

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 996, 997, 998, and 999

[Docket No. FV02-996-1 IFR]

#### Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States and Termination of the Peanut Marketing Agreement and Associated Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule establishes a new Part 996 requiring all domestic and imported peanuts marketed in the United States to be officially inspected. This action is mandated by the Farm Security and Rural Investment Act of 2002, enacted May 13, 2002. This rule establishes handling standards that handlers and importers must follow and edible quality standards that all such peanuts intended for edible use must meet prior to entering human consumption channels. Safeguards to protect against peanut quality concerns also are specified. This rule also terminates Peanut Marketing Agreement No. 146 (Agreement) and the rules and regulations issued under the Agreement. It also terminates the companion regulations that apply to imported peanuts and peanuts handled by persons not subject to the Agreement.

**DATES:** Effective September 10, 2002, except that, Part 998 is removed effective January 1, 2003; comments received by October 9, 2002, will be considered prior to issuance of a final rule. Indemnification payments for the 2001 crop peanuts will continue through December 31, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments

concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or e-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). All 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Jim Wendland or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, suite 2A04, Unit 155, Riverdale, Maryland 20737; telephone (301) 734-5243, Fax: (301) 734-5275 or Ronald L. Cioffi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; telephone (202) 720-2491, Fax: (202) 720-8938; or e-mail: [james.wendland@usda.gov](mailto:james.wendland@usda.gov), [kenneth.johnson@usda.gov](mailto:kenneth.johnson@usda.gov) or [ronald.cioffi@usda.gov](mailto:ronald.cioffi@usda.gov).

Small businesses may request information on complying with this rule by contacting Jay Guerber, at the same address as above, or e-mail: [jay.guerber@usda.gov](mailto:jay.guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171), 7 U.S.C. 7958, hereinafter referred to as the "Act."

This interim final rule has been determined to be non-significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB) and therefore has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

#### Termination of the Peanut Marketing Agreement and the Peanut Non-Signer and Import Regulations

This rule terminates Peanut Marketing Agreement No. 146 (7 CFR 998.1-998.61) and the rules and regulations (7 CFR 998.100-998.409) in effect under the Agreement on December 31, 2002, so that indemnification payments can be made on 2001 crop peanuts. This rule also terminates the companion regulations that apply to peanuts handled by persons not subject to the Agreement (7 CFR part 997) and to imported peanuts (7 CFR 999.600) effective September 10, 2002.

The Peanut Marketing Agreement No. 146 (7 CFR part 998) has been in effect since 1965 under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (AMAA). The Agreement was administered by the Peanut Administrative Committee (PAC), which was comprised of peanut handlers and producers appointed by USDA. Minimum quality regulations were applied to handlers who signed the Agreement. The Agreement covered peanuts produced in the three regional production areas in the United States. The Agreement also included authority for indemnification payments to signatory handlers on peanuts involved in product and appeals claims due to aflatoxin content. Reporting and recordkeeping requirements also were prescribed. Handlers paid assessments to the PAC to cover program administrative and indemnification costs.

Consistent with the requirements of the AMAA, comparable quality requirements were in effect for peanuts handled by persons not signatory to the Agreement ("non-signers"). The non-signer program (7 CFR part 997) was mandated in 1989 by Public Law 101-220, which amended the AMAA. The peanut import regulation has been authorized by section 108B(f)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445c3), as amended in 1990 and 1993.

The non-signer regulations covered peanuts handled by persons not subject to the Agreement. The inspection and quality requirements were the same as those under the Agreement. Non-signer handlers had to pay the same administrative assessment rate as applied to signatory handlers under the Agreement.

The peanut import regulation required imported peanuts to meet the same quality and handling requirements as required under the Agreement. Imported peanuts were maintained under lot identification procedures and kept separate and apart from domestic peanuts until certified for human consumption use.

Under all three programs, failing peanuts could be reconditioned to meet edible requirements or disposed of in non-edible outlets. Safeguard provisions were included in the three programs to ensure that the Federal or Federal State Inspection Service (Inspection Service) sampled, inspected, and certified the quality of all peanut lots intended for edible consumption, and that chemical analyses were performed by USDA laboratories or laboratories approved by USDA.

The Act terminated the PAC effective July 1, 2002. This, in turn, requires terminating the Agreement and its implementing regulations. The companion regulations covering peanuts handled by persons not signatory to the Agreement and imported peanuts also are terminated. Assessments collected by the PAC under the Agreement and by USDA under the non-signer regulations ceased with 2001 crop peanuts.

#### **New Peanut Program Authority**

Section 1308 of the Act requires that USDA take several actions with regard to peanuts marketed in the United States, effective with 2002 crop peanuts.

**Mandatory Inspection:** Paragraph (a) requires that all peanuts marketed in the United States (including imported peanuts) be officially inspected and graded by Federal or Federal-State inspectors.

**Termination of the Peanut Administrative Committee:** Paragraph (b) terminated the PAC effective July 1, 2002. As noted above, because the PAC was charged with daily oversight of the Agreement's regulatory program, termination of the PAC necessitates termination of the Agreement and its implementing regulations. The companion non-signer and peanut import regulations were based on regulations under the Agreement. Those regulations also are terminated.

**Establishment of a Peanut Standards Board:** Paragraph (c) provides for the establishment of a Peanut Standards Board (Board), and requires USDA to consult with the Board prior to establishing or changing quality and handling standards for domestically produced and imported peanuts. The Board is not subject to the Federal Advisory Committee Act. A transition period is designated to allow time for

USDA to implement nomination procedures and select a Board, as prescribed under the Act.

USDA received nominations and applications from interested persons to serve on the Board. A Notice was published in the **Federal Register** on August 2, 2002 (67 FR 50409) and an application form was posted on the AMS Web site at: <http://www.ams.usda.gov/fv/peanut-farbill.html>. Written nominations were received through September 3, 2002.

The Act also provides, in paragraph (g)(1) of section 1308, that during the transition period from the Agreement to the new program, USDA may designate persons serving as members of the PAC to serve as members of the Board, on an interim basis, for the purpose of carrying out the duties of the Board. USDA has established the interim Board and has consulted with the Board and Board officers on three occasions to establish the quality and handling standards specified in this program.

**Maintaining wholesome quality peanuts:** Paragraph (d) directs USDA to make identifying and combating the presence of all quality concerns related to peanuts a priority in the development of quality and handling standards for peanuts and in the inspection of domestically produced and imported peanuts. The Act directs USDA to consult with appropriate Federal and State agencies to provide adequate safeguards against all quality concerns related to peanuts. USDA notified State government Inspection Service supervisors of the proposed text on the internet and met with supervisors on July 29 and August 15, 2002. USDA also has contacted officials in the United States Customs Service (Customs Service) and the Food and Drug Administration (FDA) with regard to this new program.

**Imported peanuts:** Paragraph (e) provides that imported peanuts shall be subject to the same quality and handling standards as apply to domestically produced peanuts.

#### **Program Continuity**

To maintain program continuity until the new peanut program could take effect, USDA continued the implementing regulations of the Agreement, and the non-signer and import regulations from July 1, 2002, until the effective date of this action. This action terminates the Agreement and the rules and regulations in effect under the Agreement on December 31, 2002, to allow payment of indemnification claims on 2001 crop peanuts. The peanut non-signer and

import regulations are terminated on the effective date of this action. Assessments will not be collected and indemnification will not be paid on 2002 crop peanuts.

The provisions of this new program will apply to 2002 and subsequent crop year peanuts, to 2001 crop year peanuts not yet inspected, and to 2001 crop year failing peanuts that have not met disposition standards, and will continue in force and effect until modified, suspended, or terminated.

Pursuant to the Act, USDA has consulted with interim Board members in the development of the quality and handling standards established in this rulemaking. USDA coordinated a conference call with interim Board members on July 2, 2002. An initial draft text with reduced USDA oversight was prepared by USDA and distributed to the interim Board members prior to the conference call. The draft was reviewed and initial changes and comments were proposed. At the interim Board's direction, four interim Board officers met with USDA on July 17, 2002. Three of the four officers proposed several additional changes. A second draft text was prepared reflecting those proposed changes. That draft was again distributed to interim Board members and State supervisors of the Inspection Service and was discussed at a meeting in Atlanta, Georgia, on July 30, 2002. In addition to the 18-member interim Board, approximately 50 industry members and Inspection Service State supervisors attended the meeting. The revised draft text was thoroughly reviewed and several modifications were recommended. Quality standards which would allow purchase of Segregation 2 and 3 quality peanuts for processing for human consumption use and a change minimum kernel size were discussed by the interim Board. An implementation schedule also was discussed.

In addition to those meetings, USDA revised the draft text after the Atlanta meeting and posted it on the AMS website. Written comments were received from interim Board members after the meeting and a few comments were received in response to the posting of the draft standards text on the internet. Comments were accepted through August 12, 2002.

#### **New Peanut Quality and Handling Standards**

This rulemaking action establishes, under Part 996, peanut quality and handling standards similar to the quality and handling requirements that were in effect under USDA's three previous peanut programs, with certain

changes. The changes, described in the following discussion, are based on interim Board and industry suggestions.

*No restrictions on use of farmers stock peanuts:* Previously, only farmers stock peanuts determined to be Segregation 1 quality peanuts could be acquired by handlers for preparation and disposition to human consumption outlets.

Segregation 2 and 3 farmers stock peanuts were restricted to non-human consumption use such as seed, oilstock, animal feed, and birdseed.

This rule differs from the previous peanut programs in that handlers may purchase any segregation quality peanuts for shelling and eventual disposition to human consumption outlets, provided that such peanuts, after handling, meet the outgoing standards of this program. This change was recommended by several of the large peanut handling operations.

Some handlers on the interim Board stated that the prohibition on Segregation 2 and 3 peanuts for edible use is more than 35 years old and that modern technologies enable handlers to shell and mill failing quality peanuts of any segregation category. They stated that this will increase use of domestic peanut production for edible consumption without a loss in edible peanut quality. They also stated that raw, farmers stock peanuts produced in other countries are not subject to incoming quality requirements or restricted as to segregation levels in those countries. Thus, they believe, this change in the peanut program would place domestic handlers on an even playing field with shellers in other countries who might export to the United States peanuts shelled and handled from any quality raw peanuts.

At least one grower spoke in favor of removal of the restriction on use of Segregation 2 and 3 farmers stock only in non-edible outlets. Many growers have long contended that a single moldy peanut in a wagonload of farmers stock greatly reduces the value of the entire wagon and, thus, significantly reduces the grower's income. These growers see this as unfair and believe that they should be able to market their peanuts without a restriction on segregation use.

Under the new program, Segregation 3 peanuts with visible aflatoxin mold may now be purchased by handlers and imported by importers. Safeguard procedures remain in place to assure peanut quality and wholesomeness. The requirement that any farmers stock peanuts shelled and milled for human consumption use must be inspected and certified as meeting outgoing quality standards for grade and aflatoxin

content prior to disposition for human consumption use is retained in this rule.

Storage of Segregation 2 and 3 farmers stock peanuts purchased by the handler is at the handler's discretion. Separate storage and shelling of Segregation 2 and 3 peanuts under the handler's ownership are no longer necessary because any peanuts intended for human consumption use must meet outgoing quality requirements before such use. Shelling of a handler's farmers stock peanuts and use of the handler's shelled peanuts also are at the handler's discretion, provided that any shelled peanuts which the handler disposes for human consumption use are inspected and certified for outgoing grade quality, as indicated in the table in § 996.31(a), and certified as negative to aflatoxin pursuant to a chemical analysis carried out by a USDA or USDA-approved laboratory. Positive lot identification (PLI) practices covered under § 996.40(a) must also be followed.

A handler may dispose of the handler's non-edible quality peanuts (sheller oilstock residuals) to such non-edible peanut uses as crushing into oil, or animal feed, or seed, pursuant to § 996.50. Disposition is at the handler's discretion provided that non-edible peanuts are moved under positive lot identification procedures and records documenting all such dispositions are maintained by the handler pursuant to § 996.71(b).

To the extent that farmers stock peanuts are imported, the importer has the same discretionary control over the storage, handling, and disposition of such peanuts.

Any storage or subsequent inspection that a handler may carry out for farmers stock peanuts held under USDA's Farm Service Agency's (FSA) loan program are subject to the provisions of the loan program.

Likewise, a handler may receive or acquire farmers stock peanuts or shelled peanuts from another handler and proceed to mill and prepare those peanuts for edible or non-edible use.

Any contractual arrangements covering storage, shelling, milling, or disposition of such peanut lots are up to the two handlers. However, any peanuts intended for human consumption must be certified for such use pursuant to § 996.31(a).

This rule establishes the same outgoing quality standards for damage, defects, foreign material and moisture, and maximum allowable aflatoxin content as required under the previous peanut programs. The 15 parts-per-billion (ppb) maximum aflatoxin content is specified in the definition of

the term "negative aflatoxin content" in § 996.11.

*Direct blanching without prior inspection:* Under the previous programs, all peanuts were required to be sampled and inspected for grade quality and aflatoxin content as the peanuts completed the shelling operation. The peanuts were also positive lot identified at that time and kept separate and apart from other milled lots. After the peanuts were moved to a blanching operation and blanched, a second sampling and grade inspection was conducted.

Under this program, handlers intending to blanch peanuts pursuant to a buyer's demand, may move peanuts from the handler's shelling facility to the handler's dedicated blanching facility without obtaining outgoing inspection and PLI prior to movement. Under this provision, the handler's blanching operation may not blanch peanuts belonging to other handlers. Movement of such peanuts under these conditions may be without grade inspection and PLI.

This change was recommended by interim Board handler members who have their own blanching facilities as a method of reducing handling and inspection costs and improving the efficiency of handling operations for peanuts that the handler intends to blanch. This change does not apply to peanuts sent to a custom blancher for blanching because those peanuts may be commingled with peanuts from another handler. To help safeguard against inadvertent commingling with another handler's peanuts, peanut lots sent to a custom blancher must be maintained under positive lot identity and be accompanied by a valid grade inspection certificate.

Because the peanuts are sampled and inspected for grade and aflatoxin content after completion of the blanching operation, and PLI is applied at that time, the outgoing quality and identity of the peanuts is not jeopardized.

*Reporting farmers stock acquisitions:* Because handlers and importers may now shell and mill Segregation 2 and 3 peanuts into edible quality peanuts, it is necessary that USDA account for all farmers stock peanuts acquired by handlers and importers. Reporting of farmers stock acquisitions is changed in this rule to require that all farmers stock acquisitions, regardless of segregation category, must be reported by the handler and importer to USDA. The Monthly Report of Acquisitions form is similar to the form previously used under the non-signer peanut program

and to the PAC-1 filed by signatory handlers under the Agreement.

*Reporting failing lots:* Under the previous programs, non-signer handlers and importers were required to file with USDA copies of the outgoing grade and aflatoxin certificates on every peanut lot failing quality or aflatoxin standards. USDA used these certificates to monitor reconditioning and proper disposition of the failing lots. Under the Agreement, the Inspection Service and the aflatoxin laboratories filed with PAC, all grade and aflatoxin certificates on behalf of the signatory handlers.

Reporting procedures similar to those used under the Agreement are used for all handlers and importers in this new program. Thus, handlers and importers will not be required to file failing grade quality and aflatoxin certificates with USDA. These certificates will be filed by the Inspection Service and USDA and USDA-approved aflatoxin laboratories.

#### **Comments From Interim Board Members and Others**

As previously discussed, USDA conducted a telephone conference call with interim Board members on July 2, 2002, and met with interim Board officers on July 17, 2002, and the full interim Board on July 30, 2002. Written comments from interim Board members and a few handlers not members of the interim Board were received throughout this period. Unless otherwise indicated, the comments addressed below were provided during the July 30 interim Board meeting.

Most interim Board members indicated that they did not seek radical or wholesale changes to the Agreement's regulations. This was apparent from the comments offered during the initial telephone conference call and at the July 30 interim Board meeting.

Some grower member representatives raised three general objections to establishment of new standards for the 2002 peanut crop. They believed that the new program should not be implemented if the 2002 crop harvest had begun. Because of geographical location, peanuts in south Texas and north Florida, representing a small portion of the total crop, were harvested before USDA could complete this rulemaking process. Because the new quality standards offer potential benefits to growers and handlers, some grower members believe that implementation after the 2002 crop harvest has begun is unfair to producers and handlers in those early-harvest areas.

Some interim Board members suggested that the greatest benefit to the program—purchase of Segregation 2 and 3 peanuts for possible edible use—

would affect only a very small percentage of the early harvest peanuts, and that it may be possible to warehouse some of those farmers stock peanuts until the new standards become effective. Other interim Board members did not contest this assessment.

Section 1308 of the Act provides that its provisions take effect with the 2002 peanut crop. An alternative could be to continue the more restrictive 2001 regulations for the entire 2002 crop. However, USDA believes that implementation of the program as soon as possible after harvest begins is better than that alternative. The benefits of the new program to the entire industry are compelling. Most interim Board members believe that there should not be further delay in implementing this action. Only a small number of early harvest producers should be affected by the implementation date of this action. Further, storage accommodations can help alleviate any timing concerns.

The same interim Board members concerned about producer fairness also cautioned about making significant changes to incoming quality provisions without knowledge of changes being considered to the Marketing Assistance Program by USDA's Farm Service Agency. Pursuant to the Act, the FSA loan program also is being restructured, and the extent and nature of the loan provisions will not be known until after the quality and handling standards in this program become effective.

These members stated that the provision to allow purchase of Segregation 2 and 3 quality peanuts for edible consumption could affect the FSA loan program. They questioned details relating to the loan payments, inspection costs and storage of farmers stock peanuts placed under FSA's loan program. These questions are applicable to growers and will be addressed by FSA in that program. This action concerns the outgoing quality standards and handling procedures applicable to peanut handlers.

None of the definitions and other provisions addressed in this rule will be applicable to other peanut programs operated by USDA such as the loan and direct payment, counter-cyclical payments, and quota buyout payment programs provided for in the 2002 Act. Thus, for example, the definitions of "handle" and "handler" set out in this rule will have no application to those other programs, and will not govern eligibility for payments, or the kinds of payments that can be made, under those other programs. Rather, the definitions and other provisions implemented here were strictly developed for the limited purposes reflected in the rule and no

other. The policy choices and any statutory interpretations involved reflect that limited purpose. FSA was consulted in that respect and assured that the understanding and intent was clearly that these rules would not in any way restrict policy determination made with respect to other programs. Rules for other peanut programs will be issued in due course. Further, references in this preamble to previous peanut programs is meant to refer to those peanut operations which were under the control of the Agricultural Marketing Service (AMS) and not those under the control of FSA or FSA's predecessor agency.

Written comments were received from a few independent handlers stating that not all handlers are able to remove all defective kernels, particularly in lots with concealed freeze damage or kernels with yellow pitting. Also, some operations do not have the latest technologies or their own dedicated blanching facilities to remove all kernels which contain aflatoxin.

Handlers will have to make decisions regarding the reconditioning of each failing lot. Those decisions are made on a lot-by-lot basis, based upon the grade factors identified in the lot's latest grade inspection or aflatoxin certificate. Handlers with the latest milling technologies or their own blanching operations may be better able to recondition failing lots than handlers without such equipment. Handlers are not prevented from remilling lots more than one time to remove defective or contaminated kernels. Custom blanching operations with current technologies are available to all handlers. If reconditioning operations are not successful, other handlers with such equipment could acquire the failing lots or recondition them on a contract basis. Because handlers are not prevented from reconditioning other handlers' failing lots, high quality standards can be established and maintained.

In the 1980's, Agreement regulations prohibited small kernels from use in edible consumption lots because research showed a higher incidence of aflatoxin in small peanuts. Research conducted at that time indicated that aflatoxin occurs more frequently in peanuts which are under stress during the growing season and that many peanut kernels are small because the plants were under such stress.

Some large handlers now contend that modern sorting technologies are able to remove the smaller, contaminated kernels and that end-product manufacturers now have markets for smaller whole kernels in snack foods

and other edible products. The handlers recommend that the change would allow more domestically produced peanuts to be used in human consumption outlets and, thus, result in a more efficient use of total domestic peanut production. They also claim that foreign manufacturers of peanut products, such as peanut paste and peanut butter, are not under such minimum size restrictions for the manufactured product they export to the United States. They contend that relaxation in the size and shape of the holes in the screens used to sort out small kernels will allow domestic handlers and manufacturers to better compete with foreign product.

However, interim Board members representing regional grower associations oppose smaller kernel sizes for food quality and wholesomeness reasons. They believe that the risk of increased aflatoxin contamination in the smaller kernels outweighs the benefit of any incremental increase in the use of small peanut kernels, or cost savings accrued. Those opposed to use of small kernels contend that, in addition to having a higher incidence of aflatoxin, smaller kernels also may have a bitter taste. At the interim Board meeting, a representative from a peanut manufacturers' association said that manufacturers would oppose use of smaller size kernels.

The draft text which USDA posted on the Internet included the table displaying the amended screen sizes that would allow smaller kernels in edible lots. Written comments were received, most from interim Board members, opposing use of round hole screens and the smaller kernel size. Those comments cited concerns for wholesomeness and a loss of quality if smaller kernels were allowed in edible lots. Some suggested that the screen sizes should not be changed without further research on the increased risk of aflatoxin in small peanut kernels.

After review of the positions presented at the meeting and the written comments received, USDA believes that the kernel sizes specified under the previous peanut programs should continue in effect for the 2002 crop year. Therefore, the recommendation to change the minimum size standard is not accepted for 2002 crop peanuts.

An oilmill operator (crusher) filed a written comment that the mission of the new standards should be to ensure food safety and not to establish restrictions that increase costs and hinder trade between willing sellers and buyers. The oilmill operator suggested that: (1) Incoming inspection should not be required for farmer stock peanuts that

the producer and handler/crusher know will be sent immediately to crushing; (2) shelled peanuts intended for non-edible use do not need to be positive lot identified; and (3) peanuts imported as non-edible specifically for crushing also should not have to be inspected before such disposition.

Incoming inspection is necessary to determine the value of any farmers stock peanuts. It is not likely that a producer will sell peanuts at low, oilstock prices without first obtaining inspection to ascertain whether the peanuts could be higher than oilstock quality. In addition, production data collected at incoming inspection continues to be used for loan data purposes and to develop daily crop reports which are helpful to peanut growers, handlers and manufacturers. This data would not be as helpful to all segments of the industry if it covered only high quality peanuts.

With regard to the commenter's second point, sheller oilstock residuals are positive lot identified with red tags to help prevent commingling in handling or storage and to assure buyers that certified edible lots are not mixed with lesser quality peanuts prior to shipment. Also, most crushing operations require certification of foreign material and moisture on milled peanuts.

With regard to the commenter's third point, to date, no peanuts have been imported specifically for crushing. Crushing is the least economical use of peanuts. It is not likely that importers would pay the international shipping costs and use limited duty-free import quota on peanuts suitable only for crushing.

This action removes a long standing Agreement provision (§ 998.200(c)(3)) which automatically imposed a small aflatoxin sampling and testing charge on buyers. The charge had been carried for several years under the Agreement and was supported by handler members on the interim Board. However, such service charges are matters that should be negotiated between sellers and buyers and, therefore, are not appropriate in these regulations.

Several additional changes have been made to the draft text posted on the Internet. These changes are based on further USDA review of the draft text and discussions with Inspection Service supervisors. These changes include re-instituting Agreement requirements that help USDA monitor disposition of sheller oilstock residuals, the movement of failing lots through the reconditioning processes, adjustments to positive lot identification procedures, and compliance oversight. A more thorough recordkeeping paragraph also

was added to reflect current industry practice and the requirements of this program.

The outgoing quality and handling standards established under this rule are the same as, or similar to, the requirements under the previous peanut programs and are intended to maintain the peanut industry's high standards for peanut quality and wholesomeness.

### Quality Standards

The following categories of peanuts are subject to inspection requirements and quality and handling standards established under new Part 996.

*Incoming quality—farmers stock peanuts:* Under this program, all farmers stock peanuts received by handlers or importers must be sampled and inspected by Federal or Federal-State Inspection Service (Inspection Service) inspectors to determine the moisture content of the peanuts, the amount of foreign material in the peanuts, and the amount of damage and concealed damage in the peanuts. Moisture and foreign material content not exceeding 10.49 percent meet incoming quality standards—the same as under the previous peanut programs. The peanuts also are inspected for visible *Aspergillus flavus* mold.

Domestically produced farmers stock peanuts are required to undergo incoming inspection at a buying point prior to shelling or storage. Incoming quality standards are found in paragraph (a) of § 966.30. Incoming inspection is conducted by the Inspection Service to determine the general grade level of raw, farmers stock peanuts presented by the producer at buying points in the various domestic production areas. Peanuts are graded for foreign material, loose-shelled kernels, and moisture content. Segregation 1 farmers stock peanuts may contain 2 percent or less damaged kernels and 1 percent or less concealed damage caused by rancidity, mold, or decay. Segregation 2 peanuts are lesser quality peanuts containing more than 2 percent damaged kernels, or more than 1 percent concealed damage. Segregation 3 peanuts are those which contain visible *Aspergillus flavus*. Segregation 2 and 3 peanuts may be shelled and entered into human consumption outlets provided the peanuts meet outgoing quality and wholesomeness requirements. Imported farmers stock peanuts must be transported directly to a buying point and subjected to incoming inspection to determine Segregation quality.

It is the handler's option to keep farmers stock peanuts segregated by category or to commingle Segregation 1,

2 and 3 peanuts in the handler's warehouse. Domestically produced and imported farmers stock peanuts, however, must be kept separate and apart because imported peanuts are subject to Customs Service redelivery demands until the imported peanuts are certified as meeting outgoing quality requirements specified in § 996.31.

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. Handlers and importers must report to USDA acquisitions of all Segregation 1, 2, and 3 farmers stock peanuts. The Inspection Service issues USDA Form FV-95, "Federal-State Inspection Service Notesheet" designating the lot as either Segregation 1, 2, or 3 quality. Reporting requirements are discussed in more detail below.

Because USDA cannot determine whether peanuts produced and milled in a foreign country originated from Segregation 1 quality peanuts, importers do not have to provide evidence of Segregation 1 quality for foreign peanuts imported in shelled or cleaned-inshell condition.

*Outgoing quality—shelled peanuts:* Both domestic and imported shelled peanuts must be sampled, inspected, and certified as meeting the outgoing grade standards specified in the table in § 996.31(a) entitled "Minimum Quality Standards B Peanuts for Human Consumption." The table lists, for different peanut varieties, maximum percentage tolerances for damaged kernels; unshelled kernels and kernels with minor defects; split and broken kernels and sound whole kernels (size factors); foreign material, and moisture content. All categories and tolerances in the table are the same as those in effect under the Agreement at the time the PAC was terminated.

Each shelled peanut lot also must undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA. AMS' Science and Technology Programs assures that all of the laboratories conducting chemical analyses follow the same testing procedures. The maximum allowable presence of aflatoxin is 15 parts per billion (ppb)—the same standard as required under the three previous peanut programs. This tolerance has been in effect for more than 15 years and was in effect at the time the PAC was terminated.

Once certified as meeting outgoing quality standards under § 996.31(a) for shelled peanuts, a lot may not be commingled with any lot that has failed outgoing quality standards or any

residual peanuts from reconditioning operations.

*Outgoing quality—Cleaned-inshell peanuts:* Based on the changes in the edible use of Segregation 2 and 3 peanuts, cleaned-inshell peanuts are no longer restricted to Segregation 1 peanuts. Cleaned-inshell peanuts are farmers stock peanuts that are cleaned, sorted, and prepared for human consumption markets in the U.S. and must be inspected against minimum quality standards not exceeding 2 percent damage, 10 percent moisture, and 0.5 percent foreign material. Cleaned-inshell peanuts also may not exceed more than 1 percent mold unless the lot is also chemically tested and found "negative" as to aflatoxin. These standards are found in paragraph (b) of § 996.31.

#### Handling Standards

Positive lot identification procedures are established under § 966.40. These are necessary to maintain identification of peanut lots and ensure that lots certified for edible consumption are not commingled with peanuts of lower quality. This section also establishes consistent procedures for collecting samples from peanut lots that are being inspected. Lot identification and sampling procedures must be applied consistently on all peanut lots undergoing inspection to ensure that all peanut lots are handled uniformly and lots once certified as meeting outgoing standards are maintained and shipped without loss of quality. PLI standards under this rule are the same as the positive lot identification requirements used by the Inspection Service in under the agreement, non-signer, and import peanut programs.

The Inspection Service works with domestic peanut handlers, importers, and storage warehouses to determine the most appropriate PLI or lot identity method to be used on individual peanut lots. Several factors dictate which PLI method should be used: (1) Size of the lot; (2) storage space on the dock or in the warehouse; (3) whether any further movement of the lot is required prior to certification; and (4) other needs of the handler, importer, dock or warehouse operators, or the Customs Service.

For domestic lots and repackaged import lots, PLI includes PLI stickers, tags or seals applied to each individual package or container in such a manner that is acceptable to the Inspection Service and maintains the identity of the lot. For imported lots, PLI tape may be used to wrap bags or boxes on pallets, PLI stickers may be used to cover the shrink-wrap overlap, doors may be sealed to isolate the lot, bags or

boxes may be stenciled with a lot number, or any other means that is acceptable to the Inspection Service. The crop year or quota year shown on the positive lot identification tags shall be the year in which the peanuts in the lot were produced domestically or imported into the U.S., as appropriate.

PLI practices for both domestic and imported peanuts also include affixing a PLI seal to the door of a shipping container so that it cannot be opened without breaking the seal, and affixing a red tag on sewn bags of failing quality peanuts. Other methods acceptable to the Inspection Service that clearly identify the lot and prevent peanuts from being removed or added to the lot may be used. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and, if in other containers, by other means acceptable to the Inspection Service. All lots of shelled or cleaned-inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

The standard peanut lot size is 40,000 pounds, but may vary at the handler or buyer's preference. Lot size is limited to 200,000 pounds, which is the largest amount of peanuts that can be adequately sampled by the Inspection Service. The limitation was used under the agreement, non-signer, and import peanut programs.

*Sampling procedures:* This rule also establishes uniform sampling procedures and sample sizes that the Inspection Service follows when conducting grade inspections, and in collecting peanuts for chemical analysis. The portion of the peanuts collected for chemical analysis are sent to a USDA or USDA-approved laboratory. A portion of the peanuts sampled are held by the Inspection Service as check samples if the lot is determined to fail either grade or aflatoxin analysis. These procedures and sample sizes are the same as those used under the agreement, non-signer, and import peanut programs.

All required sampling and positive lot identification procedures are performed by inspectors of the Federal or Federal-State Inspection Service. Imported peanuts are subject to Customs Service redelivery demands if determined in violation of these quality or handling standards or Customs Service entry requirements referenced below.

Handlers and importers must reimburse the Inspection Service and chemical laboratories for sampling and grade inspection and chemical analyses for aflatoxin. Incoming inspections range from \$4.00 to \$6.25 per ton of farmers stock peanuts. Sampling and outgoing grade inspections vary with each

Federal-State Inspection Service and range from \$1.50 to \$3.00 a ton. Chemical analysis for aflatoxin averages \$40.00 per analysis. The fee schedule for USDA laboratories appear at 7 CFR 91.37.

### Import Entry Procedures

This program establishes procedures for importing peanuts into the United States that are similar to the procedures applied under the previous peanut import program (7 CFR 999.600).

*U.S. Customs Service requirements:* Importers of foreign produced peanuts must follow established Customs Service entry procedures and AMS stamp-and-fax notification and inspection procedures specified below. Customs Service importation procedures and requirements are set out in title 19 of the Code of Federal Regulations. 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 19.13 and 19.2); manipulation in bonded warehouses (19 CFR 19.11); transfer of ownership (19 CFR 141.113 and 141.20); failure to recondition (19 CFR 113.62(e)); and redelivery of merchandise (19 CFR 113.62(d)). For Customs Service purposes, the term "consumption" means "use in the United States." Customs Service entry procedures are not superseded by the import procedures in this program.

It is the importer's responsibility to file import entry documentation and notify the Inspection Service with documentation sufficient to insure inspection of all imported peanut lots. It also is the importer's responsibility to account for disposition of all failing quality peanut lots imported by the importer. A bond secured by surety or U.S. Treasury obligations must be posted by the importer with the Customs Service to guarantee the importer's performance. For more information on these procedures importers should contact their importer broker, the Customs Service office at the port where peanuts are expected to be entered, or <http://www.ustreas.gov/education/duties/bureaus/uscustoms.html>.

*Safeguard procedures:* The safeguard procedures in this part are similar to those in the current import regulation and provide for monitoring of imported

peanut lots from entry into the U.S. to final disposition. The safeguard procedures are similar to safeguard procedures already in place for peanuts and other imported fresh agricultural commodities and are consistent with the inspection, identification, and certification requirements applied to domestically produced peanuts.

To obtain information on importing peanuts or making arrangements for necessary inspection and certification, importers may contact the Fresh Products Branch headquarters office in Washington, DC, which will direct them to the closest regional inspection office. The telephone number of headquarters office is (202) 720-5870, and the fax number is (202) 720-0393.

*Stamp-and-fax procedure:* Under USDA safeguard procedures established in this program, the importer must provide advanced notice of inspection needs to the Inspection Service office that will collect samples of the peanuts for inspection. The importer must file completed entry documentation (Customs Service Form 3461 or other equivalent form) with the Inspection Service office by mail or facsimile transmission. To expedite entry procedures, the filing should occur prior to, or upon, arrival of the shipment at the port of entry. The Inspection Service office will stamp, sign, and date the entry document and return it to the importer or import broker by fax or mail. The importer/broker then submits the stamped copy to the Customs Service. This "stamp-and-fax" procedure is the same as the procedure currently in place under the import regulation and similar to procedures in place for other imported agricultural commodities under USDA jurisdiction. Failure to file with the Customs Service a copy of the entry documentation stamped by the Inspection Service may result in a delay or denial of entry by the Customs Service.

The importer must file a copy of each stamp-and-fax entry document with USDA and forward a copy, with any conditionally released lot, to the inland destination where the lot is to be inspected or warehoused. The importer must provide sufficient information to identify the peanut lot being entered and to ensure that arrangements are made for sampling and inspection. This information must include the Customs Service entry number, 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 and telephone number at the destination. If the destination is changed from that

listed on the stamp-and-fax document, the importer must immediately advise Inspection Service offices at both the original destination and the new destination of such change. Shipments that are not made available pursuant to entry documentation, or are not properly displayed for sampling purposes, will be reported to the Customs Service as failing to follow required entry procedures.

Boatload shipments exceeding 200,000 pounds must be entered under two or more Customs Service entry documents. Lot size and identification arrangements must be made cooperatively between the importer, Inspection Service, and the Customs Service office at the port-of-entry. This facilitates subsequent lot identification, inspection, and reporting of large imported shipments.

*Release for importation:* Depending on condition (shelled or inshell) and containerization, foreign-produced peanuts may be either: (1) 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 under Customs Service entry procedures and transported inland for inspection and certification.

Under option (1), foreign-produced shelled or cleaned-inshell peanuts which are held at the port-of-entry must be presented in containers or bags that allow appropriate sampling of the lot pursuant to Inspection Service requirements. After sampling, such lots are held at the port-of-entry under Customs Service custody, under positive lot identification requirements of the Inspection Service, pending results of the inspection and chemical analysis. If determined to meet the applicable edible quality requirements of this Part, the shelled or cleaned-inshell peanuts may be entered for consumption without further inspection. Reports of such entries do not have to be filed with USDA.

If a lot is held at the port of entry under Customs Service custody and subsequently determined to fail edible quality standards, the lot, at the importer's discretion, may be: exported; entered for reconditioning and if satisfactorily remilled or blanched, used for edible consumption; or entered for non-edible consumption. Such failing peanuts that remain under Customs Service custody until exported do not have to be reported to USDA because the peanuts were not officially entered into the U.S. Failing lots that are conditionally released for reconditioning at a remilling or blanching facility inland must be

reported to USDA. The importer is responsible for ensuring that such lots remain under PLI until reconditioned and determined to meet edible quality requirements. Disposition of residual peanuts to non-edible outlets also must be reported to USDA. Such reports must be submitted within the time frames discussed under Reporting and Recordkeeping Requirements, below.

Under option (2), foreign produced peanuts are conditionally released at the port of entry and transported inland for sampling, inspection, and certification. All imported farmers stock peanuts must be shipped inland for sampling and inspection because specialized sampling facilities at buying points are not available at ports of entry. All conditionally released lots must be maintained under PLI. Shelled and cleaned-in-shell lots which are subsequently sampled and determined to meet both grade and aflatoxin quality standards may be entered directly into human consumption channels of commerce and not reported to USDA. Conditionally-released peanut lots failing to meet outgoing quality standards and their eventual disposition as edible or non-edible peanuts also are reported to USDA by the Inspection Service and/or the aflatoxin laboratory.

Peanuts transported from one port-of-entry to another port-of-entry must be transported by a carrier designated by the Customs Service under 19 U.S.C. 1551. Peanuts entered for warehousing must be stored in a Customs Service bonded warehouse. Such peanuts must 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, is a conditional release, pending final certification that the peanuts conform to Customs Service entry requirements and meet the handling and quality standards of this program.

Peanut samples may be taken at the port-of-entry and shipped to an Inspection Service office with equipment and personnel qualified to a perform grade inspection. Imported shipments of farmers stock peanuts must be transported inland to a buying point where sampling equipment is available to conduct the sampling operation. In addition to grading the shelled peanuts against quality standards, the inspection office also sends samples from each lot to a USDA or USDA-approved laboratory for

aflatoxin analysis. The laboratories must send copies of aflatoxin certificates to the USDA. Importers are required to maintain all records showing compliance with these standards and all Customs Service requirements.

Importers must not release failing lots for edible consumption until reconditioned and certified as meeting the standards of this program.

#### **Reporting and Recordkeeping**

This rule establishes reporting and recordkeeping standards under § 996.71 that are necessary for USDA to monitor compliance with program quality and handling standards.

*Farmers stock acquisitions:* Handlers and importers are required to report to USDA the volume of Segregation 1, 2, and 3 farmers stock peanuts acquired from growers or others, or imported. Under the previous programs, the information was used, in part, to determine the assessment owed by signatory handlers to the PAC and non-signatory handlers to USDA.

Because all farmers stock peanuts can now be shelled for human consumption use, this rule establishes that all three categories of farmers stock must be reported. This information is used for compliance purposes and in the compilation of reports by USDA. The monthly report must include the volume, by variety, of Segregation 1, 2, and 3 farmers stock peanuts acquired in the preceding month. The storage location of the peanuts also must be reported. A form similar to USDA's FV-117 and the PAC-1 will be used by handlers and importers to report their monthly farmers stock acquisitions.

To collect farmers stock information, the interim Board recommended that USDA use the form submitted by handlers to the National Peanut Board, under the Peanut Promotion Research and Information Order (7 CFR part 1216), to determine handler assessments under the national Peanut Promotion and Research Program. However, the form previously used by the Board has been discontinued and the new "First Handler's Report" does not require disclosure of volume handled, peanut variety, or Segregation of the peanuts acquired. The form cannot be used for the purposes needed in this rulemaking.

The new form must be sent to USDA. Facsimile or express mail deliveries may be used to ensure timely receipt of certificates and other required documentation. Mail deliveries must be addressed to the DC Marketing Field Office, MOAB, FVP, AMS, USDA, 4700 River Road, Unit 155, Riverdale, MD 20737, Attn: Report of Peanuts. The Fax number is (301) 734-5275.

Falsification of any report submitted to USDA is a violation of Federal law and is punishable by fine or imprisonment, or both.

*Documentation of edible and non-edible peanuts:* This program continues the procedures used under the Agreement to monitor disposition of edible and failing quality peanuts. The Inspection Service sends copies of all grade inspections and the chemical laboratories send copies of all aflatoxin assays to USDA. USDA uses this information to monitor proper disposition of all lots failing either grade or aflatoxin certification.

This represents a relaxation of reporting requirements for importers. Under the previous peanut import program, non-signatory handlers and importers were required to file copies of all failing grade and aflatoxin certificates with AMS. They are no longer required to do so, unless specifically requested by USDA or unless the Customs Service demands such documentation of importers. These certificates will be provided by the Inspection Service, USDA laboratories, or certified USDA laboratories, as the case may be.

*Recordkeeping:* Handlers and importers are required to maintain all relevant documentation on the disposition of inedible peanuts. If remilled, blanched, or roasted, the handler or importer must maintain grade certificate(s) and/or aflatoxin certificate(s) showing that the lot has been reconditioned and subsequently meets outgoing, edible quality standards. Grade and aflatoxin inspections conducted on reconditioned lots reference the peanuts lot number and previous grade and aflatoxin certificate numbers so that a record of the lot's reconditioning is maintained. Documents showing the disposition of non-edible residuals (pick-outs etc.) must be maintained by each handler and importer. For example, if the lot is crushed for oil the oil mill's report of crushing must be maintained. That crushing report must tie the crushed residual peanuts to their original failing lots. If the failing lot is sold for seed or for animal feed, the sales receipt of the transaction must tie the purchased lot to the failing lot through the inspection certificate number. If the failing lot is exported, an export certificate must be filed showing the inspection certificate number of the failing peanut lot. Failing peanut lots sent to a landfill or buried also must be reported with proof of such disposition through the inspection certificate number.

In total, the documentation maintained and distributed to USDA

must be sufficient to document and substantiate the proper disposition of all peanut lots failing grade or aflatoxin quality standards, as well as the residuals resulting from those failing lots.

Documentation on lot dispositions must be maintained for at least two years after the crop year of applicability.

#### **Confidentiality**

This rule includes a confidentiality provision in § 996.72 to protect handler and importer reports and records required to be submitted to USDA under this action. Confidential information includes data or information constituting a trade secret or disclosing a trade position, financial condition, or business operations of handlers or their customers. Confidentiality provisions do not extend to disclosure of peanuts lots determined to be within the provisions in § 996.74(b).

#### **Verification of Reports**

Provisions are included in § 996.73 of this Part that allows USDA access to any premises where peanuts may be held or processed, and access to any business files containing information regarding the handling, importing, and disposition of peanuts. USDA, at any time during regular business hours, is 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 of by that handler or importer.

#### **Compliance Oversight**

USDA will take action against any handler or importer in violation of the Act or this Part. Such action includes instances when a handler or importer: (1) Acquires farmers stock peanuts without official incoming inspection; (2) fails to obtain outgoing inspection on shelled or cleaned-in-shell peanuts and ships such peanuts for human consumption use; (3) ships failing quality peanuts for human consumption use; (4) commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use; (5) fails to maintain PLI on peanut lots certified for human consumption use; (6) fails to maintain and provide access to records on the reconditioning or disposition of failing quality peanuts; or (7) otherwise violates any provisions of the Act or this program.

USDA will use injunctions to restrain violations and withdraw inspection services from alleged violators.

AMS will notify the FDA of the names of any handlers or importers known to

have shipped un-inspected peanuts into human consumption channels and the lot numbers of such peanuts. AMS also will publish on the AMS Web site the names of any handler and importer and the failing lots not reported as reconditioned or disposed to non-edible outlets.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Analysis Act (RFA) the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS had prepared this initial regulatory flexibility analysis.

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.

There were approximately 45 peanut handlers and 38 importers that were subject to regulation under the Agreement and non-signer program, and the peanut import regulation. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on the documents and reports received by USDA. Small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (13 CFR 121.201), as those having annual receipts of less than \$5,000,000.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition (less than \$750,000 in annual receipts from agricultural sales) can be obtained from the 1997 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 10,505 peanut farms with sales valued at less than \$500,000 in 1997, representing 86 percent of the total number of peanut farms in the U.S. (12,221). Since the Agricultural Census does not use \$750,000 in sales as a category, \$500,000 in sales is the closest approximation. Assuming that most of the sales from those farms are attributable to peanuts, the percentage of small peanut farms in 1997 (less than \$750,000 in sales) was likely a few percentage points higher than 86 percent, and may have shifted a few percentage points since then. Thus, the proportion of small peanut farms is likely to be between 80 and 90 percent.

Two-year average peanut production for the 2000 and 2001 crop years was 3.711 billion pounds, harvested from 1.363 million acres, yielding 2,723 pounds per acre. The average value of

production for the two-year period was \$948.777 million, as reported on the National Agricultural Statistics Service (NASS) Web site as of August 2002 (<http://www.nass.usda.gov:81/idepd/report.htm>). Average grower price over the two-year period was \$0.26 per pound, and the average value per harvested acre was \$707. Dividing the two-year average value of production (\$948.177 million) by the estimated 12,221 farms yields an estimated revenue per farm of approximately \$77,600.

The Agricultural Census presents farm sizes in ranges of acres, and median farm size in 1997 was between 50 and 99 acres. The median is the midpoint from the ranging from the largest to the smallest. Median farm size in terms of annual sales revenue was between \$100,000 and \$250,000.

Several producers may own a single farm jointly, or, conversely, a producer may own several farms. In the peanut industry, there is, on average, more than one producer per farm. Dividing the two-year average value of production of \$948.777 million by an estimated 23,000 commercial producers (2002 Agricultural Statistics, USDA, Table 11-10) results in an estimate of average revenue per producer of approximately \$41,251.

Oilmill operators, blanchers, and private chemical laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71. There are several such entities in the peanut industry and these requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection programs (FSIS) that will perform inspection under this new program.

Importers of peanuts cover a broad range of business entities, including fresh and processed food handlers and commodity brokers who buy agricultural products on behalf of others. Under the 2001 import quota, approximately 38 business entities imported approximately 126 million pounds of low duty peanuts (sometimes called "duty free" quota peanuts). The import quota period began January 2, 2001, for Mexico, and April 2, 2001, for Argentina, Israel, and other countries. Some large, corporate handlers are also importers of peanuts. AMS is not aware of any peanut producers who imported peanuts during any of the recent quota years. The majority of peanut importers have annual receipts under \$5,000,000. Customs Service brokers provide import services to importers and are regulated

under this rule to the extent that they must comply with entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71. These requirements are not applied disproportionately to small customs service brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, and importers may be classified as small entities. In addition, it may be assumed that many oilmill operators and blanchers also are small entities.

The quality and handling requirements of the prior peanut quality programs have been in effect for more than 36 years and for imported peanuts for more than six years. Handlers and importers have been the segment of the industry directly regulated under the three peanut programs, and they are in general agreement that the industry has changed greatly since the establishment of the Agreement in 1965.

With only a few exceptions, the quality and handling standards in this peanut program are the same as, or similar to, the requirements previously in effect for domestically produced and imported peanuts. The few exceptions are relaxations in requirements that will benefit handlers and importers. These requirements were subject to regulatory flexibility analysis and were found to not disproportionately affect small entities.

The Act requires that all peanuts marketed in the United States be officially inspected and graded by Federal or Federal-State inspectors. The Act further requires that USDA make identifying and combating the presence of all quality concerns a priority in the development of quality and handling standards and in the inspection of all peanuts in the domestic market. Finally, USDA is to “\* \* \* provide adequate safeguards against all quality concerns related to peanuts.” A new peanut program is to be established in consultation with the Peanut Standards Board. Currently, members of the PAC are acting in an interim capacity for the Board.

This program establishes under new Part 996 the minimum quality and handling standards that were in effect on May 13, 2002, the date the Act became effective, with a few relaxations recommended by interim Board members and a few peanut growers and handlers. Peanuts may not be entered into human consumption channels unless the peanuts are inspected and meet minimum quality standards for size, damage, defects, foreign material and moisture, and not exceed maximum aflatoxin content specified in this rule.

Handling standards include the same positive lot identification, sampling and inspection procedures, and prohibitions on commingling certified and non-edible peanuts as were in effect under the three previous programs. Peanuts failing to meet the quality standards of this Part, or which are not handled consistent with the handling standards of this Part, may not be used for human consumption in the United States.

All USDA required sampling, quality certification, and lot identification is conducted by the Inspection Service. Chemical analysis is conducted by USDA or USDA-approved laboratories. Private laboratories must, among other things, agree to send copies of all aflatoxin analyses conducted by the laboratory to USDA. Foreign produced peanuts stored in bonded warehouses are subject to Customs Service audits. Handlers and importers must reimburse the Inspection Service and USDA laboratories and approved private laboratories, for services provided and costs incurred in the sampling, grade inspection and chemical analysis of peanuts. Incoming inspections range from \$4.00 to \$6.25 per ton of farmers stock peanuts. Sampling and outgoing grade inspections vary with the Federal and each Federal-State Inspection Service and range from \$1.50 to \$3.00 a ton. Chemical analysis for aflatoxin averages \$40.00 per analysis. These costs to handlers and importers also were incurred under the previous three programs. Thus, there is no net increase in financial burden attributable to these aspects of the new program.

This action will impose on handlers and importers a minor reporting requirement in addition to that imposed under the previous peanut programs (reporting acquisitions of Segregation 2 and 3 farmers stock peanuts). However, importers and non-signatory handlers under the previous programs have a minor decrease in reporting requirements, because they are no longer required to submit evidence of disposition of failing lots. That task is completed by the USDA. Recordkeeping requirements remain the same as required under the three previous peanut programs. The information collection burden under the previous programs totaled 411 reporting hours and 269 recordkeeping hours. These were approved under OMB Nos. 0581-0067 (Agreement), 0581-0163 (non-signers), and 0581-0176 (imports).

*Changes affecting regulated entities:* Under this program, handlers are no longer subject to payment of assessments based on the volume of farmers stock peanuts acquired. Under the Agreement and non-signer program,

handlers were assessed \$.33 per net farmers stock ton of peanuts acquired. This totaled over \$515,000 for the 2000 crop. Assessments collected from signatory handlers provided for the administration of the PAC. Assessments collected from non-signatory handlers helped reimburse USDA for administration of the non-signer program. There are no such assessments under the new peanut program.

The previous peanut programs prohibited the use of Segregation 2 and 3 farmers stock peanuts in human consumption channels, but this rule removes that prohibition. This will allow such peanuts to be handled and marketed in higher return outlets. Handlers sought this change. As noted above, handlers believe that modern milling technologies enable handlers to remove poor quality and contaminated peanut kernels in the shelling and milling operation. This change from the previous programs' requirements will enable more peanuts to be marketed at higher market values for human consumption. Segregation 2 and 3 peanuts, in a normal crop year, average around 1 percent of total production. Thus, for the 2000 and 2001 crop years, this would have allowed an additional 37 million pounds of farmers stock peanuts to be available for human consumption channels.

Handlers stated that peanuts used in the manufacturing of imported peanut butter and peanut paste are not restricted to Segregation 1 quality peanuts in those exporting countries. They contend that use of Segregation 2 and 3 quality peanuts for human consumption, after careful and efficient sorting and milling processes, levels the playing field for the U.S. peanut industry. Outgoing inspection will ensure that poor quality peanuts do not enter domestic edible consumption market channels.

Grower and handler revenues are likely to increase slightly due to the ability to sell Segregation 2 and 3 quality peanuts for human consumption use. This change is not expected to affect small and large entities differently.

If Segregation 2 and 3 peanuts are handled for human consumption, it is reasonable to assume that fewer poor quality peanuts will be available for crushing into oil and other non-edible use such as animal feed. It can be expected that the price of oilstock quality peanuts will rise slightly. A higher percentage of sheller oilstock residuals are likely to be sorted out of Segregation 2 and 3 peanuts during the initial shelling process. Therefore, not all of the peanuts in Segregation 2 and

3 lots will be edible, and the supply of oilstock peanuts will not be cut off completely. The market value of peanuts used for crushing into oil and added to animal feed could increase.

Further, blanching operations could realize an increase in business because blanching, as a last resort in reconditioning a failing lot, will likely be used in the final preparation of shelled peanuts originating from Segregation 2 and 3 peanuts for human consumption.

Finally, handlers with blanching facilities dedicated exclusively to the handler's own peanuts may move a lot of shelled peanuts directly from the shelling operation to their dedicated blanching operations without first obtaining grade inspection and PLI on the lot. Handlers recommended removing the required inspection and PLI prior to blanching at their own, dedicated facilities because the nature of the peanuts change in the blanching process and the peanuts must be inspected immediately after blanching, rendering the first inspection redundant. This would apply only to lots blanched in the handler's own blanching facility that does not blanch peanuts belonging to others, thus eliminating the need to establish PLI prior to blanching. This streamlined handling process will increase efficiency of the handling of peanuts that the handler intends to blanch. Handler costs for such lots are reduced by inspecting the lot once, rather than twice. While this change may tend to be most beneficial to those handlers who are mostly larger operations with their own, dedicated, blanching facilities, it should not have an adverse impact on small handlers.

Reporting and recordkeeping requirements under the new peanut program are not expected to adversely impact small businesses, and there is no indication that large and small businesses would be impacted differently. Under this program, handlers and importers must report monthly acquisitions of Segregation 2 and 3 peanuts—a minor increase from the previous programs when only Segregation 1 peanuts were reported. However, the benefits of being able to handle those peanuts for possible edible consumption outweigh the increased reporting requirement. Further, this minor increase in reporting is offset by a decrease in reporting disposition of failing peanut lots for non-signatory handlers and importers. In the case of imports, few, if any, peanuts are imported in farmers stock form because of the extra weight and bulk of the peanut shell. Thus, importers will likely

not be filing a monthly report of acquisitions.

The other provisions in this peanut program are the same as, or similar to, the requirements in effect for domestically produced and imported peanuts for the last several years. Those requirements were subject to prior regulatory flexibility analysis.

USDA has considered alternatives to this program. The Act provides that a new program be established for the 2002 peanut crop. An alternative would be to continue the 2001 regulations for the entire 2002 crop. However, based on industry comment, implementation of a new program as soon as possible after harvest begins is preferable to continuing the previous programs. USDA has met with the interim Board which is representative of the industry and has included nearly all of its recommendations in this rule. The initial draft prepared by USDA proposed a streamlined program with less USDA oversight of handling standards. However, the interim Board suggested that oversight provisions in the previous programs be included in this program to assure the continued high quality and wholesomeness of peanuts entered into human consumption channels in the U.S. Draft provisions were posted on the USDA Web site and comments were received. Most comments confirmed the Board's consensus that significant changes in the previous programs were not desired. For instance, one proposal included changing screen sizes to allow smaller kernels to be included in lots intended for human consumption use. Comments advised against this relaxation and it is not included in this rule. Thus, this program is substantially the same as USDA's three previous peanut programs.

Except as previously discussed, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. A small business guide on complying with AMS' fresh fruit, vegetable, and specialty crop programs similar to this peanut program may be viewed at the following Web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide or compliance with this program should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

#### Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements under the Agreement, non-signers and import programs were

approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581-0067, 0581-0163 and 0581-0176, respectively. However, with the termination of those peanut programs, reporting and recordkeeping burdens on peanut handlers and importers were terminated. The burden under the three previous programs was 680 hours. The burden under the new program is estimated to be 463 hours. An estimated 367 hours (nearly 80 percent) of the new program burden is for recordkeeping, which handlers and importers would normally do under good business practice.

The Act specifies in § 1604(c)(2)(A) that any new quality and handling standards, established pursuant to the Act, may be implemented without regard to the Paperwork Reduction Act. Nonetheless, USDA has considered the reporting and recordkeeping burden on handlers and importers under the new program.

Handlers and importers are required to complete and file only one form—a monthly acquisition of farmers stock peanuts. Acquisitions of Segregation 2 and 3 peanuts must now be reported because those peanuts can be prepared for edible markets. Because Segregation 2 and 3 peanuts normally account for around 1 percent of each peanut crop, this change is expected to represent only a minor increase in the reporting burden under the new program. Non-signatory handlers and importers are no longer required to submit evidence of disposition of failing lots, which reduces their reporting burden. Recordkeeping requirements remain the same as required under the three previous peanut programs.

AMS invites comments on this interim final rule. Any comments received by October 9, 2002, will be considered prior to finalization. A 30-day comment period is deemed appropriate because § 1308 of the Act provides that the Act's requirements take effect with the 2002 crop of peanuts.

USDA has held several meetings with the interim Board, Inspection Service supervisors, posted a draft rule on the internet for comments, and considered all comments. The program is substantially the same as the three previous peanut programs. USDA also has reviewed this rule with FSA and provided drafts to the Customs Service and FDA. The 2002 crop harvest has already begun. Section 1601 also specifies that promulgation of the standards and administration of the new peanut quality program shall be made without regard to: (A) The Paperwork Reduction Act; (B) the Statement of

Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and (C) the notice and comment provisions of section 553 of title 5, United States Code.

Nonetheless, based upon the above, USDA may find, upon good cause, that it would be impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. Further, with regard to the termination and removal of Parts 997, 998, and section 999.600, it is found that those programs no longer tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, or the purposes of that Act.

#### List of Subjects

##### 7 CFR Part 996

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements

##### 7 CFR Part 997

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

##### 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

##### 7 CFR Part 999

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674 and Public Law 107–171, 7 CFR Chapter IX is amended as set forth below:

1. A new Part 996 is added to read as follows:

#### **PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETING IN THE UNITED STATES**

##### Definitions

- Sec.
- 996.1 Act and scope.
  - 996.2 Conditionally released.
  - 996.3 Crop year.
  - 996.4 Handle.
  - 996.5 Handler.
  - 996.6 Importation.
  - 996.7 Importer.
  - 996.8 Incoming inspection.
  - 996.9 Inshell peanuts.
  - 996.10 Inspection Service.

- 996.11 Negative aflatoxin content.
- 996.12 Outgoing inspection.
- 996.13 Peanuts.
- 996.14 Person.
- 996.15 Positive lot identification.
- 996.16 Producer.
- 996.17 Quota year.
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- 996.19 Shelled peanuts.
- 996.20 USDA.
- 996.21 USDA laboratory.
- 996.22 USDA-approved laboratory.

##### Quality and Handling Standards

- 996.30 Incoming quality standards.
- 996.31 Outgoing quality standards.
- 996.40 Handling standards.
- 996.50 Reconditioning failing quality peanuts.
- 996.60 Safeguard procedures for imported peanuts.

##### Reports and Records

- 996.71 Reports and recordkeeping.
- 996.72 Confidential information.
- 996.73 Verification of reports.
- 996.74 Compliance.
- 996.75 Effective time.

**Authority:** Sec. 1308, Pub.L. 107–171, 116 Stat. 178 (7 U.S.C. 7958).

##### Definitions

###### § 996.1 Act and scope.

*Act* means Public Law 107–171, or the Farm Security and Rural Investment Act of 2002, enacted May 13, 2002. None of the definitions or provisions of this part shall apply to any other part or program (including, but not limited to, any program providing for payments or loans to peanut producers or other persons interested in peanuts or peanut quotas) unless explicitly adopted in such other part or program.

###### § 996.2 Conditionally released.

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

###### § 996.3 Crop year.

*Crop year* means the 12-month period beginning with July 1 of any year and ending with June 30 of the following year, or other period established by USDA.

###### § 996.4 Handle.

*Handle* means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of domestic or imported peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned-inshell or shelled peanuts or other activity causing peanuts to enter into human consumption channels of commerce: *Provided*, That this term does not include sales or deliveries of peanuts by a producer to a handler or to an

intermediary person engaged in delivering peanuts to handler(s): *And provided further*, That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

###### § 996.5 Handler.

*Handler* means any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling peanuts.

###### § 996.6 Importation.

*Importation* means the arrival of foreign produced peanuts at a port-of-entry with the intent to enter the peanuts into channels of commerce of the United States.

###### § 996.7 Importer.

*Importer* means a person who engages in the importation of foreign produced peanuts into the United States for the purposes of entering such peanuts into human consumption channels.

###### § 996.8 Incoming inspection.

*Incoming inspection* means the sampling, inspection, and certification of farmers stock peanuts to determine segregation and grade quality.

###### § 996.9 Inshell peanuts.

*Inshell peanuts* means peanuts, the kernels or edible portions of which are contained in the shell.

###### § 996.10 Inspection Service.

*Inspection Service* means the Federal Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA or the Federal-State Inspection Service.

###### § 996.11 Negative aflatoxin content.

*Negative aflatoxin content* means 15 parts per billion (ppb) or less for peanuts that have been certified as meeting edible quality grade standards.

###### § 996.12 Outgoing inspection.

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

###### § 996.13 Peanuts.

*Peanuts* means the seeds of the legume *Arachis hypogaea* and includes both inshell and shelled peanuts produced in the United States or imported from foreign countries, other

than those in green form for consumption as boiled peanuts.

(a) *Farmers Stock*. "Farmers stock peanuts" means picked and threshed 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.

(b) *Segregation 1*. "Segregation 1 peanuts" 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*.

(c) *Segregation 2*. "Segregation 2 peanuts" 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*.

(d) *Segregation 3*. "Segregation 3 peanuts" means farmers stock peanuts with visible *Aspergillus flavus*.

**§ 996.14 Person.**

*Person* means an individual, partnership, corporation, association, any other business unit or legal entity.

**§ 996.15 Positive lot identification.**

*Positive lot identification* is a means, approved by the Inspection Service, of relating the inspection certificate to the lot covered so that there is no doubt that the peanuts in the lot are the same peanuts described on the inspection certificate.

**§ 996.16 Producer.**

*Producer* means any person in the United States engaged in a proprietary capacity in the production of peanuts for market.

**§ 996.17 Quota year.**

*Quota year* means the 12-month period beginning January 1 and ending

December 31 of the same year for peanuts produced in Mexico and the 12-month period beginning April 1 and ending March 31 of the following year for Argentina and other countries, or other such periods as may be prescribed by the U.S. Customs Service.

**§ 996.18 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States or any officer, employee, or agent of the United States Department of Agriculture who is, or who may hereafter be authorized to act in the Secretary's stead.

**§ 996.19 Shelled peanuts.**

*Shelled peanuts* means the kernels or portions of kernels of peanuts after the shells are removed.

**§ 996.20 USDA.**

*USDA* means the United States Department of Agriculture, including any officer, employee, service, program, or branch of the Department of Agriculture, or any other person acting as the Secretary's agent or representative in connection with any provisions of this part.

**§ 996.21 USDA laboratory.**

*USDA laboratory* means laboratories of the Science and Technology Programs, Agricultural Marketing Service, USDA, which chemically analyze peanuts for aflatoxin content.

**§ 996.22 USDA-approved laboratory.**

*USDA-approved laboratory* means laboratories approved by the Science and Technology Programs, Agricultural Marketing Service, USDA, that chemically analyze peanuts for aflatoxin content.

**Quality and Handling Standards**

**§ 996.30 Incoming quality standards.**

(a) All farmers stock peanuts received or acquired by a handler shall be

officially inspected by the Inspection Service, and certified as to segregation, moisture content, and foreign material.

(b) *Moisture*. No handler or importer shall receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing 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 storing or milling.

(c) *Foreign material*. No handler or importer shall receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are 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 removes sand and dirt.

(d) A handler may receive or acquire any peanuts from other persons for edible and non-edible use: *Provided*, That such peanuts intended for human consumption are inspected and certified pursuant to § 996.31 prior to such disposition. Non-edible uses may include, but are not limited to, seed, oilstock, animal feed, bird seed, or for export.

**§ 996.31 Outgoing quality standards.**

(a) *Shelled peanuts*: No handler or importer shall ship or otherwise dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, chemically analyzed by a USDA laboratory or USDA-approved laboratory and certified "negative" as to aflatoxin, and certified by the Inspection Service as meeting the following quality standards:

MINIMUM QUALITY STANDARDS: 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	Sound whole kernels	Total		
<b>Excluding lots of "splits"</b>							
Runner .....	1.50	2.50	3.00%; 17/64 inch round screens.	3.00%; 1 5/64 × 3/4 inch slot screen.	4.00% Both screen	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 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 5/64, inch round screen.	3.00%; 1 5/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00

MINIMUM QUALITY STANDARDS: PEANUTS FOR HUMAN CONSUMPTION—WHOLE KERNELS AND SPLITS: MAXIMUM LIMITATIONS—Continued

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		
No. 2 Virginia .....	1.50	3.00	6.00%; 17/64 inch round screen.	6.00%; 15/64 × 1 inch slot screen.	6.00% Both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 17/64 inch roundscreen.	3.00%; 16/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
Virginia with splits (not more than 15% sound splits).	2.50	1.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 16/64 inch round screen.	2.00%; 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
<b>Lots of "splits"</b>							
Runner (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 3/4 slot screen.	4.00% Both screens.	.20	9.00
Virginia (not less than 90% splits).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 16/64 inch round screen.	3.00%; 13/64 × 3/4 inch slot screen.	4.00% Both Screens.	.20	9.00

(b) *Cleaned-inshell peanuts*: No handler or importer shall ship or otherwise dispose of cleaned-inshell peanuts for human consumption unless such peanuts are Positive lot identified and are determined by the Inspection Service to contain:

(1) Not more than 1.00 percent kernels with mold unless a sample of such peanuts, drawn by an inspector of the Inspection Service, is analyzed chemically by a USDA laboratory or a USDA-approved laboratory and certified "negative" as to aflatoxin;

(2) Not more than 2.00 percent peanuts with damaged kernels;

(3) Not more than 10.00 percent moisture; or

(4) Not more than 0.50 percent foreign material.

**§ 996.40 Handling standards.**

(a) *Identification*: Each lot of shelled or cleaned inshell peanuts intended for human consumption shall be identified by positive lot identification prior to being shipped or otherwise disposed of. Positive lot identification (PLI) methods are tailored to the size and containerization of the lot, by warehouse storage or space requirements, or, by necessary further movement of the lot prior to certification. Positive lot identification is established by the Inspection Service

and includes the following methods of identification. For domestic lots and repackaged import lots, PLI includes PLI stickers, tags or seals applied to each individual package or container in such a manner that is acceptable to the Inspection Service and maintains the identity of the lot. For imported lots, PLI tape may be used to wrap bags or boxes on pallets, PLI stickers may be used to cover the shrink-wrap overlap, doors may be sealed to isolate the lot, bags or boxes may be stenciled with a lot number, or any other means that is acceptable to the Inspection Service. The crop year or quota year shown on the positive lot identification tags shall be the year in which the peanuts in the lot were produced domestically or imported into the U.S., as appropriate. All lots of shelled and cleaned-inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which are reconstituted and/or commingled at the request of the buyer: *Provided*, That the reconstituted or commingled lots were previously positive lot identified and certified as meeting the outgoing standards of § 996.31.

(b) *Sampling and testing shelled peanuts for outgoing inspection*: Prior to shipment, the following sampling and inspection procedures shall be conducted on each lot of shelled

peanuts intended for human consumption. The lot size of shelled or cleaned-inshell peanuts presented for outgoing inspection in bags or bulk shall not exceed 200,000 pounds.

(1) Each handler or importer shall cause appropriate samples, based on a sampling plan approved by the Inspection Service, of each lot of shelled peanuts intended for human consumption to be drawn by the Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin chemical analysis. The three 48-pound samples shall be designated by the Inspection Service as "Sample 1," "Sample 2," and "Sample 3" and each sample shall be placed in a suitable container and positive lot identified by means acceptable to the Inspection Service. Sample 1 may be prepared for immediate testing or Sample 1, Sample 2, and Sample 3 may be returned to the handler or importer for testing at a later date. Imported peanuts shall be labeled "Sample 1IMP," "Sample 2IMP," and "Sample 3IMP" and handled accordingly.

(2) Before shipment of a lot of shelled peanuts to a buyer, the handler or importer shall cause Sample 1 to be ground by the Inspection Service, a

USDA laboratory or a USDA-approved laboratory, in a "subsampling mill." The resultant ground subsample from Sample 1 shall be of a size specified by the Inspection Service and shall be designated as "Subsample 1-AB" and at the handler's, importer's or buyer's option, a second subsample may also be extracted from Sample 1. It shall be designated as "Subsample 1-CD." Subsample 1-CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a USDA laboratory or USDA-approved laboratory that can provide analyses results on such samples in 36 hours. The cost of sampling and testing Subsample 1-CD shall be for the account of the applicant. Subsample 1-AB shall be analyzed only in a USDA laboratory or USDA-approved laboratory. Both Subsamples 1-AB and 1-CD shall be accompanied by a notice of sampling or grade certificate, signed by the inspector, containing, at least, identifying information as to the handler or importer, the buyer, if known, and the positive lot identification of the shelled peanuts.

(3) The samples designated as Sample 2 and Sample 3 shall be held as aflatoxin check-samples by the Inspection Service or the handler or importer and shall not be included in the shipment to the buyer until the analyses results from Sample 1 are known.

(4) Upon call from the laboratory, the handler or importer shall cause Sample 2 to be ground by the Inspection Service, USDA or USDA-approved laboratory in a "subsampling mill." The resultant ground subsample from Sample 2 shall be of a size specified by the Inspection Service and it shall be designated as "Subsample 2-AB." Upon call from the laboratory, the handler shall cause Sample 3 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample 3 shall be of a size specified by Inspection Service and shall be designated as "Subsample 3-AB." "Subsamples 2-AB and 3-AB" shall be analyzed only in a USDA laboratory or a USDA-approved laboratory and each shall be accompanied by a notice of sampling. The results of each assay shall be reported by the laboratory to the handler and to USDA.

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

Service offices, or for further assistance, handlers and importers may contact: Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Room 2049-S, (STOP 0240), Washington, DC, 20250-0240; Telephone: (202) 720-5870; Fax: (202) 720-0393.

(6) Handlers and importers may make arrangements for required chemical analysis for aflatoxin content at the nearest USDA or USDA-approved laboratory. For further information concerning chemical analysis and a list of laboratories authorized to conduct such analysis contact: Dr. Robert Epstein, Deputy Administrator, Science and Technology Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0270, Washington, DC 20250-0270; Telephone (202) 720-5231; Fax (202) 720-6496.

#### **§ 996.50 Reconditioning failing quality peanuts.**

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

(b) Sheller oil stock residuals shall be positive lot identified using red tags, or other methods acceptable to the Inspection Service, and may be disposed of domestically or to the export market in bulk or bags or other suitable containers. Disposition to crushing may be to approved crushers.

(1) If such peanuts are not tested and certified as to aflatoxin content, pursuant to paragraph (a) of this section, the handler or importer shall cause the following statement to be shown on the shipping papers: "The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin."

(2) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(c) *Remilling*. Handlers and importers may remill, or cause to have remilled, lots of shelled or cleaned-in-shell peanuts failing to meet the applicable outgoing quality standards in the table in § 996.31(a). If, after remilling, such

peanut lot meets the applicable quality standards in § 996.31, the lot may be moved for human consumption under positive lot identification procedures and accompanied by applicable grade and aflatoxin certificates.

(d) *Blanching*. Handlers and importers may blanch, or cause to have blanched, shelled peanuts failing to meet the outgoing quality standards specified in the table in § 996.31(a). If, after blanching, such peanut lot meets the quality standards in § 996.31(a), except fall through standards as specified below, the lot may be moved for human consumption under positive lot identification procedures and accompanied by applicable grade and aflatoxin certificates. Peanut lots certified as meeting fall through standards as specified in § 996.31(a) prior to blanching shall be exempt from fall through standards after blanching.

(e) *Roasting*. Handlers or importers may roast or cause to be roasted shelled peanuts which meet the grade standards the table in § 996.31(a) but are positive to aflatoxin. Lots of peanuts moved under this provision must be accompanied by a valid grade certificate showing that the lot met grade requirements of § 996.31(a) prior to roasting and a valid aflatoxin certificate. If, after roasting, such peanut lot is certified negative as to aflatoxin and the positive lot identity has been maintained during the roasting process, the lot may be moved for human consumption.

(f) Lots of shelled peanuts moved for remilling, blanching or roasting shall be positive lot identified and accompanied by valid grade inspection certificate, *Except* That, a handler's shelled peanuts may be moved without PLI and grade inspection to the handler's blanching facility that blanches only the handler's peanuts. The title of such peanuts shall be retained by the handler or importer until the peanuts have been certified by the Inspection Service as meeting the outgoing quality standards specified in the table in § 996.31(a). Remilling, blanching, and roasting under the provisions of this paragraph shall be performed only by those remillers and blanchers approved by USDA. Such approved entities must agree to comply with the handling standards in this part and to report dispositions of all failing peanuts and residual peanuts to USDA.

(g) Residual peanuts resulting from remilling, blanching, or roasting of peanuts shall be red tagged, or identified by other means acceptable to the Inspection Service, and returned directly to the handler for further disposition or, in the alternative, such residual peanuts shall be positive lot

identified by the Inspection Service and shall be disposed of to handlers who are crushers, or to approved crushers. Handlers who are crushers and crushers approved by USDA must agree to comply with the terms and conditions of this part.

(h) *Re-inspection.* Whenever USDA has reason to believe that domestic or imported peanuts may have been damaged or deteriorated while in storage, USDA may reject the then effective inspection certificate and may require the owner of the peanuts to have a re-inspection to establish whether or not such peanuts may be disposed of for human consumption.

(i) 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 applicant. Whenever peanuts are presented for inspection, the handler or importer shall furnish any labor and pay any costs incurred in moving, opening containers, and shipping samples as may be necessary for proper sampling and inspection. The Inspection Service shall bill the applicant or other responsible entity separately for applicable fees covering sampling and inspection, delivering aflatoxin samples to laboratories, positive lot identification measures, and other certifications as may be necessary to certify edible quality or non-edible disposition. The USDA and USDA-approved laboratories shall bill the applicant or other responsible entity separately for applicable fees for aflatoxin assays.

**§ 996.60 Safeguard procedures for imported peanuts.**

(a) Prior to, or upon, arrival of a foreign-produced peanut lot at a port-of-entry, the importer, or customs broker acting on behalf of the importer, shall mail or send by facsimile transmission (fax) a copy of the Customs Service entry documentation for the peanut lot or lots to the Inspection Service office that will perform sampling of the peanut shipment. More than one lot may be entered on one entry document. The documentation shall include: the Customs Service entry number; the container number(s) or other identification of the lot(s); the volume of the peanuts in each lot being entered, the inland shipment destination where the lot will be made available for inspection; and a contact name or telephone number at the destination. The inspection office shall sign, stamp, and return the entry document to the importer. The importer shall cause a

copy of the relevant entry documentation to accompany each peanut lot and be presented to the Inspection Service at the time of inspection.

(b) Importers shall report to AMS the entry number, container number, and inspection certificate of those peanuts which are sampled and inspected but which are subsequently exported as excess of the peanut import quota. Peanuts for which an import application is filed with the Customs Service, and which are not sampled and inspected, but which are subsequently exported as excess of quota, shall not be reported to USDA.

(c) *Early arrival and storage.* Peanut lots sampled and inspected upon arrival in the United States, but placed in storage for more than one month prior to beginning of the quota year for which the peanuts will be entered, must be reported to USDA at the time of inspection. The importer shall file copies of the Customs Service documentation showing the volume of peanuts placed in storage and location, including any identifying number of the storage warehouse. Such peanuts should be stored in clean, dry warehouses and under cold storage conditions consistent with industry standards. The Inspection Service may require re-inspection of the lot at the time the lot is declared for entry with the Customs Service.

(d) *Additional standards.* (1) Nothing contained in this section shall preclude any importer from milling or reconditioning, prior to importation, any shipment of peanuts for the purpose of making such lot eligible for importation into the United States. However, all peanuts entered for human consumption use must be certified as meeting the quality standards specified in § 996.31(a) prior to such disposition. Failure to fully comply with quality and handling standards as required under this section, will result enforcement action by USDA.

(2) Imported peanut lots sampled and inspected at the port-of-entry, or at other locations, shall meet the quality standards of this part in effect on the date of inspection.

(3) A foreign-produced peanut lot entered for consumption or for warehouse may be transferred or sold to another person: *Provided*, That the original importer shall be the importer of record unless the new owner applies for bond and files Customs Service documents pursuant to 19 CFR 141.113 and 141.20: *And provided further*, That such peanuts must be certified and reported to USDA pursuant to § 996.71 of this part.

(4) 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.

**Reports and Records**

**§ 996.71 Reports and recordkeeping.**

(a) Each handler and importer shall report acquisitions of all farmers stock peanuts, by Segregation, on a form "Monthly Report of Acquisitions" and such other reports or information as may be necessary to enable USDA to carry out the provisions of this part.

(b) Each handler and importer shall maintain records of all receipts and acquisitions of farmers stock peanuts, and all grade and aflatoxin certificates showing the results of milling, remilling, blanching and roasting of peanuts for human consumption and the records of the disposition of peanuts not certified as meeting Outgoing quality standards, specified in § 996.31(a) of this part. Such records shall be maintained for at least 2 years after the crop year of their applicability. Such recordkeeping shall be sufficient to document and substantiate the handler or importer's compliance with this part.

(c) USDA shall maintain copies of grade and aflatoxin certificates on all peanut lots inspected and chemically tested. USDA and USDA-approved laboratories shall file copies of all aflatoxin certificates completed by such laboratories with the DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Suite 2A04, Unit 155, Riverdale, Maryland 20737; Telephone (301) 734-5243, Fax: (301) 734-5275, or other address as determined by USDA.

**§ 996.72 Confidential information.**

All reports and records furnished or submitted by handlers and importers to USDA which include data or information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular handlers or their customers shall be received by, and at all times kept in the custody and control of one or more employees of USDA, and, except as provided in § 996.74 or otherwise provided by law, such information shall not be disclosed to any person outside USDA.

**§ 996.73 Verification of reports.**

For the purpose of checking and verifying reports filed by handlers and importers and the operation of handlers and importers under the provisions of this Part, the officers, employees or duly authorized agents of USDA shall have access to any premises where peanuts may be held and at any time during reasonable business hours and shall be permitted to inspect any peanuts so held by such handler or importer and any and all records of such handler with respect to the acquisition, holding, or disposition of all peanuts which may be held or which may have been disposed by the handler.

**§ 996.74 Compliance.**

(a) A handler or importer shall be subject to withdrawal of inspection services, for a period of time to be determined by USDA, if the handler or importer:

(1) Acquires farmers stock peanuts without official incoming inspection, pursuant to § 996.30;

(2) Fails to obtain outgoing inspection on shelled or cleaned-inshell peanuts, pursuant to § 996.31, and ships such peanuts for human consumption use;

(3) Ships failing quality peanuts, pursuant to § 996.31, for human consumption use;

(4) Commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use;

(5) Fails to maintain positive lot identification, pursuant to § 996.40(a), on peanut lots certified for human consumption use;

(6) Fails to maintain and provide access to records, pursuant to § 996.71, on the reconditioning or disposition of peanuts acquired by such handler or importer; or

(7) Otherwise violates any provision of section 1308 of the Act or any provision of this part.

(b) Any peanut lot which fails to meet the Outgoing quality standards specified in § 996.31, and is not reconditioned to meet such standards, or is not disposed to non-human consumption outlets as specified in § 996.50, shall be reported by USDA to the Food and Drug Administration and listed on an Agricultural Marketing Service Web site.

**§ 996.75 Effective time.**

The provisions of this part, as well as any amendments, shall apply to the remainder of the 2002 crop year peanuts and subsequent crop year peanuts, to 2001 crop year peanuts not yet inspected, and to 2001 crop year failing peanuts that have not met disposition

standards, and shall continue in force and effect until modified, suspended, or terminated. Indemnification payments for the 2001 crop peanuts will continue through December 31, 2002, under the terms and conditions of 7 CFR part 998.

**PART 997—[REMOVED]**

2. Part 997 is removed.

**PART 998—[REMOVED]**

3. Part 998 is removed, effective January 1, 2003.

**PART 999—SPECIALTY CROPS; IMPORT REGULATIONS**

4. The authority citation for part 999 continues to read as follows:

**Authority:** 7 U.S.C. 601–674; 7 U.S.C. 1445c–3, and 7 U.S.C. 7271.

**§ 999.600 [Removed]**

5. Section 999.600 is removed.

Dated: September 3, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–22700 Filed 9–6–02; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 98–ANE–48–AD; Amendment 39–12867; AD 2002–17–02]

**RIN 2120–AA64**

**Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines; Correction**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 2002–17–02 applicable to Pratt & Whitney JT8D series turbofan engines that was published in the **Federal Register** on August 28, 2002 (67 FR 55108). The first sentence in the amendatory language that states “2. Section 39.13 is amended by removing Amendment 39–11940 (65 FR 65731, November 2, 2000) and by adding a new airworthiness directive to read as follows:” is incorrect. This document corrects that sentence. In all other respects, the original document remains the same.

**EFFECTIVE DATE:** August 28, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A final rule airworthiness directive FR Doc. 02–21832 applicable to Pratt & Whitney JT8D series turbofan engines, was published in the **Federal Register** on August 28, 2002 (67 FR 55108). The following correction is needed:

**§ 39.13 [Corrected]**

On page 55110, in the second column, the first sentence of the amendatory language is corrected to read:

“2. Section 39.13 is amended by removing Amendment 39–11940 (65 FR 65731, November 2, 2000) and by adding a new airworthiness directive, Amendment 39–12867, to read as follows:”

Issued in Burlington, MA, on August 30, 2002.

**Francis Favara,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 02–22759 Filed 9–6–02; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2002–NE–08–AD; Amendment 39–12865; AD 2002–16–26]

**RIN 2120–AA64**

**Airworthiness Directives; Bombardier-Rotax GmbH Type 912 F and 914 F Series Reciprocating Engines; Correction**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments, correction.

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 2002–16–26, applicable to Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines. AD 2002–16–26 was published in the **Federal Register** on August 15, 2002 (67 FR 53296). The effective date in the **DATES:** section is incorrect. This document corrects that date. In all other respects, the original document remains the same.

**EFFECTIVE DATE:** August 30, 2002.

**FOR FURTHER INFORMATION CONTACT:**

James Lawrence, Aerospace Engineer,