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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 996

[Doc. No. AMS-SC-16-0102; SC16-996-3 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Peanut Standards Board (Board) to revise the minimum quality and handling standards for domestic and imported peanuts marketed in the United States (Standards). The Board advises the Secretary of Agriculture regarding potential changes to the Standards and is comprised of producers and industry representatives. This action relaxes the allowance for damaged kernels in farmers stock peanuts when determining segregation. This change increases the allowance for damaged kernels under Segregation 1 from not more than 2.49 percent to not more than 3.49 percent. The requirements for Segregation 2 are also adjusted to reflect this change. The Board recommended this change to align the incoming standards with recent changes to the outgoing quality standards and to help increase returns to producers.

DATES: Effective February 1, 2018.

FOR FURTHER INFORMATION CONTACT: Steven W. Kauffman, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3775, Fax: (863) 291-8614, or Email: Steven.Kauffman@ams.usda.gov or Christian.Nissen@ams.usda.gov.

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

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to Public Law 107-171, the Farm Security and Rural Investment Act of 2002 (Act). The minimum quality and handling standards for domestic and imported peanuts marketed in the United States (Standards) regulate the quality and handling of domestic and imported peanuts marketed in the United States.

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a “non-significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, this rule is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

Executive Order 13175

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

and would not have significant Tribal implications.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect and shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act; but is intended that all such statutes shall remain in full force and effect except in so far as they are inconsistent herewith or repugnant hereto (7 U.S.C. 587).

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

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

Pursuant to the Act, USDA has consulted with Board members in their review of the changes to the Standards included in this action. This final rule relaxes the allowance for damaged kernels in farmers stock peanuts when determining segregation. The Board recommended changing the allowance for damaged kernels under Segregation 1 from not more than 2.49 percent to not more than 3.49 percent. The requirements for Segregation 2 are also adjusted to reflect this change. The Board believes these changes will align the incoming standards with recent revisions to the outgoing quality standards and increase returns to producers. These changes were recommended by the Board at its meeting on September 1, 2016. USDA proposed and requested public comment on the Board’s recommendation in the **Federal Register** on May 25, 2017 (82 FR 24082).

The Standards establish minimum incoming and outgoing quality

requirements for domestic and imported peanuts marketed in the United States. Section 996.8 defines incoming inspection as the sampling, inspection, and certification of farmers stock peanuts to determine segregation and grade quality. Section 996.13 of the Standards defines three levels of segregation for incoming farmers stock peanuts. Segregation 1 is currently defined as 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*. Segregation 2 is currently defined as 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*, and Segregation 3 is defined as farmers stock peanuts with visible *Aspergillus flavus*. Section 996.30 outlines the incoming quality standards, which specify that all farmers stock peanuts received by handlers shall be inspected and certified as to segregation and moisture content.

Segregation 1 encompasses the majority of incoming farmers stock peanuts. Segregation 2 peanuts have historically constituted roughly one percent of the domestic crop. However, there has been a slight increase for the previous two years to 2.5 percent in 2014 and 3 percent in 2015. The fluctuation in the percentage of Segregation 2 peanuts is likely the result of weather conditions around harvest time.

A group of several entities representing peanut producers wrote a letter to the Board requesting that the Board review the allowance for damaged kernels for farmers stock peanuts. In their letter, the producer groups stated they believe the loan value for Segregation 2 peanuts under the Farm Service Agency's marketing assistance loans program remains low. Even though changes in regulations and technology allow Segregation 2 peanuts to now be cleaned and resold at a higher market rate, there has been little change in the loan value for these peanuts. The letter further stated that should a farmer have his entire crop graded Segregation 2, it could be economically devastating. Therefore, the letter requested an increase in the allowance for damaged kernels for Segregation 1 from 2.49 to 3.49 percent, shifting more peanuts into the category of Segregation 1.

The Board discussed this request at its September 1, 2016, meeting. In its discussion, the Board recognized the large difference between the loan rate for Segregation 1 and for Segregation 2

peanuts. The Board agreed that many Segregation 2 peanut lots can be cleaned-up to meet the outgoing quality standards with minimal cost involved. This allows a significant portion of the Segregation 2 peanuts purchased to be utilized at a higher value after processing.

There has been significant industry advancement in technology since the 2002 Farm Bill established the Standards. Before 2002, Segregation 2 peanuts had to be sent to a crusher and could not be reworked to meet the outgoing quality standards. In recent years, the improvements in technology have allowed the industry to utilize Segregation 2 peanuts and still meet outgoing quality standards. Further, recent changes to the outgoing quality standards relaxed the allowance for damaged kernels from 2.5 to 3.5 percent for kernels and for cleaned-inshell peanuts (81 FR 50283, published August 31, 2016). This relaxation made additional peanuts available for sale for human consumption. This final rule makes a corresponding adjustment to the damage requirements for incoming peanuts. This action relaxes the allowance for damaged kernels under the definition for Segregation 1 peanuts from 2.49 to 3.49 percent, which will shift a small portion of peanuts from Segregation 2 into the Segregation 1 category.

The effect of this change on the overall quality of peanuts in the industry should be minimal. In considering this issue, the Board reviewed data from the National Center for Peanut Competitiveness. The data indicated that roughly one third of Segregation 2 farmers stock peanuts would be shifted into the Segregation 1 category under the change. Since Segregation 2 historically composes approximately one percent of total farmers stock peanuts, this adjustment represents a very small shift in overall volume. Therefore, the change will have an insignificant impact on the composition of Segregation 1 peanuts.

As the producer value of farmers stock peanuts is determined in part by the category of segregation, the segregation level determined during the incoming inspection impacts producer returns. If a producer experiences a shift in damage that moves their peanuts from Segregation 1 to Segregation 2, it can have a significant financial impact, especially for small producers. This change benefits the industry by moving more peanuts into the Segregation 1 category. This should increase returns and help lower financial risk to producers by shifting more peanuts into the higher value Segregation 1 category.

This change also requires increasing the Segregation 2 criteria from more than 2.49 percent to more than 3.49 percent damaged kernels. The Board recommended these changes, in part, to align the incoming standards with the recent changes that were made to the outgoing quality standards earlier this year. Further, the Board believes the 3.49 percent allowance for damaged kernels represents an acceptable level of damage while maintaining quality peanuts.

Consequently, the Board recommended increasing the percent damaged kernel allowance under Segregation 1 from not more than 2.49 percent to not more than 3.49 percent. The Board voted 13–2 in support of the changes. One of the two Board members voting against the changes was concerned that the decision was being made without enough data and was concerned about maintaining the quality of peanuts. Several Board members responded that this change was not a new issue for the industry. Further, this change has been well supported by producer groups prompting this action. These changes are consistent with the Standards and the Act.

Final Regulatory Flexibility Analysis

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

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

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

There are approximately 7,500 peanut producers, 60 peanut handlers operating approximately 70 shelling plants, and 25 importers subject to regulation under the peanut program.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition can be obtained from the 2012 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 3,066 peanut farms with annual agricultural sales valued at less than

\$500,000 in 2012, representing 47 percent of the total number of peanut farms in the U.S. (6,561). According to the National Agricultural Statistics Service (NASS), peanut production for the 2014 and 2015 crop years averaged 5.7 billion pounds. The average value of production for the two-year period was \$1.173 billion. The average producer price over the two-year period was \$0.21 per pound. Dividing the two-year average production value of \$1.173 billion by the approximate number of peanut producers of 7,500 results in an average revenue per producer of approximately \$156,000, well below the SBA threshold for small producers.

Dividing the two-year average production value of \$1.173 billion by the approximate number of peanut handlers of 60 results in an average revenue per handler of approximately \$19,550,000. Using a normal distribution, the majority of handlers may be considered large entities. Further, according to the Foreign Agricultural Service's Global Agricultural Trade System, the average annual value of peanuts imported into the United States for the 2014 and 2015 seasons was approximately \$67 million. By dividing the annual average value of imported peanuts by the number of importers, the majority of importers meet the SBA definition for small agricultural service firms. Consequently, the majority of producers and importers may be classified as small entities, but the majority of handlers may be considered large entities when using a normal distribution.

This final rule relaxes the allowance for damaged kernels in farmers stock peanuts when determining segregation. This change increases the allowance for damaged kernels under Segregation 1 from not more than 2.49 percent to not more than 3.49 percent. The Board believes this rule will align incoming farmers stock peanuts segregation with the outgoing quality standards and increase returns to producers.

It is not anticipated that this action will impose additional costs on handlers, producers, or importers, regardless of size. Rather, these changes should help improve returns to peanut producers and help lower financial risk.

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

The USDA has considered alternatives to these changes. The Act requires USDA to consult with the Board on changes to the Standards. An alternative discussed was to increase the

damaged kernel percentage up to 4.49 percent for Segregation 1. However, the Board believes this alternative would relax the kernel damage too far. Therefore, this alternative was rejected.

USDA has met with the Board, which is representative of the industry, and has included its recommendations in this rule.

The Act specifies in section 1604(c)(2)(A) that the Standards established pursuant to it may be implemented without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). However, USDA has considered the reporting and recordkeeping burden on handlers and importers under this program.

This final rule relaxes the allowance for damaged kernels in farmers stock peanuts when determining segregation under the Standards. Recordkeeping requirements will remain the same. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large handlers or importers.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. Further, the public comments received concerning the proposal did not address the initial regulatory flexibility analysis.

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

The Board's meeting was widely publicized throughout the peanut industry and all interested persons were invited to attend and participate in Board deliberations on all issues. Like all Board meetings, the September 1, 2016, meeting was a public meeting and all entities, both large and small, were able to express views on these issues.

Section 1601 of the Act also provides that amendments to the Standards may be implemented without extending interested parties an opportunity to comment. However, due to the nature of the proposed changes, interested parties were provided with a 30-day comment period.

A proposed rule concerning this action was published in the **Federal Register** on May 25, 2017 (82 FR 24082). Copies of the rule were mailed or sent via facsimile to all Board members. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending June 26, 2017,

was provided to allow interested persons to respond to the proposal.

Ten comments were received during the comment period in response to the proposal. The commenters included producers, a sheller, a producer association, a sheller association, two State farm bureaus, a State peanut board, a State commodity commission, and one anonymous individual. Nine of the comments received were in support of the proposed rule, and one comment was in opposition.

All nine positive comments expressed support for finalizing the proposed rule as issued. Seven of these comments recognized the industry's advancements in technology that allows for better sorting and cleaning of incoming farmers stock peanuts. Seven commenters stated this change would align farmers stock segregation damage under incoming standards with the 2016 changes to the outgoing peanut quality standards. Six commenters suggested the one percent relaxation should allow farmers to improve returns and lower financial risk by shifting more peanuts into Segregation 1. One comment added that modern harvesting practices can cause slightly more damage to peanut kernels, but noted that this type of damage is cosmetic and has nothing to do with food safety or quality. Two of the comments asked for the changes to be implemented for the 2017 crop.

Given industry and USDA adjustments that will need to occur to accommodate these changes, USDA believes that the changes should be effective well in advance of a given crop year. The 2017 crop is well underway. As such, USDA is setting February 2018 as the most appropriate effective date to ensure an orderly transition to the revised standards for the next season.

The one negative comment, received from an anonymous individual, questioned why the standards are being lowered to match our competitors. The commenter also noted this is likely an effort to receive more product from overseas.

Few, if any, peanuts are imported as farmers stock. Consequently, this action would have no impact on imported peanuts. However, imported peanuts are subject to the same outgoing quality requirements as domestic peanuts under the Standards. This action makes no changes to the outgoing standards. While this change would not impact imported peanuts, it could result in additional domestic peanuts being available for human consumption.

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

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

List of Subjects in 7 CFR Part 996

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

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

PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS 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. Section 996.13 is amended by revising paragraphs (b) and (c) to read as follows:

§ 996.13 Peanuts.

* * * * *

(b) *Segregation 1.* “Segregation 1 peanuts” means farmers stock peanuts with not more than 3.49 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 3.49 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*.

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Dated: October 16, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017-22712 Filed 10-19-17; 8:45 am]

BILLING CODE 3410-02-P

FARM CREDIT ADMINISTRATION

12 CFR Part 607

RIN 3052-AD30

Assessment and Apportionment of Administrative Expenses

AGENCY: Farm Credit Administration.

ACTION: Direct final rule.

SUMMARY: The Farm Credit Administration (FCA or we) issues this direct final rule adopting technical

amendments to eliminate language that is obsolete, confusing, and unnecessary to determine the annual assessment amount of Farm Credit System institutions.

DATES: If no significant adverse comment is received on or before November 20, 2017, this regulation shall become effective no earlier than the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish notice of the effective date in the **Federal Register**.

ADDRESSES: For accuracy and efficiency reasons, please submit comments by email or through the FCA’s Web site. We do not accept comments submitted by facsimile (fax), as faxes are difficult for us to process in compliance with section 508 of the Rehabilitation Act. Please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at reg-comm@fca.gov.
- *FCA Web site:* <http://www.fca.gov>. Select “Public Commenters,” then “Public Comments,” and follow the directions for “Submitting a Comment.”
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select “Public Commenters,” then “Public Comments,” and follow the directions for “Reading Submitted Public Comments.” We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Jeremy R. Edelstein, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4497, TTY (703) 883-4056; or

Jennifer A. Cohn, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (303) 696-9737, TTY (703) 883-4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this direct final rule is to eliminate confusion in the definition of “average risk-adjusted asset base” in § 607.2(b), which is used to determine the annual assessment amount of System institutions, by:

- Removing an obsolete and unnecessary reference to FCA’s call report schedule; and
- Clarifying the effect of mergers and consolidations based on current accounting practices and deleting obsolete language relating to transfers of direct lending authority.

II. Discussion

Effective January 1, 2017, the FCA published the Tier 1/Tier 2 Framework; Final Rule (new capital rule).¹ The new capital rule, in pertinent part, revised the risk-weights that determine the risk-adjusted asset base (the denominator) of the permanent capital ratio that Farm Credit System (System) institutions must compute. The average risk-adjusted asset base of a System bank, association, or designated other System entity is used to determine its annual assessment of funds to cover FCA’s expenses.² Existing § 607.2(b) defines and specifies how to calculate “average risk-adjusted asset base” in four different ways, depending on when the institution was formed and how many quarters of risk-adjusted assets are available. All these variations, however, define “average risk-adjusted asset base” using the regulatory definition of “risk-adjusted asset base” and with reference to risk-adjusted assets as reported on each quarterly Call Report Schedule RC-G.

The FCA significantly revised and relabeled its call report schedules in connection with the new capital rule. An institution’s permanent capital ratio denominator—its average risk-adjusted asset base—is no longer reported in Call Report Schedule RC-G. Accordingly, FCA is revising the definition of “average risk-adjusted asset base” in § 607.2(b) to remove the references to Call Report Schedule RC-G. Because call report schedules are subject to change outside of the regulatory process, the revised definition does not refer to a call report schedule. Rather, revised § 607.2(b) defines “average risk-adjusted asset base” with reference to the average daily risk-adjusted assets as of the last day of the quarter and without reference to the call report schedule. Because average daily risk-adjusted assets can be determined under FCA’s regulations, the reference to the

¹ 81 FR 48720, July 28, 2016.

² See 12 CFR part 607.