

crop, the same screen sizes established in the interim rule and used since the late 1980s. This decision is based on USDA's determination that further research on aflatoxin contamination in small kernels should be conducted. Such research has been started by ARS with the cooperation of the Federal-State Inspection Service and Agricultural Marketing Service aflatoxin laboratories in Georgia. Furthermore, this year's marketing season, using the present screen sizes, is well under way and any change in screen sizes at this stage would not cover the majority of the 2002 crop. If, based on USDA's research and studies, it is determined that a change in screen size is warranted, such change will be considered and discussed with the Board.

Four other issues were covered in comments on the interim final rule. A few handlers requested that a sampling and inspection fee of \$.0027 per pound, formerly charged to buyers under the Peanut Marketing Agreement, be retained in the new peanut standard program. The interim final rule terminated the Agreement. As discussed in the interim final rule, USDA did not include the fee in that rule because the fee is considered a contractual matter between sellers and buyers. This rule does not reinstate such fee.

Several handlers pointed out that a separate moisture content requirement for Virginia-type seed peanuts was omitted in the interim final rule. This was corrected by memorandum from USDA to the Inspection Service dated October 4, 2002. The separate moisture requirement for Virginia-type seed peanuts is added to the final rule as a proviso to the incoming quality standards in paragraph (b) of § 996.30.

Three commenters in Oklahoma requested an increase in the incoming grade tolerance for foreign material content because their buying point does not have facilities to clean freshly pulled farmers stock peanuts to meet the required foreign material content tolerance. However, the tolerance is the same as required under USDA's previous peanut programs for many years. Moreover, alternative courses of action provided under the previous programs are continued in this program to help growers and buying point operators to meet the foreign material content tolerance. Paragraph (c) of § 996.30 provides that farmers stock peanuts with a foreign material content exceeding 10.49 percent may held separately until milled, moved over a sand-screen before storage, or shipped directly to a handler for prompt shelling.

Finally, one interim Board grower member opposed the relaxation to allow purchase of Segregation 3 peanuts for processing into edible peanuts. The commenter stated that this would increase the chances of kernels with aflatoxin ending up in edible peanut lots. The majority of other commenters supported the relaxation in comments to the draft provisions and interim final rule on the premise that contaminated kernels would be sorted out in the handling process. USDA will continue to allow the purchase of Segregation 3 peanuts for processing for human consumption use because this will enable a more efficient use of peanut production.

Clarification of Interim Final Rule

Clarification to certain provisions of the interim rule were suggested by the Inspection and the Customs Service. These are as follows:

The Inspection Service suggested that paragraph (b)(4) of § 996.40, regarding the sampling and testing of peanuts for outgoing requirements, should read that number 3 check samples may be ground by the Inspection Service or a USDA or USDA-approved laboratory. The interim final rule provided only that the Inspection Service would grind number 3 samples. The phrase "USDA or USDA-approved laboratory" is added to § 996.40(b)(4) to allow those entities to grind number 3 check samples if it is more convenient to the efficient testing of the number 3 samples.

Paragraph (g) of § 996.50 provides for the positive lot identification (PLI) of residual peanuts by red tags or other PLI means acceptable to the Inspection Service. The Inspection Service also suggested that it is not the responsibility of Inspection Service personnel to determine the appropriate use of other PLI methods in addition to the use of red tags. However, Inspection Service personnel are able to utilize lot identification methods, other than red tags, if other methods are determined suitable and appropriate to a particular situation or lot of peanuts and are documented on the inspection certificate. The paragraph will continue to read as provided in the interim final rule.

Paragraph (c) of § 996.60, regarding the early arrival and storage of foreign peanuts in the U.S. prior to the opening of an import quota, incorrectly specifies that the Inspection Service may require re-inspection. However, the Inspection Service does not have authority to demand re-inspection. USDA may require such re-inspection. Paragraph (c) of § 996.60 is revised accordingly.

The Customs Service clarified titles and citations of Customs Service regulations specified in the preamble on page 57135 of the interim final rule. The correct citations are specified in the preamble discussion under Import Entry Procedures.

Customs also suggested changes in the preamble discussion and text definition of "conditionally released" to clarify that merchandise is not conditionally released for storage or warehousing. Under Customs Service procedures, warehoused merchandise is not conditionally released. Appropriate changes in the preamble discussion under the stamp-and-fax procedure and in the definition of "conditionally released" under § 996.2 have been made in this final rule.

The Customs Service requested that the preamble discussion regarding limiting lot size to 200,000 pounds clarify that Customs has no requirement on the amount of merchandise that can be covered under a single entry. The 200,000 pound limit is required by USDA and the inspection service to assure an accurate sampling protocol. The preamble language has been clarified accordingly.

Customs also suggested clarifications in the use of some terms in the preamble to be consistent with Customs Service terminologies. The preamble has been edited to use "Customs broker" rather than "import broker," "port of arrival" rather than "port of entry," and "warehousing" rather than "storage." In the discussion, the process involved in the conditional release of peanuts also has been clarified to conform with Customs Service procedures. The suggested clarifications are made in the preamble discussion in this final rule.

Finally, Customs Service suggested that the definition of importer under § 996.7 should include importers who enter peanuts intended for non-edible use. Importation of non-edible peanuts may not be economically feasible at this time, given the low value of oilstock and feed-quality peanuts. Further, it is not USDA's intention to restrict importation for such purposes. However, importers of all peanuts, regardless of intended use, must comply with the inspection and disposition requirements of this program. The definition of Importer under § 996.7 has been clarified accordingly.

After review of all comments received to the interim final rule, USDA finalizes, and continues in effect with changes, the interim final rule in 7 CFR part 996 as follows.