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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AF56

Cleaning and Reinspection of Farmers Stock Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation is adopting, as a final rule, with certain changes, the provisions of an August 5, 1998, interim rule that eased conditions for marketing Segregation 3 peanuts. The interim rule allowed peanut producers to recondition and regrade peanuts in certain limited instances. Peanuts are graded as ''Segregation 3'' peanuts when they are found by visual inspection to have Aspergillus flavus (A. flavus) mold. This rule changes the provisions of the interim rule to allow peanuts found to have the mold to be cleaned at a different buying point if the buying point to which a producer delivered the peanuts does not have cleaning facilities. In addition, this rule formally extends the time for having the peanuts visually reinspected to 72 hours and, under certain conditions, allows reinspection at an alternate site. This rule continues to limit reinspection to only once for any given lot. Comments solicited in the interim rule with respect to chemical inspection of farmers stock peanuts are discussed in this rule. However, no change has been made at this time with respect to that issue.

In addition, this rule makes certain other technical/administrative changes to the program regulations. One of those is a provision allowing for waivers of non statutory program requirements in cases where such waivers serve the purposes of the program. Secondly, the rule drops a provision which refers to a defunct crop insurance procedure.

DATES: Effective January 10, 2001.

FOR FURTHER INFORMATION CONTACT: David Kincannon, (202) 720–7914.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

For purposes of Executive Order 12866, this rule has been determined to be not significant and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim rule because the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Unfunded Federal Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule do not preempt State laws to the extent that such laws are consistent with the provisions of this rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 1446, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

National Appeals Division Rules of Procedure

The procedures set out in 7 CFR parts 11 and 780 apply to appeals of adverse decisions made under the regulations adopted in this notice.

Paperwork Reduction Act

The information reporting requirements contained in this rule have been approved by OMB and assigned OMB control number 0560–0014. The provisions of this rule do not impose new reporting requirements or changes in existing information collection requirements.

Background

In the August 5, 1998, **Federal Register**, CCC issued changes in the peanut poundage quota regulations at 7 CFR Part 1446 with respect to determining Segregation 3 peanuts. The rule modified the definition of Segregation 3 peanuts found in § 1446.103 by providing that peanuts found to have visible A. flavus mold upon a visual inspection at a buying point may be reconditioned and regraded in certain limited instances. For many years peanuts found to have visible A. flavus mold were required to be marketed as additional loan peanuts or as quota peanuts returned to the farm for seed. Although no cleaning was allowed, the impact of the inspection on farmers was mitigated by the availability of ''disaster transfers'' which allowed a transfer of additional loan peanuts to a quota loan pool. Those transfers did not change the ultimate use of the peanuts but did allow the farmer to receive a return close to that for quota peanuts if the farmer otherwise had unused quota.

The Federal Agriculture Improvement and Reform act of 1996 (1996 Act) substantially limited the quantity and price on such transfers but did not mandate the particular procedures by which peanuts would be classified as Segregation 3 peanuts. To mitigate possible harm to individual farmers with Segregation 3 peanuts, farmers

whose peanuts are found to contain visible A. flavus mold were allowed by the interim rule to have the peanuts reconditioned by removing foreign material and loose shelled kernels (LSK's) in accordance with directions to be issued by the Director of the Tobacco and Peanuts Division of the Farm Service Agency. Comments were requested on the interim rule. Also, the preamble to that rule requested comments on whether there should be chemical testing undertaken with respect to the delivery of all farmers stock peanuts. It was noted, however, that chemical testing for wholesomeness was already being undertaken, under other authorities, at a later marketing stage. Specifically, comments were requested with respect to the efficiency of such testing, standards for such testing and the assignment of costs for such testing.

A total of 25 comments was received during the comment period, representing three area peanut grower associations, seven State peanut grower organizations, a State peanut organization, a State farmer organization, a national peanut sheller organization, six members of Congress, three Senators, an individual sheller/handler, a national peanut manufacturer organization, and a law firm representing certain peanut producers.

One area peanut grower association, one State peanut grower organization, the national peanut manufacturer organization, and the national peanut shellers association opposed the change to allow regrading. The remaining 21 respondents generally supported the change to allow cleaning and reinspection. The respondents raised three primary issues: (1) Since not all buying points have cleaning facilities, there is a need for removing peanuts from the buying point to a location having such facilities, (2) tracking loads of peanuts cleaned and presented for reinspection may present problems, and (3) producers may need more than 24 hours to have peanuts cleaned and reinspected.

First of all, with respect to the general issues raised (whether to allow recleaning at all) it remains the view of the agency that the rule should allow for regrading and recleaning. That allowance can help avoid hardship to farmers. So far, the allowance of recleaning has not appeared to present a problem as far as the administration of the price support system. The only material potential problem would be the potential diversion to quota loan pools of peanuts that have been recleaned but which might not be purchased out of the inventory at full price because a buyer knows that the peanuts have been recleaned. So far, there does not appear to be any loan problems of that kind. However, because pool losses can spread to all farmers under the statutory system that is now in place, the agency will continue to monitor this situation to insure fairness to all.

We now address the other issues raised and the two additional rule changes undertaken in this notice:

1. Removing Peanuts From the Buying Point To Facilitate Reconditioning of Segregation 3 Peanuts

Twelve respondents, both those in support of the rule and those opposed, expressed concern about tracking those loads of peanuts removed from the buying point for cleaning to assure the same peanuts were returned for regrading. One area peanut grower association in support of the interim rule stated that buying points without cleaning facilities should be allowed off-site cleaning in order to implement the interim rule on a fair and equitable basis for all buying points. One State grower association and one area peanut grower association opposed the interim rule based, in part, on the premise it would be necessary for peanuts to be removed for cleaning if the buying point did not have cleaning facilities. Also, in support of the rule, a State grower association and a State peanut commission commented that they believed loads of peanuts removed from the buying point could be tracked and monitored. An area peanut grower association and three State peanut grower associations supported the interim rule as issued and emphasized that peanuts should not leave the buying point.

In some cases it may well be that the buying point to which the farmer takes the farm's peanuts may not be a location where recleaning is possible. Accordingly, not allowing the peanuts to be recleaned elsewhere could have a serious effect on the marketing decisions made by producers and could interfere with normal operations of private buying points and producers. On the other hand, control of the peanuts is important because of the possible effect on the loan program if buyers refuse to buy peanuts that have been moved for fear that the presence of the mold has been obscured by re mixing of the peanuts. Such fears, should they occur, could affect the marketability of the peanuts. In turn, the lack of marketability could produce price support loan losses. Hence, this raises the same general concern as the question of whether to allow recleaning at all and we reach the same result as with the general question as there does not appear to be strong evidence to indicate that there will be serious interference with the price support program if this allowance is made. In the absence of such evidence, the agency is reluctant to interfere with established marketing relationships. Accordingly, the final rule does not require that recleaning take place at the same location where the peanuts are first presented for marketing if that buying point does not have its own cleaning facilities.

2. 24-Hour Period for Cleaning and Reinspection

In the interim rule, the agency generally allowed 24 hours for the recleaning to take place but did provide explicitly for authority to extend that period if the Director of the Tobacco and Peanuts Division (TPD) of the Farm Service Agency (FSA) saw fit to do so. A number of comments addressed this issue. One area peanut grower association and three State peanut grower associations supported the interim rule as written with a 24-hour reinspection turnaround. One area peanut grower association, three State peanut grower associations, one State peanut organization, six members of Congress, and three Senators supported the interim rule but also suggested either a 24-hour turnaround was not enough time or requested allowing 72 hours for peanuts to be cleaned and reinspected. One area peanut grower association and one State peanut grower association opposed the interim rule based, in part, on the assertion that 24 hours was not enough time to have the peanuts cleaned and regraded.

Following issuance of the interim rule, FSA issued procedures implementing the changes to allow reconditioning and reinspection of farmers stock peanuts. As the marketing of 1998 crop peanuts began, certain buying points that did not have cleaning facilities but had peanut producers who wanted their peanuts cleaned and regraded requested that TPD grant relief to allow the peanuts to be cleaned at a different buying point. In order to provide equity to all producers, under the provisions of the interim rule, the Director of TPD, FSA, issued instructions to allow 72 hours for cleaning and regrading and buying points without cleaning facilities to move the peanuts to an alternate buying point for cleaning and reinspection.

We have estimated that fewer than 350 loads of peanuts were cleaned and reinspected during the 1999 crop with most occurring in the Southeast marketing area. This represents a 30 percent decrease from year-earlier

amounts of peanuts cleaned and reinspected under this provision. We estimate that about 65 percent of the reinspected peanuts were able to qualify as Segregation 1 peanuts.

Here also, the same concerns are at play. Those concerns were identified in the comments of several respondents who expressed the concern that reinspected peanuts would be viewed as ''hot'' with respect to undetected A. flavus mold and thereby cause pool losses. However, the relative small amount of peanuts cleaned and reinspected did not have a significant impact on the peanut price support loan program. Having decided that off-premises recleaning should be allowed, it follows that the recleaning period should not be limited to 24 hours as it may not be possible for the recleaning to be done in that period of time. However, this concern is not limited only to those situations, as 24 hours may also be too short in some instances at buying points with cleaning facilities at times when many peanuts are being delivered at once or whether there is an equipment failure or, for that matter, a holiday. Accordingly, subject to continued oversight, the rule allows for a 72 hour period for the process of recleaning and regrading to be completed.

3. Chemical Testing of Farmers Stock Peanuts for Aflatoxin

With respect to chemical testing, the issue has been whether or not there would be a requirement of some kind of chemical testing before farmers stock peanuts can be marketed—currently, there is a visual inspection of the peanuts though, as indicated, such inspections are designed for the administration of the price support program and assigning a value to the peanuts. Wholesomeness concerns with respect to the human consumption of peanuts takes place as needed further along in the marketing process and is not under the jurisdiction of CCC. Nor is CCC, as such, a regulator of the marketing of peanuts except as needed to operate the price support program itself and to administer the production restriction provisions which are tied into the price support system. However, because of concerns that undetected problems could produce losses to buyers later on, there has been a debate within the industry about whether there should be chemical testing of all farmer stock peanut deliveries. In light of that debate and its connection with the recleaning issue, the interim rule asked for comment on whether chemical testing should be required for all marketings, as opposed to being left to individual determinations by individual buyers. A number of comments were received.

One area peanut grower association and four State peanut grower organizations opposed the use of chemical testing of farmers stock peanuts. Concerns about adverse impacts on peanut producers, increased expense, delays in peanut delivery and environmental impacts of chemicals used for testing were issues raised by the respondents.

A national peanut sheller organization and a national peanut product manufacturer organization, two State peanut grower organizations and a State peanut commission supported the use of chemical testing as a more accurate and consistent test for reflecting the aflatoxin content in farmers stock peanuts. These respondents pointed to studies that show occurrences of excess aflatoxin in peanuts graded as Segregation 1 and relatively low levels of aflatoxin in peanuts grading Segregation 3. The respondents emphasized that the studies show that the current visual inspection method of grading farmers stock peanuts for A. flavus mold is not a definitive indicator of aflatoxin content of the inspected peanuts.

A sheller/handler acknowledged the need to enhance the peanut grading system and, without addressing chemical testing directly, stressed the need to remove subjectivity from the testing process. Several respondents urged using available technology in the grading process while protecting the integrity of the peanut price support program and its function for peanut producers.

Discussion by respondents included incorporation of marketing and grading procedures based on the field application of beneficial mold that studies suggest decreases the likelihood of the occurrence of aflatoxin in peanuts produced on such fields. In addition, several respondents suggested that incoming grade requirements with respect to visual inspection for A. flavus mold or aflatoxin content be eliminated for commercial peanut sales. Since handlers are subject to outgoing quality standards based on chemical testing for aflatoxin, the respondents reasoned that there is no real justification for testing farmers stock peanuts.

Discussions on the issue of chemical testing of farmer stock peanuts continue in the industry and, so far, no consensus has been reached. Thus for example, no provisions have been added to the Peanut Marketing Agreement, an agreement which for the most part is the product of recommendations of a joint group of producers and buyers. Issues which come into play in the question concern the type of testing that would be required, whether it would be required in all cases, and who would pay for the testing. Given that lack of unanimity on this issue and the lack of unanimity of treatment in the marketplace, there does not appear to be an established market practice which the price support system needs to insure that peanuts are properly valued for price support purposes to avoid pool losses. For that reason and given the limited purposes of the price support program, there does not appear to be reason at this time for a change in the program regulations regarding this issue. However, private concerns remain free to engage in whatever additional testing they feel is needed to protect their interests in the marketplace.

4. Modification of § 1446.307

In § 1446.307 of the regulations, specifically in paragraph (g) of that section, it is provided that disaster transfers cannot be made from an additional peanut loan pool to a quota loan pool if the producer has executed a waiver of the right in connection with the acquisition of crop insurance benefits from the Federal Crop Insurance Corporation (FCIC), or other federal agency. Apparently, FCIC has, in the past, been the only federal agency to require such a waiver. Because, however, it is understood that such waivers are no longer required by FCIC, this provision is removed in this rule.

5. Modification of § 1446.102

In § 1446.102, provisions are set out which govern the general administration of the price support program. In that connection, in order to assure maximum flexibility for the agency in dealing with new problems as they may arise, a new provision is being added to the regulations which allows the Director of TPD, FSA, to approve variances from the regulations where the variance does not involve a statutory requirement and where such a variance would serve the purposes of the overall administration of the program. This authority would, however, only be used sparingly to deal with new and developing issues or to resolve disputes and supplements whatever flexibility is already granted by other terms of the regulations, or granted elsewhere.

List of Subjects in 7 CFR Part 1446

Loan programs—agriculture, reporting and recordkeeping requirements.

For the reasons set out in the preamble, the amendments to 7 CFR part 1446 contained in the interim rule

issued August 5, 1998, are adopted as a final rule with the following change:

PART 1446—PEANUTS

1. The authority citation for part 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 7271; 15 U.S.C. 714b and 714c.

2. Paragraph (c) of § 1446.102 is amended by adding a new sentence to the end of the paragraph to read as follows:

§ 1446.102 Administration.

* * * * *

(c) *Supervisory authority.* * * * Further, the Director of TPD, FSA, may authorize the wavier or modification of deadlines and other requirements, except statutory deadlines or requirements, in cases where lateness or the failure to meet such other requirements does not adversely affect operation of the program.

3. Paragraph (3) of the definition of ''Segregations'' in § 1446.103 is revised to read as follows:

§ 1446.103 Definitions.

* * * * *

(3) *Segregation 3.* Segregation 3 peanuts are farmers stock peanuts which, upon visible inspection, are found to contain Aspergillus flavus mold: *Provided further, however,* That, in accordance with such written instructions as the Director may issue, the Director shall permit producers at approved buying points as specified by the Director to have the Segregation 3 lot reconditioned, one time only, and then reinspected visually. If the buying point where the peanuts were initially delivered does not have adequate cleaning facilities, CCC may approve an alternative buying point for cleaning and reinspection. The visual reinspection may not occur more than 72 hours from the initial inspection except as permitted by the Director and the second grade shall be considered the final grade for the farmers stock peanuts.

§ 1444.307 [Amended]

4. Section 1444.307 is amended by removing paragraph (g) from that section.

Signed at Washington, D.C., on January 3, 2001.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01–651 Filed 1–9–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 830

RIN 1901–AA34

Nuclear Safety Management

AGENCY: Department of Energy

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) adopts, with minor changes, the interim final rule published on October 10, 2000, to amend the DOE Nuclear Safety Management regulations.

EFFECTIVE DATE: This final rule is effective on February 9, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Black, Director, Office of Nuclear and Facility Safety Policy, 270CC, Department of Energy, 19901 Germantown Road, Germantown, MD 20874; telephone: 301–903–3465; e-mail: Richard.Black@eh.doe.gov

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

On October 10, 2000, the Department of Energy (DOE) published an interim final rule in the **Federal Register** (65 FR 60291) that amended DOE's nuclear safety regulations in 10 CFR Part 830 (Interim Final Rule). DOE provided a 30-day public comment period for the Interim Final Rule and subsequently received comments to the rule from over 30 parties. As a result of the comments that were received to that Interim Final Rule, DOE became aware of a number of minor errors in the published version of the rule and the preamble, as well as a number of minor changes to the rule that would clarify and simplify implementation of the amended rule. We are republishing the rule as a final rule with those changes. Finally, we are summarizing the issues raised in the comments to the Interim Final Rule and providing DOE's responses to the major issues. Many of the comments concerned rule implementation issues that will be addressed in the rule implementation guides.

II. Discussion of Changes to the Rule

The following changes to 10 CFR Part 830 are being made in response to comments to the Interim Final Rule.

A. Changes to § 830.2, Exclusions

We are amending paragraph 830.2(d) to exclude the mixed oxide fuel fabrication and irradiation facilities that the Nuclear Regulatory Commission (NRC) has the authority to license and regulate under § 3134 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261). Section 3134 amends the Energy Reorganization Act of 1974 to add § 202(5) (42 U.S.C. 5842). This exclusion will make clear that these facilities will be licensed by the NRC and must be designed and constructed to meet NRC regulations. Thus, these facilities are excluded from the requirement to meet 10 CFR Part 830 before and after a license is issued by the NRC.

B. Changes to § 830.3, Definitions.

We are revising the following definitions in § 830.3:

1. Safety Class Structures, Systems, and Components

We are revising the words ''identified by the documented safety analysis'' to ''determined from safety analyses'' to make the definition consistent with those for ''safety structures, systems, and components'' and ''safety significant structures, systems, and components.''

2. Technical Safety Requirements (TSRs)

We are revising the definition of TSRs to express it more clearly. As revised, the definition of TSRs means the limits, controls, and related actions that establish the specific parameters and requisite actions for the safe operation of a nuclear facility and include, as appropriate for the work and the hazards identified in the documented safety analysis for the facility: Safety limits, operating limits, surveillance requirements, administrative and management controls, use and application provisions, and design features, as well as a bases appendix. The documented safety analysis identifies the need for TSRs, but the actual limits are identified in the TSRs. The revisions make clear that the TSRs address the specific numerical limits and related actions necessary for safe operation of a nuclear facility. Because the TSRs identify the limits and actions necessary in specific situations, it is not appropriate to use the graded approach to justify the use of different limits and actions than those set forth in the TSRs. The change made to the graded approach section is consistent with this change.

C. Changes to § 830.7, Graded Approach

We received a number of comments requesting us to clarify where a contractor must use a graded approach and how the graded approach documentation should be submitted. We are revising the language in § 830.7 to clarify that a contractor may not use a graded approach in implementing the unreviewed safety question (USQ)