

The provisions of the new program apply to 2002 and subsequent crop year peanuts, to 2001 crop year peanuts not yet inspected, and to 2001 crop year failing peanuts that have not met disposition standards. This program continues in force and effect until modified, suspended, or terminated.

Pursuant to the Act, USDA consulted with interim Board members in the development of the quality and handling standards established in this rulemaking. USDA coordinated a conference call with interim Board members on July 2, 2002. An initial draft text with reduced USDA oversight was prepared by USDA and distributed to the interim Board members prior to the conference call. The draft was reviewed and initial changes and comments were proposed. At the interim Board's direction, four interim Board officers met with USDA on July 17, 2002. Three of the four officers proposed several additional changes, including a proposal to change the minimum kernel size that could be used in human consumption outlets. A second draft text was prepared reflecting those proposed changes. That draft was again distributed to interim Board members and State supervisors of the Inspection Service and was discussed at a meeting in Atlanta, Georgia, on July 30, 2002. In addition to the 18-member interim Board, approximately 50 industry members and Inspection Service State supervisors attended the meeting. The revised draft text was thoroughly reviewed and several modifications were recommended. Quality standards which would allow purchase of Segregation 2 and 3 quality peanuts for processing for human consumption use and the proposed change in the minimum kernel size were discussed by the interim Board. An implementation schedule also was discussed.

USDA revised the draft text after the Atlanta meeting and posted it on the AMS website. Written comments were received from interim Board members after the meeting and a few comments were received in response to the posting of the draft standards text on the internet. Comments to the draft were accepted through August 12, 2002.

Comments From Interim Board Members and Others to the Draft Rule

Most interim Board members indicated that they did not seek radical or wholesale changes to the Agreement regulations. This was apparent from comments offered during the initial conference call and at the July 30, 2002, interim Board meeting.

Grower member representatives raised three general objections to establishment of new standards for the 2002 peanut crop. They believed that the new program should not have been implemented if the 2002 crop harvest had begun. Because of geographical location, peanuts in south Texas and north Florida, representing a small portion of the total crop, were harvested before USDA could complete this rulemaking process. Because the new quality standards offer potential benefits to growers and handlers, some grower members contended that implementation after the 2002 crop harvest had begun would be unfair to producers and handlers in those early-harvest areas.

Some interim Board members suggested that the greatest benefit from the program—purchase of Segregation 2 and 3 peanuts for possible edible use—would affect only a very small percentage of the early harvest peanuts, and that it may be possible to warehouse some of the early season farmers stock peanuts until the new standards become effective. Other interim Board members did not contest this assessment.

Section 1308 of the Act provides that its provisions take effect with the 2002 peanut crop. An alternative considered was to continue the more restrictive 2001 regulations for the entire 2002 crop and implement the new program for the 2003 crop. However, USDA believed that implementation of the program as soon as possible after harvest begins was better than that alternative. The benefits of the new program to the entire industry are compelling. Most interim Board members believe that there should not be further delay in implementing this action. Only a small number of early harvest producers were affected by the implementation date of this action. Further, storage accommodations can help alleviate any timing concerns. Finally, the Act mandates that the new program be in effect for 2002 crop peanuts.

The same interim Board members concerned about producer fairness also cautioned about making significant changes to incoming quality provisions without knowledge of changes being considered to the Marketing Assistance Program by USDA's Farm Service Agency. Pursuant to the Act, the FSA loan program also was being restructured, and the extent and nature of the loan provisions were not known until after the quality and handling standards in this program became effective.

These members stated that the provision to allow purchase of

Segregation 2 and 3 quality peanuts for edible consumption could affect the FSA loan program. They questioned details relating to the loan payments, inspection costs and storage of farmers stock peanuts placed under FSA's loan program.

None of the definitions and other provisions addressed in the interim final rule are applicable to other peanut programs operated by USDA, such as the loan and direct payment, counter-cyclical payments, and quota buyout payment programs provided for in the 2002 Act. Thus, for example, the definitions of "handle" and "handler" set out in the interim final rule have no application to those other programs and do not govern eligibility for payments, or the kinds of payments that can be made, under those other programs. Rather, the definitions and other provisions implemented in the interim final rule were strictly developed for the limited purposes reflected in the rule and no other. The policy choices and any statutory interpretations involved reflect that limited purpose. FSA was consulted in that respect and assured that the understanding and intent was clearly that these rules would not in any way restrict policy determination made with respect to other programs. Rules for other peanut programs will be issued in due course. Further, references in this preamble to previous peanut programs is meant to refer to those peanut operations which were under the control of the Agricultural Marketing Service (AMS) and not those under the control of FSA or FSA's predecessor agency.

Written comments concerning provisions of the draft rule were received from a few independent handlers stating that not all handlers are able to remove all defective kernels, particularly in lots with concealed freeze damage or kernels with yellow pitting. Also, some alleged that not all peanut shelling operations have the latest technologies or their own dedicated blanching facilities to remove all kernels which contain aflatoxin.

Handlers must make decisions regarding the reconditioning of each failing lot. Those decisions are made on a lot-by-lot basis, based upon the grade factors identified in the lot's latest grade inspection or aflatoxin certificate. Handlers with the latest milling technologies or their own blanching operations may be better able to recondition failing lots than handlers without such equipment. Handlers are not prevented from remilling lots more than one time to remove defective or contaminated kernels. Custom blanching operations with current