

technologies are available to all handlers. If reconditioning operations are not successful, other handlers with such equipment could acquire the failing lots or recondition them on a contract basis. Because handlers are not prevented from reconditioning other handlers' failing lots, high quality standards can be established and maintained.

In the 1980's, Agreement regulations prohibited small kernels from use in edible consumption lots because research showed a higher incidence of aflatoxin in small peanuts. Research conducted at that time indicated that aflatoxin occurs more frequently in peanuts which are under stress during the growing season and that many peanut kernels are small because the plants were under such stress.

Some large handlers contended in the interim Board meeting that modern sorting technologies are able to remove the smaller, contaminated kernels and that end-product manufacturers now have markets for smaller whole kernels in snack foods and other edible products. The handlers recommended that the change would allow more domestically produced peanuts to be used in human consumption outlets and, thus, result in a more efficient use of total domestic peanut production. They also claimed that foreign manufacturers of peanut products, such as peanut paste and peanut butter, are not under such minimum size restrictions for the manufactured product they export to the United States. The handlers contended that relaxation in the size and shape of the holes in the screens used to sort out small kernels would allow domestic handlers and manufacturers to better compete with foreign product.

However, interim Board members representing regional grower associations opposed smaller kernel sizes for food quality and wholesomeness reasons. They contended that the risk of increased aflatoxin contamination in the smaller kernels outweighs the benefit of any incremental increase in the use of small peanut kernels, or cost savings accrued. Those opposed to the use of small kernels contended that, in addition to having a higher incidence of aflatoxin, smaller kernels also have a bitter taste. At the interim Board meeting, a representative from a peanut manufacturers' association said that manufacturers oppose use of smaller size kernels.

The draft text which USDA posted on the internet included a table displaying amended screen sizes that would allow smaller kernels in edible lots. Written

comments were received, most from interim Board members, opposing the use of round hole screens and the smaller kernel size. Those comments cited concerns for wholesomeness and a loss of quality if smaller kernels were allowed in edible lots. Some suggested that the screen sizes should not be changed without further research on the increased risk of aflatoxin in small peanut kernels.

After review of the positions presented at the interim Board meeting and the written comments received, USDA determined that the kernel sizes specified under the previous peanut programs should be established in the interim final rule and continue in effect for the 2002 crop year. Therefore, the recommendation to change the minimum size standard was not accepted for 2002 crop peanuts.

An oilmill operator (crusher) commenting on the draft text stated that the mission of the new standards should be to ensure food safety and not to establish restrictions that increase costs and hinder trade between willing sellers and buyers. Therefore, it was the commenter's view that peanuts to be used for non-edible purposes such as crushing should not be subject to the same incoming identification and inspection requirements as edible peanuts. USDA discussed and explained in the Interim Final Rule why incoming inspection is necessary.

Several additional minor changes were made to the draft text, reviewed by the interim Board, and posted on the internet. Those changes were based on further USDA review of the draft text and discussions with Inspection Service supervisors. The changes included re-instituting Agreement requirements in the new program that help USDA monitor the disposition of sheller oilstock residuals, the movement of failing lots through the reconditioning processes, adjustments to positive lot identification procedures, and compliance oversight. A more thorough recordkeeping paragraph also was added to reflect current industry practice and the requirements of this program.

USDA published the interim final rule (67 FR 57129) establishing the new peanut minimum quality and handling standards on September 9, 2002. The rule became effective September 10, 2002. Comments were accepted through October 9, 2002. Twenty five comments were received and are addressed below.

#### **Comments Concerning the Interim Final Rule**

The major issue discussed in the comments was the large handlers'

recommendation to change screen sizes to reduce the minimum kernel size for peanuts intended for human consumption. Twenty one comments were received on that topic. Five handlers, 10 growers, and 2 other persons supported the recommendation to change the minimum kernel size. Their position was not changed from that outlined in the interim final rule discussion: (1) Domestic and international markets exist for small peanut kernels; (2) allowing the use of smaller kernels in edible lots will enable domestic handlers to compete with foreign peanut butter produced without regard to kernel size; and (3) wholesomeness is ensured because the outgoing standards are not changed in the new Peanut Standards rule.

Two growers and two handlers commented that the screens should not be changed. They claimed that an Agricultural Research Service (ARS) study conducted in the late 1980s shows a higher incidence of aflatoxin contamination in small peanut kernels. They commented that allowing the use of smaller kernels is not worth the increased risk of aflatoxin contamination in those small kernels. They also cited the pungent taste of small kernels as a quality factor which should weigh against use of smaller peanut kernels.

Proponents of smaller kernel use also contend that wholesomeness is not a concern because the electronic sorting equipment identifies and removes all damaged and contaminated kernels, even small, contaminated kernels. Based upon compliance staff information, approximately 31 of 71 handlers have electronic equipment capable of efficiently sorting out contaminated small kernels. One commenter pointed out that a reduction in kernel size for domestic peanuts would be applied to imported peanuts, but that it is not known how many foreign peanut shelling operations utilize electronic equipment.

Manufacturer associations opposed changing screen sizes when the interim final rule was being prepared. A handler commented that brand-name manufacturers are the ones best prepared, but least likely (due to quality concerns) to use the small kernels, while smaller, low-end buyers are most likely to buy the low-priced small kernels but are least likely to have the equipment or expend extra funds for testing to assure the small kernels are free of aflatoxin contamination.

After consideration of comments received on minimum kernel size, USDA has determined the regulations should continue, for the 2002 peanut