

# Rules and Regulations

Federal Register

Vol. 70, No. 146

Monday, August 1, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 996

[Docket No. FV05-996-2 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule changes 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:** Effective August 2, 2005.

**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; 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 final rule is issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), 7 U.S.C. 7958, hereinafter referred to as the "Farm Bill."

This final 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 final 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. These include ensuring mandatory inspection on all peanuts marketed in the United States; establishing the Board comprised of producers and industry representatives to advise USDA; developing and implementing peanut quality and handling standards; and modifying 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 the 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 USDA's Farm Service Agency (FSA) identified an FSA

program issue requiring resolution before implementation of any relaxation to the moisture 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 will remain unchanged. The original peanut inspection notesheet/certificate will 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 because this requirement was not needed.

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

Therefore under this final rule, 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.

#### Final 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 final 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 final rule changes the minimum peanut quality and handling standards so that handlers may receive 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 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 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 is 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.

#### 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 were provided 15 days to file comments. The proposed rule concerning these changes was published in the **Federal Register** (70 FR 35562) on June 21, 2005. The rule was posted on the AMS Web site specified above and was available through the internet by the Office of the Federal Register. The proposed rule provided that comments received by July 6, 2005, would be considered in finalizing the rulemaking action.

A total of four comments were received from a peanut shellers association, a peanut product manufacturers association, a peanut growers association, and the Georgia Peanut Commission. Three comments were in support of the proposed rule. The comment from the peanut commission stated that it wanted to be certain that grower interests were protected and that any proposed changes would not be detrimental to growers. This rule would allow handlers and importers to receive or acquire high moisture peanuts thereby promoting the development of new drying technologies, increasing efficiencies and reducing costs to the overall industry. This comment also mentioned an additional concern pertaining to comparable loan calculations on peanuts that have been dried to a suitable loan level. As stated previously in this action, FSA has revised its Form 1007 to identify and track high moisture peanut shipments, including green peanuts. Accordingly, no changes are made in the provisions as proposed.

It also is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because producers and handlers are preparing for the 2005 crop year, which

starts September 1. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and four comments were received as discussed herein.

#### 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 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.

(a) \* \* \*

(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: July 27, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-15167 Filed 7-27-05; 4:10 pm]

BILLING CODE 3410-02-P

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-21054; Directorate Identifier 2005-NM-054-AD; Amendment 39-14205; AD 2005-15-16]

RIN 2120-AA64

#### Airworthiness Directives; AvCraft Dornier Model 328-300 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain

AvCraft Dornier Model 328-300 airplanes. This AD requires modifying the electrical wiring of the fuel pumps; installing insulation at the flow control and shut-off valves, and other components of the environmental control system; installing markings at fuel wiring harnesses; replacing the wiring harness of the auxiliary fuel system with a new wiring harness; and installing insulated couplings in the fuel system; as applicable. This AD also requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new inspections of the fuel tank system. This AD is prompted by the results of fuel system reviews conducted by the airplane manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** This AD becomes effective September 6, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of September 6, 2005.

**ADDRESSES:** For service information identified in this AD, contact AvCraft Aerospace GmbH, P.O. Box 1103, D-82230 Wessling, Germany.

**Docket:** The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL-401, Washington, DC. This docket number is FAA-2005-21054; the directorate identifier for this docket is 2005-NM-054-AD.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with an AD for certain AvCraft Dornier Model 328-300 airplanes. That action, published in the *Federal Register* on April 26, 2005 (70 FR 21346), proposed to require modifying the electrical wiring of the fuel pumps; installing insulation at the flow control and shut-

off valves, and other components of the environmental control system; installing markings at fuel wiring harnesses; replacing the wiring harness of the auxiliary fuel system with a new wiring harness; and installing insulated couplings in the fuel system; as applicable. That action also proposed to require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new inspections of the fuel tank system.

#### Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment that was submitted on the proposed AD.

#### Provide for Incorporation of Temporary Revision By Normal Revision Process

The commenter requests that we revise paragraph (h) of the proposed AD to provide for incorporation of AvCraft Temporary Revision (TR) ALD-028, dated October 15, 2003, into the body of the Airworthiness Limitations section of the Instructions for Continued Airworthiness document through the normal revision process. The commenter notes that the proposed AD, as written, would require the TR to remain in the Airworthiness Limitations section forever. However, once the information in the TR is incorporated into the Airworthiness Limitations section through the normal revision process, the TR document will be unnecessary.

We agree. We have revised paragraph (h) of this AD accordingly, and added a new note, Note 1, to clarify the revised language in paragraph (h). These changes will allow the TR to be removed from the Airworthiness Limitations once the information in the TR has been incorporated into the Airworthiness Limitations by the normal revision process.

#### Explanation of Change to Applicability

We have revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected model.

#### Explanation of Changes to Tables 1 and 2 of Proposed AD

Tables 1 and 2 of the proposed AD incorrectly referred to paragraphs that do not exist in the referenced service bulletins. We have revised Tables 1 and 2 of this AD to refer to the correct paragraphs in the referenced service bulletins.