



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 996

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

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: Proposed rule.

SUMMARY: This proposed rule would implement 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 would relax the allowance for damaged kernels in farmers stock peanuts when determining segregation. This change would increase 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 would also be 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: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet:

<http://www.regulations.gov>. All comments should reference the document 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.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

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 E-mail: Steven.Kauffman@ams.usda.gov or Christian.Nissen@ams.usda.gov.

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 E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued pursuant to Public Law 107-171, the Farm Security and Rural Investment Act of 2002 (Act). The 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 would not have substantial and

direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This proposed 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 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; developing and implementing peanut quality and handling requirements; establishing the 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 its review of the changes to the Standards included in this proposed rule. This proposed rule invites comments on a revision to relax 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 would also be adjusted to reflect this change. The Board believes these changes would 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.

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 for 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 their 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 proposed change would make a corresponding adjustment to the damage requirements for incoming peanuts. The change would relax the allowance for damaged kernels under the definition for Segregation 1 peanuts from 2.49 to 3.49 percent, which would 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 would 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 proposed change. Since Segregation 2 historically composes approximately one percent of total farmers stock peanuts, this adjustment would represent a very small shift in overall volume. Therefore, the proposed change would 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 a Segregation 1 to a Segregation 2, it can have a significant financial impact, especially for small producers. This change would benefit 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 would also require 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 would represent 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 proposed 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.

Initial 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 initial 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 would 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 proposed rule would relax the allowance for damaged kernels in farmers stock peanuts when determining segregation. This action would change 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 proposed rule would align incoming farmers stock peanuts segregation with the outgoing quality standards and increase returns to producers.

It is not anticipated that this action would 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 proposed 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 § 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 proposed rule would relax the allowance for damaged kernels in farmers stock peanuts when determining segregation under the Standards. Recordkeeping requirements would remain the same. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large handlers or importers.

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 are provided with a 30-day comment period.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because farmers stock peanuts are already being delivered from the 2016-17 crop. Further, the industry is aware of this proposed action recommended by the Board. All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be amended as follows:

PART 996 - MINIMUM QUALITY AND HANDLING STANDARDS FOR
DOMESTIC AND IMPORTED PEANUTS MARKETED 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

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(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: May 19, 2017

Bruce Summers
Acting Administrator
Agricultural Marketing Service

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