stock peanut lots could not be commingled with other peanut lots prior to incoming inspection. Incoming inspection determines the quality of the farmers stock peanuts based on moisture content, foreign material, damage, loose shelled kernels, and visible *Aspergillus flavus* mold. The inspection service would issue USDA form CFS-1007, "Inspection Certificate and Sales Memorandum" (formerly ASCS-1007) designating the lot as either Segregation 1, 2, or 3 quality.

Only Segregation 1 peanut lots could be prepared for human consumption use. Such peanuts would be shelled or prepared for cleaned-inshell use, and certified for disposition within 23 days of the lot's release. If Segregation 1 lots imported on successive days were commingled, each imported lot would still have to comply with the 23-day reporting period. For quality control and reporting purposes, Segregation 1 lots intended for human consumption outlet could be commingled only with other like quality peanuts of the same importer. A Segregation 1 lot commingled with Segregation 2 or 3 peanuts would assume the lower Segregation 2 or 3 quality and would be disposed as non-edible quality peanuts.

Foreign produced farmer stock peanuts received by importers and determined at incoming inspection to be Segregation 2 and 3 quality peanuts could be disposed only as non-edible peanuts. Segregation 3 and commingled Segregation 2 and 3 farmers stock peanuts could be exported inshell or shelled and fragmented prior to export. Segregation 2 and 3 peanuts could also be destroyed by burying (under inspection service supervision) or exported (certified by Customs Service). The importer would report non-edible disposition by providing a copy of the incoming inspection certificate, bills of lading and sales receipts, or other official certifications as proof of disposition to crushing or exportation, or to other non-edible outlets or burying. Exported peanuts would be lot identified by the inspection service and that certification would be filed with the

Secretary within the 23 day reporting period and applicable Customs Service re-export procedures would be followed.

Foreign produced Segregation 2 and 3 quality peanuts could be shelled by a custom seed sheller for seed use and dyed or chemically treated so as to be unfit for human or animal consumption. Domestically produced Segregation 2 and 3 peanuts shelled for seed need not be dyed or treated but must be produced under the auspices of a State agency, shelled by a custom seed sheller, and subject to the Peanut Administrative Committee (PAC) oversight. Measures such as these are necessary to ensure that peanuts used for human consumption are safe and wholesome. Proof of dyeing or chemical treatment of foreign produced peanuts would be filed with the Secretary within the 23 day reporting period.

Foreign produced farmers stock peanuts do not qualify for the support program administered by the Farm Service Agency, formerly the Agricultural Stabilization and Conservation Service (ASCS).

Shelled peanuts: Foreign produced shelled peanuts could: (1) Originate from foreign produced Segregation 1 farmers stock milled at facilities in the U.S., or (2) be peanuts produced and milled in another country which are conditionally released at the port-of-entry for inland sampling and inspection. Both categories of shelled peanuts would be sampled and inspected against outgoing quality requirements specified in paragraph (c) of this regulation.

Domestically produced shelled peanuts intended for edible markets must originate from farmers stock peanuts which have undergone incoming inspection and are determined to be of Segregation 1 quality. The AMS cannot determine whether shelled peanuts produced and milled in a foreign country originated from Segregation 1 quality peanuts prior to milling. However, because outgoing inspection is more reliable and precise in determining aflatoxin content in peanut kernels, this proposed import regulation provides that peanuts shelled prior to entry would be exempt from incoming inspection before delivery for outgoing inspection. Such shelled peanuts would be sampled and tested against outgoing quality requirements prior to disposition to edible outlets.

Two grade levels for shelled peanuts are in effect under the Agreement and would be established in this import regulation. The Agreement provides that shelled peanut lots meeting the quality requirements specified in a table

entitled "Other Edible Quality," under paragraph (a) of § 998.200, must be chemically analyzed for aflatoxin content prior to disposition to edible outlets. The quality requirements specified in the Other Edible Quality table are duplicated in "Table 1, Minimum Grade Requirements—Peanuts for Human Consumption" of this proposed import regulation. The outgoing quality requirements would also include a parts-per-billion tolerance for aflatoxin, determined by chemical analysis.

Aflatoxin appears most frequently in damaged, stressed, under-developed and malformed kernels. Domestic lots with fewer poor quality kernels are less likely to be contaminated and, thus, do not have to be chemically tested. The Agreement's "Indemnifiable Grades" table in paragraph (a) of § 998.200, provides for a superior quality level with more rigorous percentage tolerances than those found in the Other Edible Quality table. Thus, foreign produced shelled lots meeting the superior quality standards would be exempt from chemical analysis. The quality requirements specified in the "Indemnifiable Grades" table are duplicated in "Table 2 Superior Quality Requirements—Peanuts for Human Consumption" of this proposed regulation.

Currently, in paragraph (c)(4) of § 998.200, peanuts are considered edible quality if the chemical assay shows the lot contains 15 ppb or less of aflatoxin. Thus, the level of aflatoxin in foreign produced peanut lots intended for edible peanut markets could not exceed 15 ppb. Consistent with paragraphs (c)(4) and (g)(3) of § 998.200, non-edible quality peanut lots with 25 ppb or less could be disposed to certain non-edible peanut outlets. Non-edible quality peanut lots with aflatoxin exceeding 25 ppb would be further restricted to certain other non-edible peanut outlets. The sampling, testing, certification and identification of foreign produced peanuts lots would be performed in accordance with paragraph (d)(4) of this proposed regulation.

Chemical testing would be performed by an AMS, Science and Technology Division laboratory or a laboratory approved by the PAC. The PAC locally administers the Agreement with Department oversight. A list of approved laboratories is provided in paragraph (d)(4)(iv) of this proposed regulation. These are the same laboratories specified in the Agreement.

Thus, to obtain approval for human consumption use of a foreign produced shelled peanut lot, the importer would present to the AMS and the Customs

Service two certifications: (1) Quality certification Form FV-184-9A "Milled Peanut Inspection Certificate" and (2) aflatoxin certification Form CSSD-3 "Certificate of Analysis for Official Samples" issued by USDA laboratories, or equivalent forms issued by a PAC approved lab. An aflatoxin certificate would not be required if the lot meets the superior grade requirements, but could be required by the buyer. The certificates are the same as those used to report grade and chemical analysis results for domestically produced peanuts. If the required certificates were not received by the AMS within 23 days of a consumption entry, or a withdrawal for consumption entry, the AMS would request the Customs Service to initiate a redelivery demand for the lot.

Cleaned-inshell peanuts: Inshell peanuts that have been cleaned, sorted, and prepared in another country for edible inshell peanut markets in the U.S. could be presented as a consumption entry at the port of entry. Such peanuts would be declared as cleaned-inshell peanuts on the Customs Service entry document and could either be presented for outgoing inspection at the port of entry, if delivered in bags, or conditionally entered for outgoing inspection at a facility inside the U.S. Peanuts declared as cleaned-inshell on a Customs Service entry document could not undergo additional cleaning, sorting, sizing, or drying prior to outgoing inspection at the destination point inside the U.S.

Cleaned-inshell peanut lots destined for edible peanut markets would be required to meet certain minimum quality requirements for damage, moisture and foreign material. Cleaned-inshell lots containing more than 1 percent kernels with visible mold would have to be chemically tested and meet aflatoxin requirements. The cleaned-inshell quality requirements specified in paragraph (c)(2) of this proposed regulation are the same as the quality requirements in paragraph (b) of § 998.200 of the Agreement.

Foreign produced farmers stock Segregation 1 peanuts also could be prepared and presented at outgoing inspection as cleaned-inshell peanuts. Such peanuts inspected and certified as meeting edible requirements for cleaned-inshell peanuts would be designated as imported peanuts on inspection service form FV-184-9A. The importer would file form FV-184-9A with the AMS for each lot of foreign produced cleaned-inshell peanuts meeting edible quality requirements for cleaned-inshell peanuts.

Imported peanuts certified as meeting edible requirements could be used any

way desired. Only after shelled and cleaned-inshell peanuts are certified as meeting applicable requirements could such peanuts be commingled with imported lots of other importers or domestically produced peanuts also certified for human consumption.

Disposition of Failing Peanuts

The following peanuts could not be used for human consumption: (1) Farmers stock peanuts that grade either Segregation 2 or Segregation 3; (2) cleaned-inshell and shelled peanuts that fail outgoing quality and/or aflatoxin requirements and were not reconditioned or reworked (the removal of defective kernels); and (3) below grade residue from any shelling, milling or blanching operations.

Cleaned-inshell lots that fail outgoing inspection requirements of paragraph (c)(2) could be reconditioned by remilling the peanuts, which could include shelling. If shelled, the peanuts would have to meet outgoing requirements of proposed paragraph (c)(1) for shelled peanuts.

Failing shelled lots, which originated from Segregation 1 peanuts, could be reconditioned following procedures established in paragraph (f) of this proposed rule. These provisions are the same as those established under various provisions of the Agreement. Segregation 1 shelled peanuts failing quality requirements in table 1 and/or exceeding 15 ppb aflatoxin content could be reconditioned by remilling and/or blanching and, when subsequently reinspected and certified as meeting edible quality and aflatoxin requirements, could be disposed to edible peanut outlets. If not reconditioned, failing Segregation 1 lots would have to be disposed to non-edible peanut outlets as unrestricted or restricted peanuts (below).

Provisions controlling the disposition of residue peanuts from inshell remilling and shelled remilling and blanching that continue to fail edible quality requirements are also provided in this proposed rule. Two categories of non-edible peanuts are specified under the Agreement—"unrestricted" and "restricted." The designation would be based on the amount of aflatoxin detected in the lot. "Unrestricted" peanuts would be peanuts which fail one or more quality requirements and, when chemically assayed, contain more than 15 ppb but 25 ppb or less aflatoxin. While such peanuts would not be edible quality, they could be crushed for oil, exported or used in animal feed, provided that certain handling and container labeling requirements were followed. Unrestricted peanuts also

could be used for seed (if dyed or treated to prevent edible use), crushed for oil, exported, or buried. Meal resulting from the crushing of unrestricted peanuts would not have to be tested a second time for aflatoxin content. Disposition of meal resulting from the crushing of peanuts is not regulated under the Agreement or this proposed regulation.

Peanuts containing more than 25 ppb aflatoxin would be considered "positive" to aflatoxin and would be designated as "restricted" peanuts. Restricted peanut lots may or may not meet quality requirements of table 1. At the direction of the importer, restricted peanut lots would be used either for seed (if dyed or treated), crushed for oil, destroyed by burying, or exported. Meal resulting from the crushing of restricted peanuts would be certified as to aflatoxin content and such certification would accompany the meal into the channels of commerce.

The importer could dispose of a failing peanut lot directly to a non-edible peanut outlet or set aside and commingle several failing lots for eventual disposition to one or more non-edible outlets. Commingled failing quality peanuts would be held separate and apart from edible peanuts and identified with red tags indicating non-edible peanuts. Eventual disposition would be to non-edible peanut outlets consistent with the failing quality of the peanuts, pursuant to paragraph (e) of this proposed rule.

If an importer chose to destroy by burying or export unrestricted or restricted peanuts, the peanuts would be lot identified and proof of burying or exportation would be provided by the importer to the AMS. Customs Service procedures controlling re-exported merchandise would also be followed by the importer. Burying and exportation expenses would be borne by the importer.

It would be the importer's responsibility to file inspection certificates and other documentation sufficient to account for disposition of all failing quality peanuts acquired by the importer. Such proof could consist of copies of bills of lading and sales receipts between the importer and non-edible peanut outlet receivers. The documentation would contain identifying information, such as container or lot numbers, that tie the peanuts reported on the documents to failing quality peanuts on inspection service or aflatoxin certificates. The name and address of the non-edible peanut receiver and valid contact information would also be specified on the documentation.

Disposition of unrestricted and restricted peanut lots would be reported to the AMS within 23 days of filing for a consumption entry, or a withdrawal for consumption entry, with the Customs Service.

The inspection service would identify imported peanuts as peanuts of foreign origin on the inspection certificate to assist in lot identification (and help prevent unintended commingling with domestically produced peanuts prior to certification). Foreign origin designations also would help importers and the AMS meet its monitoring responsibilities.

From time to time, the PAC may recommend to the Secretary that quality requirements or handling procedures specified in the Agreement be revised. If such changes are approved by the Secretary and implemented for the domestic peanut industry in 7 CFR Part 998, corresponding changes would be made in § 999.600. Changes in regulations for domestically produced peanuts are generally made effective July 1. Thus, corresponding changes to the import regulation would be made effective on that date, unless otherwise specified in the regulation. Quality requirements in effect on the date of inspection of a foreign produced lot would be applied to the inspected lot.

Safeguard procedures: This proposed rule would establish a procedure to verify importers' compliance with import requirements. The safeguard procedures would provide for monitoring of peanut lots from entry to final disposition. The purpose of these procedures would be to ensure that foreign produced peanuts either meet edible requirements or are appropriately disposed to non-edible peanut outlets, exported or destroyed. The proposed safeguard procedures are similar to safeguard procedures already in place for other imported commodities and are consistent with the inspection, identification and certification requirements applied to domestically produced peanuts under the Agreement.

The safeguard process would include the "stamp-and-fax" entry procedure, described above, whereby the importer provides the Customs Service with an entry document stamped by the inspection service. The importer also would file a copy of the entry document with the AMS and forward a copy, with the released lot, to the inland destination where the lot would be inspected or warehoused. Edible certification and non-edible disposition would be reported by filing with the AMS copies of all grade certificates, aflatoxin certificates, and proof of non-edible disposition. Such certifications

would be filed within 23 days of filing a consumption entry or a withdrawal from warehouse for consumption entry.

Receipt of required certificates and other documentation within the 23-day deadline would be essential. Failure of an importer to obtain edible certification—or arrange for appropriate non-edible disposition—on all foreign produced peanut acquisitions, and file such reports with the AMS within 23 days of a consumption declaration, could result in a redelivery demand by the Customs Service. Failure to redeliver the violating lot could result in liquidated damages.

Certificates and other supplementary documentation would be sent to AMS, Marketing Order Administration Branch (MOAB) which oversees the domestic peanut program and would oversee this proposed import program. Facsimile or express mail deliveries could be used to ensure timely receipt of certificates and other required documentation. Overnight and express mail deliveries would be addressed to the USDA/AMS, Marketing Order Administration Branch, 14th and Independence Ave. SW, Room 2525, Washington, DC. 20250, Attn: Report of Imported Peanuts. The MOAB's fax number is (202) 720-5698, Attn: Report of Imported Peanuts.

For the purposes of checking and verifying reports filed by importers and disposition outlets, provisions would be included in this proposed regulation that would allow the Secretary, through duly authorized agents, to have access to any premises where peanuts may be held and processed. Authorized agents, at any time during regular business hours, would be permitted to inspect any peanuts held, and any and all records with respect to the acquisition, holding or disposition of any peanuts which may be held, or which may have been disposed by that importer.

USDA record retention requirements would also be established to require importers to retain information for at least two years beyond the year of applicability. Customs Service record retention requirements are longer.

With regard to Customs Service reporting procedures, it is the importer's decision when to commence "consumption" entry procedures or when to withdraw merchandise from a warehouse for consumption. The importer's decision would be implemented in a manner consistent with Customs Service procedures and reported in accordance with normal Customs Service requirements. Any Customs Service reporting or recordkeeping requirements for disposition of imported merchandise or

clearance of bonding requirements would not be superseded by this regulation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information and collection requirements that are contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) and would be assigned a new OMB number. Comments should reference this proposed import regulation and the date and page number of this Federal Register. Comments must be received by April 1, 1996. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, D.C., 20503 and to the USDA in care of the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; fax 202-720-5698. A comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days of publication of the rule. All comments will also become a matter of public record.

Comments are invited on: (1) Whether the proposed collection of information is necessary for USDA's oversight of imported peanuts; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

The reporting and recordkeeping burdens imposed under this proposed rule are designed to be minimal on importers and customs brokers. No new forms would be required to be completed by importers or customs brokers. However, various documentation obtained during the importation process—incoming and outgoing inspection certificates, lot identification certificates, aflatoxin laboratory analyses, Custom Service documentation, bills of lading, etc. would be photocopied and mailed to the Secretary. The information collected would be used for compliance purposes only and would be held confidential by the Department. The information collected would not be compiled for dissemination in any public report.

Estimate of Burden: Public reporting burden for this proposed collection of information is estimated to average 5 minutes (0.083 hours) per response.

Respondents: Importers and customs brokers who import peanuts.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 85.

Estimated Total Annual Burden on All Respondents: 177 hours (7.08 hours per respondent).

Without the benefit of prior experience in this subject, and for the purposes of complying with the Paperwork Reduction Act requirements, the Department makes several rough estimates as to the number of importers affected by this regulation, the number of peanut shipments imported, and the number of documents needed to be filed for each shipment. As many as 50 peanut handlers are capable of conducting handling functions on imported peanuts, but evidence from 1995 indicates that only a handful imported peanuts. Thus, the number of importers is estimated at 25. While the exact amount is not yet determined, if the 1996 quota is established at 85 million pounds (and is fully subscribed), approximately 425 entries of 200,000 pound shipments would be entered. If allocated equally, the number of shipments per importer would be 17.

It is expected that most shipments would be shelled peanuts needing as few as three documents filed with the Secretary—the initial Customs Service entry document (Form 3461, or equivalent form, filed with the inspection service office and AMS), a grade inspection certificate (FV-184-9A, “Milled Peanut Inspection Certificate”) and an aflatoxin assay certificate (Form CSSD-3 “Certificate of Analysis for Official Samples” or equivalent PAC approved laboratory form). Inshell lots and shelled lots that fail inspection requirements (expected to be far fewer in number) would require additional forms for reconditioning or disposition of non-edible peanuts. This rule estimates that each entry would require an average of five documents to be filed for each imported shipment of peanuts—resulting in an estimated 85 documents filed for each importer, and approximately 2,125 filings for the industry. The time to photocopy and mail a document, and file the document for recordkeeping purposes, is estimated to total 5 minutes—resulting in an annual burden of approximately 7 hours per importer, and a total of 177 burden hours for the industry.

In addition to the reporting requirements, this proposed rule would establish that importers and customs brokers retain copies of certifications and entry documentation for not less

than two years after the calendar year of acquisition. This is a commonly accepted records retention period and within good business practices. The time for maintaining records by filing each document internally is included in the five minute filing estimate. The information collected would be used only for compliance purposes by personnel of the USDA.

The reporting and recordkeeping requirements established in this proposed rule would enable the USDA to oversee the importation of peanuts and help the U.S. peanut industry provide only good quality, wholesome peanuts for edible peanut outlets. Without the quality requirements specified in the Agreement (7 CFR Part 998), regulations for non-signatory handlers (7 CFR Part 997), and these proposed regulations, poor quality peanuts could more easily be entered into edible channels, causing consumer dissatisfaction and having a negative impact on the market for peanuts and peanut products. Compliance with these standards would help the peanut industry in its efforts to expand markets.

Although these proposed requirements could result in small additional costs for importers, the benefits from the restriction of low quality peanuts from edible markets could outweigh any additional inspection, handling, recordkeeping and reporting costs resulting from the requirements. The proposed requirements have been carefully reviewed and every effort has been made to minimize any unnecessary reporting and recordkeeping costs.

Based on available information, the Administrator of the AMS has determined that this proposed rule could impose some additional costs on affected importers. However, the benefits of marketing a high quality product should exceed the additional costs, if any, which could be incurred in meeting these requirements.

A 30 day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered when finalizing this proposed rule.

List of Subjects in 7 CFR Part 999

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

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

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

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

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

2. A new § 999.600 is added to part 999 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 2.49 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*.

(6) *Segregation 2 peanuts*, unless otherwise specified, means farmers stock peanuts with more than 2.49 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*.

(7) *Segregation 3 peanuts*, unless otherwise specified, means farmers' stock peanuts with visible *Aspergillus flavus* mold.

(8) *Shelled peanuts* means the kernels of peanuts after the shells are removed.

(9) *Outgoing inspection* means the sampling and inspection of either: shelled peanuts which have been cleaned, sorted, sized and otherwise prepared for human consumption markets; or inshell peanuts which have been cleaned, sorted and otherwise prepared for inshell human consumption markets.

(10) *Negative aflatoxin content* means 15 parts-per-billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements, and 25 ppb or less for non-edible quality peanuts.

(11) *Person* means an individual, partnership, corporation, association, or any other business unit.

(12) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture (USDA) who is, or who may hereafter be, authorized to act on behalf of the Secretary.

(13) *Inspection service* means the Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, USDA.

(14) *USDA laboratory* means laboratories of the Science and Technology Division, Agricultural Marketing Service, USDA, that chemically analyze peanuts for aflatoxin content.

(15) *PAC approved laboratories* means laboratories approved by the Peanut Administrative Committee, pursuant to Peanut Marketing Agreement No. 146 (7 CFR Part 998), that chemically analyze peanuts for aflatoxin content.

(16) *Conditionally released* means released under bond by the United States Customs Service (Customs Service) for consumption (use in the United States) or withdrawal from warehouse for consumption.

(17) *Importation* means the release from custody of the Customs Service.

(b) *Incoming regulation*: (1) Farmers stock peanuts presented for importation must first undergo incoming inspection. Only Segregation 1 peanuts may be used for human consumption. All foreign produced farmers stock peanuts for human consumption must be sampled and inspected at a buying point or other handling facility capable of performing incoming sampling and inspection. Sampling and inspection shall be conducted by the inspection service. Only Segregation 1 peanuts certified as meeting the following requirements may be used in human consumption markets:

(i) *Moisture*. Except as provided under paragraph (b)(2) *Seed peanuts*, of this section, peanuts may not contain more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storage or milling.

(ii) *Foreign material*. Peanuts may not contain more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be held separately until milled, or moved

over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term *sand-screen* means any type of farmers stock cleaner which, when in use, removes sand and dirt.

(iii) *Damage*. For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(iv) *Loose shelled kernels*. Peanuts may not contain more than 14.49 percent loose shelled kernels, except that peanuts having a higher loose shelled kernel content may be imported if held separately until milled or shipped directly to a shelling facility for prompt shelling. All percentage determinations shall be rounded to the nearest whole number. Kernels which ride screens with the following or larger slot openings may be separated from loose shelled kernels: Runner— $1\frac{6}{64} \times \frac{3}{4}$ inch; Spanish and Valencia— $1\frac{5}{64} \times \frac{3}{4}$ inch; Virginia— $1\frac{5}{64} \times 1$ inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared for inspection and sale for human consumption: *Provided*, That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for non-edible use, pursuant to paragraph (e) of this section. If the kernels which ride the prescribed screen are not separated from the kernels which do not ride the prescribed screen, the entire amount of loose shelled kernels shall be removed from the farmers stock peanuts and shall be held separate and apart and disposed of for non-edible use, pursuant to paragraph (e) of this section.

(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. Disposition of such peanuts to a seed outlet must be reported to the Secretary by submitting a copy of the bill of lading or sales contract which reports the weight of the peanuts so disposed, and the name, address and telephone

number of the receiving seed outlet. Residuals from the shelling of Segregation 1 seed peanuts shall be held and/or milled separate and apart from other peanuts, and such residuals meeting quality requirements specified in paragraph (c)(1) of this section may be disposed to human consumption channels, and any portion not meeting such quality requirements shall be disposed to non-edible peanut channels pursuant to paragraph (e) of this section. Segregation 2 and 3 peanuts may be shelled for seed purposes but must be dyed or chemically treated so as to be unfit for human or animal consumption. All disposition of seed peanuts and residuals from seed peanuts shall be reported to the Secretary pursuant to paragraphs (f)(2) and (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 as provided herein. 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, exported inshell, or shelled and fragmented for export as provided in paragraph (e) of this section. Shelled peanuts and cleaned-inshell peanuts which fail to meet the requirements for human consumption in paragraph (b)(1) may be crushed for oil or exported.

(4) Whenever the Secretary has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Secretary may reject the then effective inspection certificate and may require the importer to have the peanuts reinspected to establish whether or not such peanuts may be disposed of for human consumption.

(c) *Outgoing regulation*. No person shall import peanuts for human consumption into the United States unless such peanuts are lot identified and certified by the inspection service as meeting the following requirements:

(1)(i) *Shelled peanuts*. All shelled peanuts shall at least meet the requirements specified in Table 1 as follows:

TABLE 1.—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 (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00%; 1 ⁹ / ₆₄ × 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2)	1.50	2.50	3.00%; 1 ⁷ / ₆₄ inch; round screen.	3.00%; 1 ⁵ / ₆₄ × 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia	1.50	2.50	3.00%; 1 ⁶ / ₆₄ inch; round screen.	3.00%; 1 ⁵ / ₆₄ × 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 1 ⁷ / ₆₄ inch; round screen.	6.00%; 1 ⁹ / ₆₄ × 1 inch; slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 1 ⁷ / ₆₄ inch; round screen.	3.00%; 1 ⁴ / ₆₄ × 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (not more than 90% splits).	1.50	2.50	3.00%; 1 ⁷ / ₆₄ inch; round screen.	3.00%; 1 ⁴ / ₆₄ × 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 1 ⁶ / ₆₄ inch; round screen.	3.00%; 1 ⁹ / ₆₄ × 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(ii) Peanuts meeting the specifications in Table 1 must also be certified "negative" to aflatoxin content, pursuant to paragraph (d)(4), prior to shipment to domestic human consumption markets. Shelled peanuts meeting requirements specified in Table 2 may be imported without sampling and testing for aflatoxin.

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION
[Whole Kernels and Splits]

Maximum limitations							
Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Runner U.S. No. 1 and better.	1.25	2.00	3.00%; 1 ⁷ / ₆₄ inch, round screen.	3.00%; 1 ⁹ / ₆₄ × 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia U.S. No. 1 and better.	1.25	2.00	3.00%; 1 ⁷ / ₆₄ inch, round screen.	3.00%; 1 ⁵ / ₆₄ × 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia U.S. No. 1 and better.	1.25	2.00	3.00%; 1 ⁶ / ₆₄ inch, round screen.	2.00%; 1 ⁹ / ₆₄ × 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Runner U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 1 ⁷ / ₆₄ inch, round screen.	3.00%; 1 ⁴ / ₆₄ × 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through 2 ⁰ / ₆₄ inch round screen).	1.25	2.00	3.00%; 1 ⁷ / ₆₄ inch, round screen.	3.00%; 1 ⁴ / ₆₄ × 1 inch, slot screen.	4.00%; both screens.	.20	9.00

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION—Continued
[Whole Kernels and Splits]

Type and grade category	Maximum limitations						
	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Spanish and Valencia U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; $\frac{1}{64}$ inch, round screen.	3.00%; $\frac{1}{32} \times \frac{3}{4}$ inch, slot screen.	4.00%; both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.25	2.00	3.00%; $\frac{1}{64}$ inch, round screen.	3.00%; $\frac{1}{64} \times \frac{3}{4}$ inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; $\frac{1}{64}$ inch, round screen.	3.00%; $\frac{1}{64} \times 1$ inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; $\frac{1}{64}$ inch, round screen.	2.00%; $\frac{1}{64} \times \frac{3}{4}$ inch, slot screen.	4.00%; both screens.	.10	9.00

(2) *Cleaned-inshell peanuts.* Peanuts declared as cleaned-inshell peanuts may be presented for sampling and inspection in bags at the port of entry. Alternatively, peanuts may be conditionally released as cleaned-inshell peanuts but shall not subsequently undergo any cleaning, sorting, sizing or drying process prior to presentation for outgoing inspection as cleaned-inshell peanuts. Cleaned-inshell peanuts 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.

(3) *Reconditioned peanuts.* Peanuts shelled, sized and sorted in another country prior to arrival in the U.S. and shelled peanuts which originated from Segregation 1 peanuts that fail quality requirements of Table 1 (excessive damage, minor defects, moisture, or foreign material) or are positive to aflatoxin may be reconditioned by remilling and/or blanching. After such reconditioning, peanuts meeting the quality requirements of Table 1 and which are negative to aflatoxin (15 ppb or less) may be disposed for edible peanut use.

(d) *Sampling and inspection.* (1) All sampling and inspection, quality certification, chemical analysis, and lot identification, required under this

section, shall be done by the inspection service, a USDA laboratory, or a PAC-approved laboratory, as applicable, in accordance with the procedures specified herein. The importer shall make arrangements with the inspection service for sampling, inspection, identification and certification of all peanuts accumulated by the importer. The importer also shall make arrangements for the appropriate disposition of peanuts failing edible quality requirements of this section. All costs of sampling, inspection, certification, identification, and disposition incurred in meeting the requirements of this section shall be paid by the importer. Whenever peanuts are offered for inspection, the importer shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection.

(2) For farmers stock inspection, the importer shall cause the inspection service to perform an incoming inspection and to issue an CFSA-1007, "Inspection Certificate and Sales Memorandum" form designating the lot as Segregation 1, 2, or 3 quality peanuts. For shelled and cleaned-inshell peanuts, the importer shall cause the inspection service to perform an outgoing inspection and issue an FV-184-9A, "Milled Peanut Inspection Certificate" reporting quality and size of the shelled or cleaned-inshell peanuts, whether the lot meets or fails to meet quality requirements for human consumption of this section, and that the lot originated in a country other than the United States. The importer shall provide to the Secretary copies of all CFSA 1007 and FV-184-9A applicable to each peanut

lot conditionally released to the importer. Such reports shall be submitted as provided in paragraph (g)(5) of this section.

(3) *Procedures for sampling and testing peanuts.* Sampling and testing of peanuts for incoming and outgoing inspections of peanuts presented for importation into the United States will be conducted as follows:

(i) *Application for sampling.* The importer shall request inspection and certification services from one of the following inspection service offices convenient to the location where the peanuts are presented for incoming and/or outgoing inspection. To avoid possible delays, the importer should make arrangements with the inspection service in advance of the inspection date. A copy of the Customs Service entry document specific to the peanuts to be inspected shall be presented to the inspection official prior to sampling of the lot.

(A) The following offices provide incoming, farmers stock inspection:
Dothan, AL, tel: (205) 792-5185,
Graceville, FL, tel: (904) 263-3204,
Winter Haven, FL, tel: (813) 291-5820, ext 260,
Albany, GA, tel: (912) 432-7505,
Williamston, NC, tel: (919) 792-1672,
Columbia, SC, tel: (803) 253-4597,
Suffolk, VA, tel: (804) 925-2286,
Portales, NM, tel: (505) 356-8393,
Oklahoma City, OK, tel: (405) 521-3864,
Gorman, TX, tel: (817) 734-3006,
Yuma, AZ, tel: (602) 344-3869.

(B) The following offices, in addition to the offices listed in paragraph (A), provide outgoing sampling and/or inspection services, and certify shelled and cleaned-inshell peanuts as meeting

or failing the quality requirements of this section:

Eastern U.S.

Mobile, AL, tel: (205) 690-6154,
Jacksonville, FL, tel: (904) 359-6430,
Miami, FL, tel: (305) 592-1375,
Tampa, FL, tel: (813) 272-2470,
Presque Isle, ME, tel: (207) 764-2100,
Baltimore/Washington, tel: (301) 344-1860,
Boston, MA, tel: (617) 389-2480,
Newark, NJ, tel: (201) 645-2670,
New York, NY, tel: (212) 718-7665,
Buffalo, NY, tel: (716) 824-1585,
Philadelphia, PA, tel: (215) 336-0845,
Norfolk, VA, tel: (804) 441-6218,

Central U.S.

New Orleans, LA, tel: (504) 589-6741,
Detroit, MI, tel: (313) 226-6059,
St. Paul, MN, tel: (612) 296-8557,
Las Cruces, NM, tel: (505) 646-4929,
Alamo, TX, tel: (210) 787-4091,
El Paso, TX, tel: (915) 540-7723,
Houston, TX, tel: (713) 923-2557,

Western U.S.

Nogales, AZ, tel: (602) 281-0783,
Los Angeles, CA, tel: (213) 894-2489,
San Francisco, CA, tel: (415) 876-9313,
Honolulu, HI, tel: (808) 973-9566,
Salem, OR, tel: (503) 986-4620,
Seattle, WA, tel: (206) 859-9801.

(c) Questions regarding inspection services or requests for further assistance may be obtained from: Fresh Products Branch, P.O. Box 96456, room 2049-S, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20090-6456, telephone (202) 690-0604, fax (202) 720-0393.

(i) *Sampling.* Sampling of bulk farmers stock lots shall be performed at a facility that utilizes a pneumatic sampler or approved automatic sampling device. The size of farmers stock lots, shelled lots, and cleaned-inshell lots, in bulk or bags, shall not exceed 200,000 pounds. For farmers stock, shelled and cleaned-inshell lots not completely accessible for sampling, the applicant shall be required to have lots made accessible for sampling pursuant to inspection service requirements. The importer shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by the inspection service. The amount of such peanuts drawn shall be large enough to provide for a grade and size analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. Because there is no acceptable method of drawing official samples from bulk conveyances of shelled peanuts, the importer shall arrange to have bulk conveyances of shelled peanuts sampled during the

unloading process. A bulk lot sampled in this manner must be positive lot identified by the inspection service and held in a sealed bin until the associated inspection and aflatoxin test results have been reported.

(4) *Aflatoxin assay.* (i) The importer shall cause appropriate samples of each lot of shelled peanuts intended for edible consumption to be drawn by the inspection service. The three 48-pound samples shall be designated by the inspection service as "Sample 1IMP," "Sample 2IMP," and "Sample 3IMP" and each sample shall be placed in a suitable container and lot identified by the inspection service. Sample 1IMP may be prepared for immediate testing or Samples 1IMP, 2IMP, and 3IMP may be returned to the importer for testing at a later date under lot identification procedures.

(ii) The importer shall cause Sample 1IMP to be ground by the inspection service or a USDA or PAC-approved laboratory in a subsampling mill. The resultant ground subsample shall be of a size specified by the inspection service and shall be designated as "Subsample 1-ABIMP." At the importer's option, a second subsample may also be extracted from Sample 1IMP and designated "Subsample 1-CDIMP" which may be sent for aflatoxin assay to a USDA or PAC-approved laboratory. Both subsamples shall be accompanied by a notice of sampling signed by the inspector containing identifying information as to the importer, the lot identification of the shelled peanut lot, and other information deemed necessary by the inspection service.

Subsamples 1-ABIMP and 1-CDIMP shall be analyzed only in a USDA or PAC-approved laboratory. The methods prescribed by the Instruction Manual for Aflatoxin Testing, SD Instruction-1, August 1994, shall be used to assay the aflatoxin level. The cost of testing and notification of Subsamples 1-ABIMP and 1-CDIMP shall be borne by the importer.

(iii) The samples designated as Sample 2IMP and Sample 3IMP shall be held as aflatoxin check-samples by the inspection service or the importer until the analyses results from Sample 1IMP are known. Upon call from the USDA or PAC-approved laboratory, the importer shall cause Sample 2IMP to be ground by the inspection service in a subsampling mill. The resultant ground subsample from Sample 2IMP shall be designated as "Subsample 2-ABIMP." Upon further call from the laboratory, the importer shall cause Sample 3IMP to be ground by the inspection service in a subsampling mill. The resultant

ground subsample shall be designated as "Subsample 3-ABIMP." The importer shall cause Subsamples 2-ABIMP and 3-ABIMP to be sent to and analyzed only in a USDA or PAC-approved laboratory. Each subsample shall be accompanied by a notice of sampling. The results of each assay shall be reported by the laboratory to the importer. All costs involved in the sampling, shipment and assay analysis of subsamples required by this section shall be borne by the importer.

(iv)(A) Importers should contact one of the following USDA or PAC-approved laboratories to arrange for chemical analysis.

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

Science and Technology Division, AMS/USDA, 1211 Schley Ave., Albany, GA 31707, Tel: (912) 430-8490/8491, Fax: (912) 430-8534

Science and Technology Division, AMS/USDA, P.O. Box 488, Ashburn, GA 31714, Tel: (912) 567-3703

Science and Technology Division, AMS/USDA, 610 North Main St., Blakely, GA 31723, Tel: (912) 723-4570, Fax: (912) 723-3294

Science and Technology Division, AMS/USDA, P.O. Box 1368, Dothan, AL 36301, Tel: (205) 792-5185, Fax: (205) 671-7984

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

Science and Technology Division, AMS/USDA, P.O. Box 272, 715 N. Main Street, Dawson, GA 31742, Tel: (912) 995-7257, Fax: (912) 995-3268

Science and Technology Division, AMS/USDA, P.O. Box 1130, 308 Culloden St., Suffolk, VA 23434, Tel: (804) 925-2286, Fax: (804) 925-2285

ABC Research, 3437 SW 24th Avenue, Gainesville, FL 32607-4502, Tel: (904) 372-0436, Fax: (904) 378-6483

J. Leek Associates, Inc., P.O. Box 50395, 1200 Wyandotte (31705), Albany, GA 31703-0395, Tel: (912) 889-8293, Fax: (912) 888-1166

J. Leek Associates, Inc., P.O. Box 368, 675 East Pine, Colquitt, GA 31737, Tel: (912) 758-3722, Fax: (912) 758-2538

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

J. Leek Associates, Inc., P.O. Box 548, 42 N. Ellis St., Camilla, GA 31730, Tel: (912) 336-8781, Fax: (912) 336-0146

Pert Laboratories, P.O. Box 267, Peanut Drive, Edenton, NC 27932, Tel: (919) 482-4456, Fax: (919) 482-5370

Pert Laboratory South, P.O. Box 149, Hwy 82 East, Seabrook Drive, Sylvester, GA 31791, Tel: (912) 776-7676, Fax: (912) 776-1137

Professional Service Industries, Inc., 3 Burwood Lane, San Antonio, TX 78216, Tel: (210) 349-5242, Fax: (210) 342-9401

Southern Cotton Oil Company, 600 E. Nelson Street, P.O. Box 180, Quanah, TX 79252, Tel: (817) 663-5323, Fax: (817) 663-5091

Quanta Lab, 9330 Corporate Drive, Suite 703, Selma, TX 78154-1257, Tel: (210) 651-5799, Fax: (210) 651-9271.

(B) Further information concerning the chemical analyses required pursuant to this section may be obtained from: Science and Technology Division, USDA/AMS, P.O. Box 96456, room 3507-S, Washington, DC 20090-6456, telephone (202) 720-5231, or facsimile (202) 720-6496.

(v) *Reporting aflatoxin assays.* A separate aflatoxin assay certificate, Form CSSD-3, "Certificate of Analysis for Official Samples", or equivalent PAC-approved laboratory form, shall be issued by the laboratory performing the analysis for each lot. The assay certificate shall identify the importer, the volume of the peanut lot assayed, date of the assay, and numerical test result of the assay. The results of the assay shall be reported as follows.

(A) Lots containing 15 ppb or less aflatoxin content shall be certified as "Meets U.S. import requirements for edible peanuts under § 999.600 with regard to aflatoxin."

(B) Lots containing more than 15 ppb aflatoxin content shall be certified as "Fails to meet U.S. import requirements for edible peanuts under § 999.600 with regard to aflatoxin." The importer shall file USDA Form CSSD-3, or equivalent form, with the Secretary, regardless of result.

(5) *Appeal inspection.* In the event an importer questions the results of a quality and size inspection, an appeal inspection may be requested by the importer and performed by the inspection service. A second sample will be drawn from each container and shall be double the size of the original sample. The results of the appeal sample shall be final and the fee for sampling and analysis shall be charged to the importer.

(e) *Disposition of peanuts failing edible quality requirements.* (1) Peanuts failing grade and/or aflatoxin requirements shall be designated as non-edible quality "unrestricted"

peanuts or "restricted" peanuts and shall be crushed for oil, exported, or disposed to other non-edible outlets as specified in this section. For the purposes of this regulation, the term "non-edible quality unrestricted peanuts" means loose shelled kernels, fall through, and pickouts from—and the entire milled production of—Segregation 1, Segregation 2, and commingled Segregation 1 and 2 farmers stock peanuts which contain more than 15 ppb and 25 ppb or less aflatoxin. The term "non-edible quality restricted peanuts" means loose shelled kernels, fall through, and pickouts from—and the entire milled production of—Segregation 1, Segregation 2, and commingled Segregation 1 and 2 farmers stock peanuts which contain in excess of 25 ppb aflatoxin. The term *loose shelled kernels* means peanut kernels or portions of kernels completely free of their hulls, as found in deliveries of farmers stock peanuts or those which fail to ride the screens prescribed in paragraph (d)(iv) of this section; the term *fall through* means sound split and broken kernels and whole kernels which pass through specified screens; and the term *pickouts* means those peanuts removed during the final milling process at the picking table, by electronic equipment, or otherwise during the milling process.

(2) Non-edible quality unrestricted peanuts may be disposed to animal feed: *Provided*, That such peanuts are certified by the inspection service as to moisture, foreign material content and treated with a coloring agent or dyeing solution covering at least 80 percent of the peanuts, handled and shipped under lot identification procedures. Except for bulk loads, red tags shall be used and marked "Animal Feed, Not For Human Consumption."

(3) Lots of non-edible quality unrestricted peanuts may be commingled during or after fragmentation and, if certified as meeting fragmentation requirements by the inspection service, such fragmented peanuts may be exported. For the purposes of this section, the term *fragmented* means that not more than 30 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish— $1\frac{5}{64} \times \frac{3}{4}$ inch slot; Runner— $1\frac{6}{64} \times \frac{3}{4}$ inch slot; and Virginia— $1\frac{5}{64} \times 1$ inch slot. All peanut lots exported must be lot identified by the inspection service and applicable Customs Service procedures for the export of merchandise must be followed.

(4) Unrestricted fall through may be disposed for use as wild-life feed and rodent bait, if in labeled containers.

(5) Seed peanuts which are chemically treated causing them to be unfit for edible or animal feed use shall be exempt from the requirements of paragraph (c) of this section.

(6) Meal produced from the crushing of unrestricted peanuts shall be exempt from further aflatoxin testing. Meal produced from the crushing of restricted peanuts shall be tested and the numerical test result of the chemical assay shall be shown on a certificate covering each lot and the certification shall accompany each shipment or disposition.

(7) Non-edible quality restricted peanuts may be crushed for oil or exported: *Provided*, That such peanuts are lot identified, bagged, red tagged, and so certified by the inspection service.

(8) Inspection certifications and proof of non-edible dispositions sufficient to account for all peanuts in each consumption entry filed by the importer must be reported to the Secretary by the importer pursuant to paragraphs (f) (2) and (3) of this section.

(f) *Reconditioning of failing peanuts:*

(1) Importers may remill and/or blanch shelled peanuts which originated from Segregation 1 peanuts that fail quality requirements of Table 1 or are positive to aflatoxin. After such reconditioning, peanuts meeting the quality requirements of Table 1 and which are certified negative to aflatoxin (15 ppb or less) may be disposed for edible use.

(2) Whole lots of remilled and/or blanched peanuts, and residuals of such peanuts, which continue to fail quality requirements of Table 1 and contain 25 ppb or less aflatoxin content shall be considered "non-edible quality unrestricted" peanuts and shall be disposed as "unrestricted" peanuts crushed for oil, exported, or animal feed, pursuant to provisions of paragraph (e). Meal produced from unrestricted peanuts shall be disposed pursuant to paragraph (e)(5).

(3) Whole lots of remilled and/or blanched peanuts, and residuals of such peanuts, which continue to fail quality requirements of Table 1 and contain more than 25 ppb aflatoxin content, shall be considered "non-edible quality restricted" peanuts and shall be disposed as "restricted" peanuts pursuant to paragraph (e)(6). Meal produced from restricted peanuts shall be disposed pursuant to paragraph (e)(5).

(4) Inspection certifications and proof of non-edible dispositions sufficient to account for all peanuts in each consumption entry filed by the importer must be reported to the Secretary by the

importer pursuant to paragraphs (f) (2) and (3) of this section.

(g) *Safeguard procedures.* (1) Prior to arrival of a foreign produced peanut lot at a port of entry, the importer, or customs broker acting on behalf of the importer, shall mail or send by facsimile transmission (fax) a copy of the Customs Service entry documentation for the peanut lot to the inspection service office that will perform sampling of the peanut shipment. The documentation shall include identifying lot or container number(s) and volume of the peanut lot being entered, and the location (including city and street address), date and time for inspection sampling. The inspection office shall sign, stamp, and return the entry document to the importer. The importer shall present the stamped document to the Customs Service at the port of entry and send a copy of the document to the Secretary. The importer also shall cause a copy of the entry document to accompany the peanut lot and be presented to the inspection service at the inland destination of the lot.

(2) The importer shall file with the Secretary copies of the entry document and grade, aflatoxin, and identification certifications sufficient to account for all peanuts in each entry filed by the importer. Certificates and other documentation providing proof of non-edible disposition, such as bills of lading and sales receipts which report the weight of peanuts being disposed and the name, address and telephone number of the non-edible peanut receiver, must be sent to the Marketing Order Administration Branch, Attn: Report of Imported Peanuts. Facsimile transmissions and overnight mail may be used to ensure timely receipt of inspection certificates and other documentation. Fax reports should be sent to (202) 720-5698. Overnight and express mail deliveries should be addressed to USDA, AMS, Marketing Order Administration Branch, 14th and Independence Avenue, SW, Room: 2526-S, Washington, DC, 20250. Regular mail should be sent to AMS, USDA, P.O. Box 96456, room 2526-S, Washington, DC 20090-6456. Telephone inquiries should be made to (202) 720-6862.

(3) Certificates and other documentation for each peanut lot must be filed within 23 days of the filing date of the entry for the lot. Failure of an importer to receive edible certification—or arrange for appropriate non-edible disposition—on all foreign produced peanuts, and file such reports with the Secretary within 23 days of an entry declaration, may result in a request for a redelivery demand by the Customs

Service. Extensions granted by the Customs Service will be correspondingly extended by the Secretary, upon request of the importer.

(4) The Secretary shall ask the Customs Service to demand redelivery of foreign produced peanut lots failing to meet requirements of this section. Importers unable to redeliver or account for all peanuts covered in a redelivery order shall be liable for liquidated damages. Failure to fully comply with quality and handling requirements or failure to notify the Secretary of disposition of all foreign produced peanuts, as required under this section, may result in a compliance investigation by the Secretary. Falsification of reports submitted to the Secretary is a violation of Federal law punishable by fine or imprisonment, or both.

(h) *Additional requirements:* (1) Nothing contained in this section shall be deemed to preclude any importer from milling or reconditioning prior to entry any shipment of peanuts for the purpose of making such lot eligible for importation. However, all peanuts presented for importation into the United States for human consumption use must be certified as meeting the quality requirements specified in paragraph (c) of this section.

(2) Conditionally released peanut lots of like quality and belonging to the same importer may be commingled. Defects in an inspected shelled lot may not be blended out by commingling with other shelled lots of higher quality. Such commingling must be consistent with applicable Customs Service regulations. Commingled lots must be reported and disposed of pursuant to paragraphs (f)(2) and (f)(3) respectively of this section.

(3) Inspection by the Federal or Federal-State Inspection Service shall be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (7 CFR part 51). The importer shall make each conditionally released lot available and accessible for inspection as provided herein. Because inspectors may not be stationed in the immediate vicinity of some ports-of-entry, importers must make arrangements for inspection and certification through one of the offices listed in this section.

(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, released by the Customs Service for consumption, may be transferred or sold to another person: *Provided*, That the original importer shall be the importer

of record unless the new owner applies for bond and files Customs Service documents pursuant to 19 CFR 141.113 and 141.20: and *Provided further*, That such peanuts must be certified and reported to the Secretary pursuant to paragraphs (f)(2) and (3) of this section.

(6) The cost of transportation, sampling, inspection, certification, chemical analysis, and identification, as well as remilling and blanching, and further inspection of remilled and blanched lots, and disposition of failing peanuts, shall be borne by the importer. Whenever peanuts are presented for inspection, the importer shall furnish any labor and pay any costs incurred in moving, opening containers, and shipment of samples as may be necessary for proper sampling and inspection. The inspection service shall bill the importer for fees covering quality and size inspections; time for sampling; packaging and delivering aflatoxin samples to laboratories; certifications of lot identification and lot transfer to other locations, and other inspection certifications as may be necessary to verify edible quality or non-edible disposition, as specified herein. The USDA and PAC-approved laboratories shall bill the importer separately for fees for aflatoxin assay. The importer also shall pay all required Customs Service costs as required by that agency.

(7) Each person subject to this section shall maintain true and complete records of activities and transactions specified in this part. Such records and documentation accumulated during importation 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: January 23, 1996.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
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