

# Rules and Regulations

Federal Register

Vol. 68, No. 152

Thursday, August 7, 2003

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. FV03-996-2 IFR]

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

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

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

**SUMMARY:** This rule changes peanut quality and handling standards for domestic and imported peanuts marketed in the United States. These changes are based on comments received from the Peanut Standards Board (Board) and other industry sources. The standards and the Board were established by the Department of Agriculture (USDA), pursuant to section 1308 of the Farm Security and Rural Investment Act of 2002. This rule changes screen sizes specified in the outgoing quality standards to allow smaller peanut kernels of all varieties to be used in edible markets; specifies in the text of the regulations that financially interested persons may appeal quality inspection results and that "holders of the title" to any lot of peanuts may appeal aflatoxin test results; allows peanut lots which meet minimum damage and minor defect standards prior to blanching, but fail for some other reason, to be exempt from damage and minor defect standards upon re-inspection after blanching; and increases to 10 percent the quantity of sound whole kernels that may be contained in lots of splits for specified peanut varieties. These changes are intended to maximize handling efficiency and to provide the producers, handlers, and importers with flexibility

to meet current and new market demands, while maintaining peanut quality and wholesomeness for consumers.

**DATES:** Effective August 8, 2003; comments received by September 8, 2003 will be considered prior to issuance of a final rule.

**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 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: [james.wendland@usda.gov](mailto:james.wendland@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, 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."

The Department of Agriculture (USDA) is issuing this interim final rule in conformance with Executive Order 12866 and has determined it to be non-significant.

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 Act 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 industry representatives to advise USDA; and develop peanut quality and handling standards; and to 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 provisions of this new program continue in force and effect until modified, suspended, or terminated.

Pursuant to the Act, USDA has consulted with Board members in the review of the handling and quality standards for the 2003 and subsequent crop years. USDA conducted a meeting with Board members on April 30, 2003. The changes were raised and supported by Board members. In addition to the meeting, USDA received written comments from Board members and others on recommended changes to the peanut handling and quality standards.

This rulemaking action: (1) Changes screen sizes specified in the outgoing

quality standards to allow smaller peanut kernels of all varieties to enter edible channels; (2) specifies in the text of the regulations that financially interested persons may appeal quality inspection and that "holders of the title" to any lot of peanuts may appeal aflatoxin test results; (3) allows peanut lots which meet minimum damage and minor defect standards, but fail for other reasons, prior to blanching, to be exempt from minimum damage and minor defect standards upon re-inspection after blanching; and (4) increases to 10 percent the quantity of sound whole kernels that may be contained in lots of splits for specified peanut varieties. These changes are intended to maximize handling efficiency and to provide the producers, handlers, and importers with flexibility to meet current and new market demands, while maintaining peanut quality and wholesomeness for consumers.

The quality and handling standards are intended to assure that satisfactory quality and wholesome peanuts are used in domestic markets. All peanuts intended for human consumption must be officially inspected and graded by the Federal or Federal-State Inspection Service and undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA. 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 previous peanut programs were terminated. Once certified as meeting outgoing quality standards, peanuts may not be commingled with any other peanuts that have failed outgoing quality standards or any residual peanuts from reconditioning operations.

#### *Small Kernel Usage*

Prior to establishing the quality standards that were applied during the 2002–03 crop year, a few peanut handler members of the Board suggested changing the shape and size of the holes in screens used to sort out small kernels. The changes discussed would have increased the number of smaller kernels that rode the screens and that could have entered edible channels.

The shape of the opening, slotted vs. round, is a significant factor in the number of smaller kernels that fall through or ride the screens. Slotted screens resemble the shape of peanuts and allow kernels to fall through as they bounce down the screen during the sorting process. Kernels fall through round openings only when striking the

opening on end or "standing up" as they bounce down the screen. When more kernels ride the screen, more are available for edible channels.

Proponents of smaller kernel use claimed that end-product manufacturers now have markets for smaller, whole kernels. They also claimed that modern, electronic color sorting technologies can sort out smaller kernels that are moldy or defective. Opponents, including some handlers and grower representatives, claimed that the benefits of increased use of small kernels were not worth the increased risk of aflatoxin contamination. Based on studies conducted by the Agricultural Research Service (ARS) going back to at least 1979, the industry was aware that there is a higher incidence of aflatoxin contamination in smaller peanut kernels.

Most Board members agreed that new research was needed on small kernel sizes and aflatoxin contamination before any change was made. USDA decided not to change screen sizes for the 2002–03 crop year and asked ARS to conduct another analysis of the incidence of aflatoxin in small peanut kernels. ARS peanut size and aflatoxin studies using 2002 crop farmers stock runner type peanuts from the Southeast (the peanuts and region most likely to have aflatoxin contamination) measured the contamination of kernels that fell through a  $1\frac{5}{64}$  inch slotted screen and those that rode a  $1\frac{7}{64}$  inch round screen. The completed results, received by Fruit and Vegetable Programs on January 21, 2003, indicated that there was a small, but not significant, increase of aflatoxin associated with the smaller peanut kernel size.

Past research demonstrated that three farmers stock grade components are associated with aflatoxin. These are damage, loose-shelled kernels, and small and other kernels. Very little aflatoxin is associated with high quality farmers stock peanuts associated with the farmers stock grade referred to as sound mature kernels and sound splits. Studies conducted by sampling 120 contaminated farmers stock lots, published in 1998, showed that these three risk components accounted for 93.1 percent of the total aflatoxin in a farmers stock lot, but only 18.4 percent of the lot kernel mass. Aflatoxin in sound mature kernels and sound splits, small and other kernels, loose shelled kernels, and damaged kernels represented 6.9, 7.9, 33.3, and 51.9 percent of the total aflatoxin. The small kernels had the lowest risk of the components. The findings of research performed in previous years were similar.

ARS believes that the results of the past studies are consistent with the current study presented to the Board in April 2003. The peanuts that rode the  $1\frac{7}{64}$  inch round screen were a mix of sizes from small to large (not only small kernels as in the past studies). The mix of sizes was used to better duplicate sheller milling lines and processing practices. The aflatoxin impact was minimal because small and other kernels have the lowest aflatoxin risk of the three risk components and the small kernels composed a small percentage of the different sizes riding the  $1\frac{7}{64}$  inch round screen. The higher the percentage of small kernels riding a  $1\frac{7}{64}$  inch round screen, the greater the aflatoxin impact that small kernels will have on the lot in question. The percentage of small kernels that fell through the  $1\frac{5}{64}$  inch slotted screen and rode the  $1\frac{7}{64}$  inch round screen varied greatly from lot to lot in the study presented to the Board. They averaged about 7 and 21 percent in the current study, respectively. In the final analysis, the aflatoxin impact of the smaller kernels was not significant according to ARS.

The Board discussed the peanut size and aflatoxin study at its April 30, 2003, meeting, and recommended relaxation of quality standards to allow smaller peanut kernels to be used for human consumption because the increase in aflatoxin in small kernels was not determined to be significant. All Board members agreed that quality and wholesomeness are paramount for producers, handlers, and importers, but the industry believes that it can continue to provide buyers with high quality and wholesome peanuts with changed screen size.

Compliance officers report that out of 77 shellers, a total of 62 have electronic sorting technology to sort out defective small kernels and further improve peanut quality and wholesomeness. The 15 shellers without sorting technology in their plants only shell seed peanuts, which are not shipped to the edible market.

Several industry representatives at last year's Board meeting also cited the pungent taste of small kernels as a quality factor that should weigh against the use of smaller peanut kernels. No such concerns were mentioned or discussed at this year's Board meeting, or in the comments received subsequent to the Board meeting.

The screen size changes are shown in the table in § 996.31(a) Minimum Quality Standards: Peanuts for Human Consumption—Whole Kernels and Splits: Maximum Limitations, under the column for Sound Whole Kernels. Under the "Excluding lots of splits"

category, this action changes the screen size for Runner peanuts from a  $1\frac{5}{64}$  inch  $\times$   $\frac{3}{4}$  inch slotted opening to a  $1\frac{7}{64}$  inch round opening. These were the screen sizes and peanut variety used in the study.

Because the Virginia, Spanish, and Valencia varieties do not routinely experience high aflatoxin content, smaller kernels of those varieties also are not expected to have significantly increased aflatoxin contamination. Therefore, corresponding changes in screen sizes for these varieties are also made in this rule. For Virginia variety peanuts, the screen size changes from a  $1\frac{5}{64}$  inch  $\times$  1 inch slotted opening to a  $1\frac{7}{64}$  inch round opening. For Spanish and Valencia varieties, the change is from a  $1\frac{5}{64}$  inch  $\times$   $\frac{3}{4}$  inch slotted opening to a  $1\frac{6}{64}$  inch round opening.

Corresponding changes are made under the "Lots of splits" category for "Sound whole kernels." For Runner variety split lots, the screen opening would change from a  $1\frac{4}{64}$  inch  $\times$   $\frac{3}{4}$  inch slotted opening to a  $1\frac{7}{64}$  inch round opening. For Virginia variety split lots, the  $1\frac{4}{16}$   $\times$  1 inch slotted opening would be changed to a  $1\frac{7}{64}$  inch round opening. For Spanish and Valencia varieties, the  $1\frac{3}{64}$  inch  $\times$   $\frac{3}{4}$  inch slotted opening would be changed to a  $1\frac{6}{64}$  inch round opening.

Currently, the table includes three columns for fall through. One column includes a maximum 3 percent tolerance for "Sound Split and Broken Kernels". The second column includes a 3 percent tolerance for "Sound Whole Kernels", and the third column includes a total tolerance of 4 percent for these categories of peanuts. A comment received from a handler association subsequent to the Board meeting suggested combining the three columns into one column and establishing a total tolerance of 6 percent for sound split, broken, and small kernels allowed in any lot. The association recommended this tolerance change to bring the tolerances into conformity with the U.S. Grade Standards for the various types of shelled peanuts grown and marketed in the United States.

Thus, this rule implements a relaxation in the utilization of small peanut kernels only by changing the screens from slotted to round holes for sound whole kernels and splits as noted above. This change is expected to increase market share for U.S. peanuts by enabling handlers to sell smaller peanuts to buyers who purchase less expensive peanuts from other origins for manufacturing into peanut butter and paste, or similar products.

This change will be implemented at shelling facilities with minimal or no

additional cost to the shellers—either large or small. The screens with smaller openings for this change are currently used for split lots and no additional investment for screens will be necessary. Any adjustments to the packing line as far as screens are concerned should be easily implemented.

According to Federal-State Inspection Service (Inspection Service), all plants in Georgia are currently using  $1\frac{7}{64}$  round screens on Runners and  $1\frac{6}{64}$  screens on Spanish peanut varieties. The Inspection Service has a supply of screens for smaller peanut kernels to cover five new shelling plants scheduled to begin operation during the 2003 crop year. In addition, the Inspection Service will provide screens for peanut shellers in other States. The cost per screen is \$55.00 plus shipping.

#### *Appeal Procedures*

The Board recommended adding an additional paragraph in the handling standards specifying that the "holder of the title" to any lot of peanuts may request an appeal inspection if it is believed that the original aflatoxin analysis is in error. Appeals for aflatoxin are currently handled following procedures specified in the Inspection Service's Instructions for Milled Peanuts. The "holder of the title" to any lot of peanuts may request such an appeal. The aflatoxin sample would be drawn by Federal or Federal-State Inspection inspectors and the appeal analysis would be performed, and the aflatoxin certificate issued, by USDA or USDA-approved laboratories.

This action also specifies that any financially interested person may request an appeal inspection if it is believed that the original quality inspection was in error. These appeals would continue to be handled following procedures specified in the Inspection Service's Instructions for Milled Peanuts. Federal or Federal-State Inspection Service inspectors would sample and inspect the peanuts following procedures in the milled peanut instructions.

All costs involved in conducting appeal inspections are for the account of the "holder of the title" or the financially interested person requesting the appeal. Under the appeal process, appeals may be requested verbally. A written request is not necessary.

#### *Re-inspection of Blanched Lots*

Peanut lots which meet quality (grade) standards, including damage and minor defects, but which fail on aflatoxin may be blanched to remove the contaminated kernels. Under the current

standards, blanched lots must be re-inspected for damage and minor defects. In some cases, a blanched lot will pass aflatoxin but fail damage and minor defect tolerances because the removal of the skins in the blanching process may expose additional instances of damage or minor defects.

Currently, § 996.50(d) provides that lots failing quality standards specified in the table in § 996.31(a), which are blanched, do not have to meet the "fall through" standards upon re-inspection. The Board recommends that the same exception be applied to the damage and minor defects standard in the second column of the table in § 996.31(a). The primary benefit of this change would be to reduce handler-operating costs and avoid a possible loss of peanuts.

#### *Allow Handlers To Purchase High Moisture Peanuts*

Under § 996.30(b) *Moisture*, farmers stock peanuts with more than 10.49 percent moisture content must be dried by the producer at the buying point or moved to another location and facility for drying. Virginia type peanuts for seed may contain up to 11.49 percent moisture. The drying is accomplished on individual wagons, prior to incoming inspection. Not all buying points, in very rural locations, have drying facilities.

The Board requested that the 10.49 percent moisture standard be changed to allow handlers to acquire farmers stock peanuts with a moisture content up to 25 percent. They also recommended the addition of a provision that the handler would have to agree to such acquisition and also to agree to dry the peanuts to meet the 10.49 percent standard prior to storage or milling. The moisture requirements for Virginia type peanuts for seed were not recommended for change. According to Board members, such a change could make a significant difference in the efficient acquisition and warehousing of farmers stock peanuts each fall. The Board indicated that this change could speed up the drying, grading, and movement of peanuts at harvest.

After considering this request and input from the Inspection Service, USDA believes that the Board's recommendation needs further review and analysis. The Inspection Service indicated that its current shelling equipment cannot properly shell peanuts with a moisture content higher than 16 to 18 percent, and that it would have difficulty grading such peanuts. Under current inspection procedures, such peanuts would be further dried by the producer.

USDA believes that the current standards and procedures should continue during the 2003–04 crop year. This will allow the peanut industry to study this issue further.

#### *Increase Sound Whole Kernel Tolerance*

The Minimum Quality Standards table in § 996.31(a) provides standards for split kernel lots. Historically, lots of split kernels may contain a maximum percentage of sound whole kernels in the lot. For Virginia variety peanuts, sound whole kernel content is limited to 10 percent of the lot by weight. For Runner, Spanish, and Valencia varieties, the sound whole kernel content is limited to 4 percent. The Board recommended that the sound whole tolerance for Runner, Spanish, and Valencia peanuts be relaxed to 10 percent, to bring the tolerance into conformity with the tolerance for Virginia variety peanuts. This rule change is expected to result in fewer split lot rejections for Runner, Spanish, and Valencia variety peanuts, which should reduce handler-reconditioning costs. No adverse impact is expected from making this standard uniform for all four varieties.

#### *Effective Time*

Section 996.75, Effective time, also is revised so that these changes apply to 2003–04 and subsequent crop year peanuts, to 2002 and 2001 crop year peanuts not yet inspected, and to failing peanuts that have not yet met disposition standards.

#### **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 currently 77 peanut handlers (shellers) 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 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.

The two-year average peanut production for the 2001 and 2002 crop years was 3.799 billion pounds, harvested from 1.354 million acres, yielding 2,806 pounds per acre. The average value of production for the two-year period was \$797.469 million, as reported on the National Agricultural Statistics Service (NASS) Web site as of February 2003 (<http://www.nass.usda.gov:81/idepd/report.htm>). The average grower price over the two-year period was \$0.21 per pound, and the average value per harvested acre was \$611. Dividing the two-year average value of production (\$797.5 million) by the estimated 12,221 farms yields an estimated revenue per farm of approximately \$65,254.

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 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 \$948.8 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 \$41,250.

The current 14 custom blanchers, 8 custom remillers, 4 oilmill operators, 4 USDA and 15 USDA-approved private chemical (aflatoxin) testing laboratories

are subject to the peanut standards 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 inspection 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. Under the 2003 import quotas, approximately 25 business entities have only imported approximately 40 percent of the 126 million pounds of low duty quota peanuts (sometimes called duty free quota peanuts) compared with 37 entities which had imported 100 percent of the quotas by April 5, 2002. The current import quota period began January 2, 2003, for Mexico, and April 1, 2003, for Argentina, 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. Some importers use customs brokers’ import services and brokers 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 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. Also, financially interested persons who may appeal quality inspection results, and “holders of the title” to any lot of peanuts who may appeal aflatoxin test results may include small entities.

This rulemaking action: (1) Changes screen sizes specified in the outgoing quality standards to allow smaller peanut kernels of all varieties to be used for edible purposes; (2) specifies in the text of the regulations that financially interested persons may appeal quality inspection results and “holders of the title” may appeal aflatoxin test results; (3) allows peanut lots which meet minimum damage and minor defect standards, but fail for other reasons, prior to blanching, to be exempt from the damage and minor defect standards upon re-inspection after blanching; and

(4) increases to 10 percent, the quantity of sound whole kernels that may be contained in lots of splits for specified peanut varieties. These changes are intended to maximize handling efficiency and to provide peanut producers, handlers, and importers with flexibility to meet new market demands, while maintaining peanut quality and wholesomeness for consumers.

#### *Smaller Kernel Sizes*

Changing screen sizes used in handling peanuts will allow smaller kernels of all varieties to be used for edible purposes. Proponents of smaller kernel use claim that manufacturers of peanut products now have markets for smaller whole kernels, and that this rule change will enable them to take advantage of this recent shift in the marketplace. Market share for U.S. peanuts is expected to rise because the rule enables handlers to sell smaller peanuts to buyers who would otherwise purchase less expensive peanuts from other origins for manufacturing into peanut butter and paste, and other similar products.

This rule implements a relaxation in the utilization of small peanut kernels by changing the screens used for sorting sound whole kernels and kernels with splits from a slotted screen to one with round holes. The equipment for this change (smaller screen sizes) is currently in use for split lots in most shelling facilities. This change should therefore require little or no additional investment for most shellers, large or small.

The Inspection Service has a supply of screens for smaller peanut kernels to cover five new shelling plants scheduled to begin operation for the 2003 crop year. In addition, the Inspection Service will provide screens for peanut shellers that need them at a cost per screen of \$55.00 plus shipping.

Although the chances of aflatoxin contamination in small kernels is not significant, proponents of the rule change claim that modern electronic color sorting technologies can sort out the moldy or defective kernels, thus ensuring that the new screens will not have a negative impact on the quality and wholesomeness of peanuts entering edible food channels.

Shellers that have already have this technology will have little or no additional cost. Compliance officers report that out of 77 shellers only 15 do not have electronic sorting technology in their shelling plants. These firms only shell seed peanuts, which are not shipped to the edible market.

#### *Re-inspection of Blanched Lots*

This rule change allows shelled lots that are being reconditioned to be excluded from re-inspection for damage or minor defects if the lot originally passed based on those standards. Peanut lots which meet quality (grade) standards, including damage and minor defects, but which fail on aflatoxin, may be blanched to remove the aflatoxin-contaminated kernels.

Under the current standards, the lot must be re-inspected for damage and minor defects after blanching. In some cases, the result of the re-inspection is that the blanched lot exceeds tolerances for damage and minor defects, even though the original lot did not fail to meet the standard. This result can occur because the removal of the skins in the blanching process may expose instances of damage or minor defects not previously detected.

The primary benefit of this rule change would be to reduce handler operating costs and avoid an additional loss of peanuts. The impact of this change is not expected to be different between large and small entities.

#### *Increased Sound Whole Kernel Tolerance*

The Minimum Quality Standards table in 996.31(a) provides standards for split kernel lots by specifying the maximum percentage of sound whole kernels permitted in a lot. For Virginia variety peanuts, sound whole kernel content is currently limited to 10 percent of the lot by weight. For Runner, Spanish, and Valencia varieties, the sound whole kernel content is currently limited to 4 percent. This rule change accepts the Board recommendation that the Sound Whole Kernel tolerance for Runner, Spanish and Valencia be relaxed to 10 percent, the same tolerance that applies to Virginia variety peanuts. The primary benefit of this rule change would be to lower costs and increase sales revenue by rejecting fewer lots of the Runner, Spanish, and Valencia varieties for splits. No adverse financial impact is expected from making this standard uniform for all four varieties. The impact of this change is not expected to be different between large and small entities.

#### *Appeal Procedures*

The addition of provisions specifying that financially interested persons may appeal quality inspection results and "holders of the title" to any lot of peanuts may request appeals of aflatoxin test results will benefit all persons involved.

USDA has considered alternatives to the suggested changes to the quality and

handling standards. The Act requires USDA to consult with the Board on these standards. An alternative would be to continue the 2002-03 crop year standards for the 2003-04 crop year without implementing the recommended relaxations made by the Board at its April 30, 2003, meeting. Because of the anticipated benefits of the recommended changes, USDA believes that implementation of the Board's suggested changes is preferable to continuing without change. The Board's meeting was a public meeting and all interested persons were able to attend 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 recommendations to change the quality and handling standards. Any comments received will be considered prior to finalization. Interested persons also are invited to submit information on the regulatory and economic impact of this action on small businesses.

#### **Information Collection**

The Act specifies in section 1601(c)(2)(A) that the standards established pursuant to the Act, 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 also specifies that promulgation of the standards and administration of the program shall be made without regard to the statement of policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notice of proposed rulemaking and public participation in rulemaking and the notice and comment provisions of section 553 of title 5, United States Code.

Nonetheless, 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** because (1) This rule relaxes quality and

handling standards under the program; (2) the 2003 peanut harvest is expected to begin around August 15 and these relaxations should be in place as soon as possible; (3) the Board supported the changes; and (4) this rule provides a 30-day comment period and any comments will be considered prior to finalization of this rule. A 30-day comment period is appropriate for these reasons.

**List of Subjects in 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 is revised to read as follows:

Authority: 7 U.S.C. 7958.

■ 2. In § 996.31, the table in paragraph (a) is revised to read as follows:

**§ 996.31** **Outgoing quality requirements.**  
(a) \* \* \*

**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 and damaged kernels and defects (percent)	Total fall through Sound whole kernels and/or sound split and broken kernels	Foreign materials (percent)	Moisture (percent)
<b>Excluding Lots of "Splits"</b>					
Runner .....	1.50	2.50	6.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen .....	.20	9.00
Virginia (except No. 2) .....	1.50	2.50	6.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen .....	.20	9.00
Spanish and Valencia .....	1.50	2.50	6.00%; 1 <sup>6</sup> / <sub>64</sub> inch round screen .....	.20	9.00
No. 2 Virginia .....	1.50	2.50	6.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen .....	.20	9.00
Runner with splits (not more than 15% sound splits) .....	1.50	2.50	6.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen .....	.20	9.00
Virginia with splits (not more than 15% sound splits) .....	1.50	2.50	6.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen .....	.20	9.00
Spanish and Valencia with splits (not more than 15% sound splits) .....	1.50	2.50	6.00%; 1 <sup>6</sup> / <sub>64</sub> inch round screen .....	.20	9.00
<b>Lots of "splits"</b>					
Runner (not less than 90% splits) .....	2.00	2.50	6.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen .....	.20	9.00
Virginia (not less than 90% Splits) .....	2.00	2.50	6.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen .....	.20	9.00
Spanish and Valencia .....	2.00	2.50	6.00%; 1 <sup>6</sup> / <sub>64</sub> inch round screen .....	.20	9.00

\* \* \* \* \*

■ 3. In § 996.40, a new paragraph (c) is added to read as follows:

**§ 996.40** **Handling standards.**

\* \* \* \* \*

(c) *Appeal inspections.* Any "holder of the title" to any lot of peanuts may request an appeal inspection if it is believed that the original aflatoxin test results were in error. Appeal inspections would be conducted in accordance with Federal or Federal-State inspection procedures for milled peanuts. The aflatoxin appeal sample would be drawn by Federal or Federal-State Inspection Service officials and the appeal analysis would be conducted by USDA or USDA-approved laboratories. Any financially interested person may request an appeal inspection if it is believed that the original quality inspection is in error. Quality appeals would be conducted by Federal or Federal-State Inspection Service inspectors in accordance with the Federal or Federal-State inspection

procedures for milled peanuts. The person requesting the appeal inspection would pay the cost of such appeals. The appeal inspection results shall be issued to the person requesting the appeal inspection and a copy shall be mailed to USDA or its agent.

■ 4. In § 996.50, paragraph (d) is revised to read as follows:

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

\* \* \* \* \*

(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), 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 the fall through standard or the damaged kernels and minor defects

standard as specified in § 996.31(a), prior to blanching shall be exempt from fall through, damaged kernels and minor defects standards after blanching.

\* \* \* \* \*

■ 5. Section 996.75 is revised to read as follows:

**§ 996.75** **Effective time.**

The provisions of this part, as well as any amendments, shall apply to 2003–04 and subsequent crop year peanuts, to 2002–03 and 2001–02 crop year peanuts not yet inspected, or failing peanuts that have not met disposition standards, and shall continue in force and effect until modified, suspended, or terminated.

Dated: August 4, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–20158 Filed 8–4–03; 3:11 pm]

**BILLING CODE 3410–02–P**