

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 996

[Docket No. FV05-996-2PR]

#### Change in Minimum Quality and Handling Standards For Domestic and Imported Peanuts Marketed in the United States

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would change the peanut quality and handling standards (Standards) to require that domestic and imported peanuts be dried to 18 percent moisture or less prior to inspection and to 10.49 percent or less prior to storing or milling. Virginia-type peanuts used for seed must be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling. The Standards and the Peanut Standards Board (Board) were established by the Department of Agriculture (USDA), pursuant to section 1308 of the Farm Security and Rural Investment Act of 2002. The Board suggested changing the peanut quality and handling standards to allow handlers and importers to receive or acquire high moisture peanuts to promote the development of new drying technologies, increase efficiencies and reduce costs to the industry.

**DATES:** Comments must be received by July 6, 2005.

**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) or [www.regulations.gov](http://www.regulations.gov). 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:**

Dawana J. Clark or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Unit 155, Riverdale, Maryland 20737; telephone (301) 734-5243, Fax: (301) 734-5275 or George J. Kelhart, Technical Advisor, 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: [dawana.clark@usda.gov](mailto:dawana.clark@usda.gov), [kenneth.johnson@usda.gov](mailto:kenneth.johnson@usda.gov) or [george.kelhart@usda.gov](mailto:george.kelhart@usda.gov).

Small businesses may request information on complying with this rule by contacting Jay Guerber, 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: [jay.guerber@usda.gov](mailto:jay.guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed 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 "Farm Bill."

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

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.

#### Background

Section 1308 of the Farm Bill requires that USDA take several actions with regard to peanuts marketed in the United States: Ensure mandatory inspection on all peanuts marketed in

the United States; establish the Board comprised of producers and industry representatives to advise USDA; develop peanut quality and handling standards; and modify those quality and handling standards when needed. An interim final rule was published in the **Federal Register** (67 FR 57129) on September 9, 2002, terminating the previous peanut programs and establishing standards in Part 996 to insure the continued inspection of 2002 crop year peanuts and subsequent crop year peanuts, 2001 crop year peanuts not yet inspected, and 2001 crop year failing peanuts that had not yet met disposition standards. The initial Board was selected and announced on December 5, 2002. A final rule finalizing the interim final rule was published in the **Federal Register** (68 FR 1145) on January 9, 2003, to continue requiring all domestic and imported peanuts marketed in the United States to be handled consistent with the handling standards and officially inspected against the quality standards of the new program. The peanut quality and handling standards were later revised in rules published in the **Federal Register** (68 FR 46919, August 7, 2003, and 68 FR 53490, September 11, 2003). The provisions of this program continue in force and effect until modified, suspended, or terminated.

Pursuant to the Farm Bill, USDA has consulted with Board members in its review of the handling and quality standards for the 2005 and subsequent crop years. The quality and handling standards are intended to assure that satisfactory quality and wholesome peanuts are used in domestic and import peanut markets. All peanuts intended for human consumption must be officially inspected and graded by the Federal or Federal-State Inspection Service and, if necessary, undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA.

Under the Standards, § 996.30(b) Moisture specifies "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 may be received and dried to not more than 10.49 percent moisture prior to storing or milling: And *Provided further*, That

Virginia-type peanuts used for seed may be received or acquired containing up to 11.49 percent moisture.”

High Moisture peanuts are farmers stock peanuts that have a moisture content, when harvested, in excess of 10.49 percent moisture. In order to ensure that high moisture peanuts are dried to or below 10.49 percent moisture, growers must dry the peanuts on individual wagons/trailers. Often farmers stock peanuts are dried, taken to a sheller or handler, inspected and found to still be too high in moisture content, and must then be returned for additional drying at the grower's farm, at a handler/buying point facility, or at another location. Not all buying points, especially those in very rural locations, have drying facilities. This results in inefficiencies and added costs.

Handlers may receive high moisture peanuts, but cannot acquire them. Peanuts that are received cannot be mixed, commingled or otherwise lose their identity. Accordingly, any high moisture deliveries from a producer cannot be mixed with other high moisture deliveries. However, the inability to commingle high moisture peanut deliveries for drying slows producer deliveries and raises drying costs. It also raises inspection costs because the peanuts need to be inspected a second time to verify moisture levels prior to handler acquisition.

In response to requests from industry representatives and the Board, USDA allowed a trial relaxation in incoming peanut requirements for the 2004 crop year only. The Standards continued to require that farmers stock peanuts be dried to 10.49 percent moisture or less before storing or milling. However, wagonloads or lots of farmers stock peanuts grading between 10.50 and 18.00 percent moisture could be commingled at the handler/buying point facilities and bulk dried by handlers, in agreement with each producer of the wagonloads or lots being commingled. An 18 percent moisture limit recognizes the difficulties in the Inspection Service's use of its shelling equipment for peanuts with more than 18 percent moisture. After drying, a second inspection for moisture only was performed by Federal-State inspectors and documented accordingly. When the commingled lot was presented for the second “moisture only” inspection, the buying point was required to provide documentation identifying the specific lots or wagonloads which constituted the commingled lot. In the event that a commingled lot, after bulk drying, still did not meet the 10.49 percent moisture requirement, the lot could be further

dried and re-inspected until the lot contained no more than 10.49 percent moisture.

This temporary relaxation was the culmination of several meetings and requests from the Board and the peanut industry to bring the high moisture issue to conclusion. The Board made several recommendations regarding high moisture peanuts in 2003 and 2004. However, prior to the Board's discussion of any changes for 2005 crop peanuts, the Department's Farm Service Agency (FSA) identified an FSA program issue requiring resolution before implementation of any relaxation to the standard. Under FSA's loan program (7 CFR part 1421), high moisture peanuts must be segregated by each producer and dried to a moisture content not exceeding 10.49 percent. If high moisture peanuts from more than one producer are commingled and batch dried, the quality, quantity, and identity of each participating producer's peanuts would be lost. As such, those high moisture peanuts would not be eligible for FSA marketing assistance loans (MAL) or loan deficiency payments (LDP).

These concerns have been resolved through a formulation of a revised FSA Form 1007 (a combined inspection certificate and calculation worksheet) that identifies and tracks high moisture peanut shipments. Inspection procedures and reporting requirements would remain unchanged. The original peanut inspection notesheet/certificate would accompany the FSA Form 1007 with the converted high moisture factors from the high moisture conversion charts provided by the National Peanut Research Laboratory (NPRL). The NPRL conversion charts provide a guide for varying levels of high moisture peanuts received and the converted grade factor equivalents when dried down to an acceptable level without having to conduct another inspection on the dried down peanuts.

The Board met on March 16, 2005, and unanimously recommended that § 996.30(b) be modified so that handlers and importers may receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 18 percent moisture: *Provided*, That farmers stock peanuts be dried to not more than 18 percent moisture prior to inspection and grading. If the sound mature kernel and sound splits grade is 60 or below on a lot of peanuts that contains moisture between 10.49 and 18 percent, the lot of peanuts shall be dried to a moisture level of 10.49 or below prior to inspection and grading. Valencia peanuts may only be inspected at

moisture levels 10.49 and below. All farmers stock peanuts must be dried to not more than 10.49 percent moisture prior to storing or milling: *Provided*, That Virginia-type peanuts used for seed must be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling.

On March 23, 2005, the Board's implementation sub-committee recommended the removal from the Board's recommendation of the moisture requirement on peanuts with a sound mature kernel plus sound splits grade of 60 or below.

According to a number of Board members, allowing handlers and importers to receive high moisture peanuts could make a significant difference in the efficient acquisition and warehousing of farmers' stock peanuts each fall. Allowing the acquisition of high moisture peanuts would allow handlers to accumulate a number of loads and batch dry them at the same time. These Board members indicated that this could speed up drying, grading, and movement of peanuts at harvest, which would be especially important when adverse weather conditions during harvest could cause peanut quality to deteriorate. According to some Board members, it would also reduce drying and inspection costs.

Therefore under this proposal, domestic and imported peanuts must be dried to 18 percent or less prior to inspection and 10.49 percent or less prior to storing or milling. Virginia-type peanuts used for seed must be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling.

#### **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 are approximately 55 peanut shelling entities, operating approximately 70 shelling plants, and 25 importers subject to regulation under the peanut program. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on 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 \$6,000,000.

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) can be obtained from the 2002 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 7,551 peanut farms with annual agricultural sales valued at less than \$500,000 in 2002, representing 87 percent of the total number of peanut farms in the U.S. (8,640). 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 2002 (less than \$750,000 in sales) was likely a few percentage points higher than 87 percent, and may have shifted by a small amount since 2002. Thus, the proportion of small peanut farms is likely to be close to 90 percent.

According to the National Agricultural Statistics Service (NASS), the two-year average peanut production for the 2003 and 2004 crop years was 4.203 billion pounds, harvested from average acreage of 1.353 million, yielding an average of 3,106 pounds per acre. The average value of production for the two-year period was \$816.904 million. The average grower price over the two-year period was \$0.194 per pound, and the average value per harvested acre was \$604. Dividing the two year average value of production (\$816.904 million) by the estimated 8,640 peanut farms (2002 Agricultural Census) yields an estimated average peanut sales revenue per farm of approximately \$94,440. Average peanut acreage per farm is 156.

The Agricultural Census provides data on the value of annual sales of all agricultural products from peanut farms in terms of ranges. The value of annual agricultural product sales of the median peanut farm in 2002 was between \$50,000 and \$99,999. The median is the midpoint ranging from the largest to the smallest.

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 \$816.904 million by 14,186 peanut producers (Farm Service Agency 2004 estimate) results in an estimate of

average revenue per producer of approximately \$57,585.

The current 14 custom blanchers, 8 custom remillers, 4 oil mill operators, 4 USDA and 15 USDA-approved private chemical (aflatoxin) laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71.

These requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection programs (Inspection Service) that will perform inspections under this peanut 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. 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 \$6,000,000. Some importers use customs brokers' import services. These brokers are usually held accountable by the importer to see that entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71 are met. These reporting requirements are not applied disproportionately to small customs brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, importers, and above-mentioned entities may be classified as small businesses.

This proposal would change the minimum peanut quality and handling standards so that handlers may receive or acquire peanuts with a moisture content of up to 18 percent. The Board suggested changing the minimum peanut quality and handling standards to allow handlers to receive or acquire high moisture peanuts to promote the development of new drying technologies, increase efficiencies and reduce costs to the industry.

USDA has considered alternatives to the suggested change to the quality and handling standards. The Farm Bill requires USDA to consult with the Board on these standards. An alternative would be to continue the current standards for the 2005 crop year. The current Board's recommended change to the handling and quality standards issue was raised during last year's USDA/Board standards review but was tabled until an inter-agency collaboration (AMS and FSA) could coordinate their respective peanut handling and loan

regulations. However, because of the anticipated benefits of the recommended change, USDA believes the implementation of the Board's suggested change would be preferable to continuing without change. The Board's meeting was open to a wide audience and all interested persons were invited to attend the meeting and provide input.

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.

This rule invites comments on the Board's recommendation to change the quality and handling standards. Interested persons also are invited to submit information on the regulatory and economic impact of this action on small businesses. A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule, if adopted, should be in place as soon as possible for the 2005 crop year. Any comments timely received will be considered before a final determination is made in this matter.

#### Information Collection

The Farm Bill specifies in section 1601(c)(2)(A) that the standards established pursuant to it, may be implemented without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Furthermore, this rule does not change the existing information collection burden.

Section 1601 of the Farm Bill also provides that promulgation of or amendments to the standards may be implemented without extending interested parties an opportunity to comment. However, due to the nature of the proposed changes, interested parties are provided 15 days to file comments.

#### List of Subjects 7 CFR Part 996

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

For the reasons set forth in the preamble, 7 CFR Part 996 is proposed to be amended as follows:

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

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

**Authority:** 7 U.S.C. 7958.

2. Paragraph (b) of § 996.30 is revised to read as follows:

**§ 996.30 Incoming quality standards.**

\* \* \* \* \*

(b) *Moisture.* Domestic and imported peanuts shall be dried to 18 percent or less prior to inspection and to 10.49 percent or less prior to storing or milling; *Provided*, That Virginia-type peanuts used for seed shall be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling.

\* \* \* \* \*

Dated: June 13, 2005.

**Barry L. Carpenter,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-12156 Filed 6-20-05; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2005-21275; Directorate Identifier 2005-CE-28-AD]

**RIN 2120-AA64**

**Airworthiness Directives; The Cessna Aircraft Company Models 208 and 208B Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all The Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This proposed AD would require you to install a pilot assist handle, Cessna part number SK208-146-2, for all affected airplanes, install deicing boots on landing gear struts and cargo pod on certain Cessna Models 208 and 208B airplanes, and make changes to the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM), and to the POH and AFM Supplement S1 for all affected airplanes. This proposed AD results from reports of several accidents and of problematic events involving the

affected airplanes during operations in icing conditions, including nine events in the 2004-2005 icing season, and ground icing conditions. We are issuing this proposed AD to prevent ice adhering to critical surfaces. Ice adhering to critical surfaces could result in a reduction in airplane performance with the consequences that the airplane cannot perform a safe takeoff, climb, or maintain altitude.

**DATES:** We must receive any comments on this proposed AD by August 22, 2005.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., NASSIF Building, Room PL-401, Washington, DC 20590-001.

- *Fax:* 1-202-493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the NASSIF Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277-7706; telephone: (316) 517-5800; facsimile: (316) 942-9006.

To view the comments to this proposed AD, go to <http://dms.dot.gov>. The docket number is FAA-2005-21275; Directorate Identifier 2005-CE-28-AD.

**FOR FURTHER INFORMATION CONTACT:** Paul Pellicano, Aerospace Engineer (Icing), FAA, Small Airplane Directorate, c/o Atlanta Aircraft Certification Office (ACO), One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703-6064; facsimile: (770) 703-6097.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, "FAA-2005-21275; Directorate Identifier 2005-CE-28-AD" at the beginning of your comments. We will post all comments we receive, without change, to

<http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA-2005-21275; Directorate Identifier 2005-CE-28-AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

**Docket Information**

*Where can I go to view the docket information?* You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at <http://dms.dot.gov>. The comments will be available in the AD docket shortly after the DMS receives them.

**Discussion**

*What events have caused this proposed AD?* The FAA has received several reports of accidents and incidents concerning problems with Cessna Models 208 and 208B airplanes during operations in icing conditions. This includes a total of six accidents in the previous two icing seasons and nine incidents in the past few months. One-third of the Model 208 icing related accidents occurred as a result of loss of control after takeoff in ground icing conditions. One-third are suspected to