



**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 E-mail: 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 E-mail: 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 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: October 16, 2017.

Bruce Summers,  
Acting Administrator,  
Agricultural Marketing Service.

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