

inshell peanuts which fail to meet the requirements for human consumption. The provision of §998.31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified pursuant to §998.34, to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire for crushing or export from other handlers peanuts originating from Segregation 2 or 3 farmers stock or the entire mill production of shelled peanuts from Segregation 1 farmers stock or lots of peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of §998.200, Outgoing quality regulation, which failed to meet the requirements for human consumption pursuant to paragraph (a) of §998.200, Outgoing quality regulation: *Provided*, That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers stock peanuts and shelled peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

(f) *Segregation 2 and 3 control*. To assure the removal from edible outlets of any lot of peanuts determined by Fed-

eral or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer, commission buyer, or like person through whom the handler receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

(g) *Shelled peanuts*. Handlers may acquire shelled peanuts, which originated from "Segregation 1 peanuts," from other handlers, for remilling and subsequent disposition to human consumption outlets.

(h) Segregation 2 and Segregation 3 farmers stock peanuts held separate and apart or commingled, and disposed of to domestic or export crushing are exempt from assessments under this section.

[62 FR 1265, Jan. 9, 1997, as amended at 63 FR 2851, Jan. 16, 1998]

§ 998.200 Outgoing quality regulation for 1997 and subsequent crop peanuts.

The following modify or in addition to the peanut marketing agreement restrictions of §998.32 on handler disposition of peanuts:

(a) *Shelled peanuts*. (1) No handler shall dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified "negative" as to aflatoxin, and certified as meeting the following requirements:

MAXIMUM LIMITATIONS
[Excluding lots of "splits"]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00%; 1 ⁶ / ₆₄ × 3 ⁴ / ₄ inch slot screen.	4.00%20	9.00

MAXIMUM LIMITATIONS—Continued
[Excluding lots of “splits”]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Virginia (except No. 2).	1.50	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00%; 1 ⁵ / ₆₄ × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia	1.50	2.50	3.00%; 1 ⁹ / ₆₄ inch round screen.	3.00%; 1 ⁵ / ₆₄ × 3 ⁴ / ₄ inch slot screen.	4.00% Both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 1 ⁷ / ₆₄ inch round screen.	6.00%; 1 ⁵ / ₆₄ × 1 inch slot screen.	6.00% Both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00%; 1 ⁹ / ₆₄ × 3 ⁴ / ₄ inch slot screen.	4.00% Both screens.	.20	9.00
Virginia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00%; 1 ⁵ / ₆₄ × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish & Valencia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 1 ⁹ / ₆₄ inch round screen.	2.00%; 1 ⁵ / ₆₄ × 3 ⁴ / ₄ inch slot screen.	4.00% Both screens.	.20	9.00
Lots of “splits”							
Runner (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00%; 1 ⁴ / ₆₄ × 3 ⁴ / ₄ inch slot screen.	4.00% Both screens.	.20	9.00
Virginia (not less than 90% splits).	2.00	2.50	3.00%; 1 ⁷ / ₆₄ inch round screen.	3.00%; 1 ⁴ / ₆₄ × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 1 ⁹ / ₆₄ inch round screen.	3.00%; 1 ⁵ / ₆₄ × 3 ⁴ / ₄ inch slot screen.	4.00% Both screens.	.20	9.00

(2) The term *fall through*, as used in this paragraph, shall mean sound split and broken kernels and whole kernels which pass through specified screens.

(b) *Cleaned inshell peanuts*. No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption:

(1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as “USDA laboratory”) and found to be wholesome relative to aflatoxin;

(2) with more than 2.00 percent peanuts with damaged kernels;

(3) with more than 10.00 percent moisture; or

(4) with more than 0.50 percent foreign material. The lot size of such pe-

nuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Sampling and testing shelled peanuts*. (1) Prior to shipment, each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as “Sample #1,” “Sample #2,” and “Sample #3” and each sample shall be placed in a suitable container and “positive lot identified” by means acceptable to the Inspection Service and the Committee. Sample #1 may be prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before

shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a "subsampling mill" approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as "Subsample 1-AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1. It shall be designated as "Subsample 1-CD." Subsample 1-CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 36 hours. Subsample 1-AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1-AB and 1-CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

(2) The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2-AB." Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3-AB." Subsamples 2-AB and 3-AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A

copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2-AB and 3-AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

(3) All costs involved in sampling and testing Subsample 1-CD shall be for the account of the buyer of the lot and at the buyer's expense. However, if the handler elects to pay any portion of these cost the handler shall charge the buyer accordingly. Aflatoxin sampling and testing cost for the AB subsamples shall be included as a separate item in the handler's invoice to the buyer at the rate of \$0.0027 per pound or \$0.27 per hundredweight of the peanuts covered by the invoice. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler, who shall promptly cause notice to be given to the buyer of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(4) For the current crop year, "negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements as determined by the Committee's sampling plan applicable to the respective grade categories.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts, in lot sizes not exceeding 200,000 pounds, shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or

other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for indemnification or for appeal inspection. Handlers shall keep and maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Committee on request.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Further modification of § 998.32.* (1) The provisions of § 998.32(a) restricting the disposition of peanuts which fail to meet the requirements specified heretofore in this section to the Commodity Credit Corporation or in such manner as may be prescribed by the Committee with the approval of the Secretary, is hereby modified to specify that only peanuts which have been certified as meeting the requirements specified in paragraphs (a) or (b) of this

section, which have been sampled pursuant to paragraph (c) of this section, and which have been identified pursuant to paragraph (d) of this section are eligible for disposition to human consumption outlets.

(2) Lots of peanuts which have not been certified as meeting the requirements for disposition to human consumption outlets, may be disposed for non-human consumption uses which are not regulated or limited by the provisions specified hereinafter in this section: *Provided*, That each such lot is positive lot identified, using red tags, and certified as to aflatoxin content (actual numerical count). However, on the shipping papers covering the disposition of each such lot of inedible quality peanuts, the handler shall cause the following statement to be shown: "The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption."

(3) Except for inedible quality peanuts disposed of under the provisions of paragraph (f)(2) of this section and peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, peanuts which have not been certified as meeting the standards set forth in paragraphs (a) or (b) of this section shall be disposed of as prescribed hereinafter in this section.

(g) *Sheller oil stock residuals—for crushing or export.* Peanuts and portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process, may be segregated into categories or commingled as sheller oil stock residuals. Such sheller oil stock residuals shall be identified pursuant to paragraph (d) of this section, but using a red tag, and such peanuts may be disposed of domestically or to the export market in bulk or bags or other suitable containers. Disposition to crushing may be to handlers who are crushers or to domestic crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of this paragraph and all other applicable requirements of the Agreement. The movement of such peanuts shall be reported to the Committee by the shipping handler and the crusher, as requested by the Committee.

(1) If the peanuts have not been tested and certified as to aflatoxin content, as prescribed in paragraph (c) of this section, the handler shall cause the following statement to be shown on the shipping papers: "The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin."

(2) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(h) *Blanching and remilling peanuts failing quality requirements.* (1) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements of paragraph (a) of this section. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Lots of peanuts which have been certified as meeting fall through requirements as specified in paragraph (a) of this section, prior to blanching, shall be exempt from fall through requirements after blanching. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements

of the Agreement. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(2) Handlers may contract with Committee approved remillers for remilling shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section: *Provided*, That such lots of peanuts contain not in excess of 10 percent fall through. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the remiller, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(3) Handlers may contract with Committee approved blanchers for roasting positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that meet the grade requirements of paragraph (a) of this section but are positive as to aflatoxin. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and a valid aflatoxin certificate. To be eligible for disposal into human consumption outlets, such peanuts after roasting, shall have had the positive lot identity maintained and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from roasting under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Roasting under the provisions of this paragraph shall be performed only by blanchers who are approved by the Committee.

(i) *Documentation of compliance.* Each handler shall keep and maintain records of all receipts and acquisitions and all milling, remilling, blanching, use and disposition of peanuts which have not been certified as meeting the requirements for disposition to human consumption, pursuant to paragraph (a) or (b) of this section, as will document and substantiate compliance and performance under this agreement.

[62 FR 1266, Jan. 9, 1997, as amended at 63 FR 2851, Jan. 16, 1998; 63 FR 33243, June 18, 1998; 63 FR 41323, Aug. 3, 1998; 64 FR 56135, Oct. 18, 1999]

§ 998.300 Terms and conditions of indemnification for 1996 and subsequent crop peanuts.

(a) For the purpose of paying indemnities on a uniform basis pursuant to

§ 998.36 of the peanut marketing agreement, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled into one of the categories listed in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200) or paragraph (j) of this section, on which the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the results of further chemical assay, after shipment.

(b) To be eligible for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements for Indemnifiable Grades as specified in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200), shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the *Outgoing quality regulation* (7 CFR 998.200) and the lot identification shall have been maintained. If the Committee concludes, based on further assays, that the lot is so high in aflatoxin that it should be handled pursuant to this section, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification.

(c) The indemnification payment shall be transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the *Outgoing quality regulation* (7 CFR 998.200).

(d) Claims for indemnification may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all of the product made from a lot of peanuts which has been determined to