



AMERICAN PEANUT SHELLERS ASSOCIATION

Introduction

Farmers Stock Trading Rules

Shelled, Inshell Trading Rules

Grade Standards

June 14, 2004

INTRODUCTION

Formed in 1919, the American Peanut Shellers Association, Inc. is the senior organized group in the American peanut industry. It is a non-profit trade association composed of commercial peanut shelling and crushing firms with operations in Alabama, Florida, and Georgia with provisions in the By-Laws for like firms in other southeastern states considered as part of the southeastern peanut production area to hold Active Memberships.

Inasmuch as many of the transactions between Members of the Association, and between members and non-members thereof, are conducted by electronic communication, through brokers or otherwise, these Official Rules and Grade Standards, covering offers, sales and purchases of peanuts, are adopted and promulgated to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale, avoiding the necessity of drafting in each instance a lengthy and cumbersome document.

These Rules and Grade Standards were approved on June 14, 2004 for submission to the U.S. Justice Department by the Active Membership of the American Peanut Shellers Association and were submitted to the Department of Justice for review pursuant to the business review procedure, 28 CFR Section 50.6. The Department has reviewed the Rules and Grade Standards under that procedure and issued its business review letter dated February 2, 2006.

Unless otherwise specified at time of sale, all peanuts or related by-products specified in and governed by these Rules and Grade Standards shall be of American origin, and produced within the United States of America.

Parties utilizing these Rules and Grade Standards in contractual matters should cite the applicable Rules or Grade Standards as follows:

- (1) If for Farmers Stock, "APSA Farmers Stock Trading Rules dated "June 14, 2004",
- (2) If for shelled, or inshell, "APSA Shelled, Inshell Trading Rules dated "June 14, 2004",
- (3) If for Grade Standards, "APSA Grade Standards dated "June 14, 2004".

AMERICAN PEANUT SHELLERS ASSOCIATION

Farmers Stock Trading Rules



FARMERS STOCK TRADING RULES

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FARMERS STOCK TRADING RULES

ARTICLE I. GENERAL RULES

The following rules shall govern the purchase and sale of farmers stock peanuts in those transactions in which the Buyer and Seller agree in writing that the rules will apply. "Farmers stock peanuts," shall be defined as defined in 7 Code of Federal Regulations Part 1446 as from time to time amended: "picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed."

RULE 1. The type, segregation, and, when applicable, the grade and/or classification of the farmers stock is to be specified at the time of the sale. Time of sale is defined as the time a contract is fully signed by all parties involved.

RULE 2. All documentation necessary to accomplish the legal acquisition of farmers stock peanuts in accordance with all applicable governmental regulations shall be supplied by the Seller to the Buyer in a timely manner and in accordance with all regulations regarding the purchase or sale of farmers stock peanuts.

ARTICLE II. STANDARDS

RULE 3. All farmers stock covered by these rules shall be first classified in accordance with the standards of the United States Department of Agriculture (USDA) and the Federal State Inspection Service (FSIS). The classifications are as follows:

Section 1. Segregation I. Farmers stock: Segregation I peanuts are farmers stock peanuts which are free from visible *Aspergillus flavus* mold and which:

- (1) Have at least 99 percent peanuts of one type;
- (2) Have not more than:
 - (a) 2.49 percent damaged kernels (rounded to nearest whole number);
 - (b) 1.00 percent concealed damage caused by rancidity, mold or decay;
 - (c) 0.50 percent freeze damage;
 - (d) 14.49 percent LSK's; and
- (3) Are free from any offensive odor.

Section 2. Segregation I farmers stock may be classed into A, B, or C classifications which are defined as follows:

Segregation I-A farmers stock shall have:

- (1) 65.00% minimum sound mature kernels (SMK)
- (2) 4.00% maximum sound splits (SS)
- (3) 69.00% minimum total sound mature kernels (TSMK)
- (4) 4.00% maximum other kernels (OK)
- (5) 1.00% maximum damaged kernels based on the total sound mature kernel weight only
- (6) 4.00% maximum foreign material (FM)
- (7) 4.00% maximum loose shelled kernels (LSK)
- (8) 8.00% minimum moisture
- (9) 10.00% maximum moisture
- (10) No more than 2 parts per billion (PPB) aflatoxin based on testing the total kernel content, unless otherwise stated in the contract, using acceptable chemical testing procedures approved by the Association of Official Analytical Chemists (AOAC).

Section 3. Segregation I-B farmers stock shall have:

- (1) 60.00% minimum sound mature kernels (SMK)
- (2) 5.00% maximum sound splits (SS)
- (3) 65.00% minimum total sound mature kernels (TSMK)
- (4) 6.00% maximum other kernels (OK)
- (5) 2.00% maximum damaged kernels based on total sound mature kernel weight only
- (6) 6.00% maximum foreign material (FM)
- (7) 6.00% maximum loose shelled kernels (LSK)
- (8) 8.00% minimum moisture
- (9) 10.00% maximum moisture
- (10) No more than 15 parts per billion (PPB) aflatoxin based on testing the total kernel content, unless otherwise stated in the contract, using acceptable chemical testing procedures approved by the Association of Official Analytical Chemists (AOAC).

Section 4. Segregation I-C farmers stock shall be: Segregation I Peanuts that fail to meet Segregation I-A or I-B standards.

RULE 4. Segregation II farmers stock: Segregation II peanuts are farmers stock peanuts which are free from visible *Aspergillus flavus* mold and which either:

- (1) have less than 99.00 percent peanuts of one type; or
- (2) have more than:
 - a. 2.49 percent damaged kernels (rounded to the nearest whole number); or
 - b. 1.00 percent concealed damage caused by rancidity, mold, or decay; or
 - c. 0.50 percent freeze damage; or
 - d. 14.49 percent LSK's; or
- (3) have an offensive odor.

RULE 5. Segregation III farmers stock: Segregation III peanuts are farmers stock peanuts which have visible *Aspergillus flavus* mold.

RULE 6. Other standards: All other standards relating to farmers stock peanuts that may pertain to seed, Commodity Credit Corporation loan, and the standards outlined in 7CFR, Part 996 shall be in effect wherever and whenever necessary so as to comply with the respective agencies' requirements.

ARTICLE III. CONTRACTS

RULE 7. Buyer and Seller may execute written contracts setting forth specific terms, standards, and conditions under which farmers stock peanuts are to be purchased/sold and received/delivered. Such written documents may be formulated by either the Buyer, the Seller, or by the USDA as appropriate.

RULE 8. In the absence of mutual written agreement to the contrary by both Buyer and Seller, all terms and conditions of the original contract shall be fully adhered to in exact accordance with the language contained in the original contractual agreement.

RULE 9. In the event that a contracting party enters into contractual agreements with multiple parties covering the same farmers stock peanuts, the contract first duly signed shall prevail over the other contracts, but the operation of this rule shall not diminish or excuse the contracting party from liability on those other contracts.

ARTICLE IV. WEIGHTS

RULE 10. Upon delivery each truck or trailer of peanuts shall be weighed for actual gross and tare weight on scales with indicators capable of printing or imprinting multi-copy weight tickets. Scales and indicators must be approved by the appropriate state agency of weights and measures.

RULE 11. Pre-determined tare weights or "split-axle" weights shall not be acceptable. When peanuts are delivered in trailers or vehicles having weight bearing tongues or hitches, such trailers or vehicles shall be completely disconnected and weighed separately. (Example: two wheel or tandem wheel peanut trailers)

ARTICLE V. DELIVERY

RULE 12.

Section 1. Place of delivery is construed to mean the receiving location of the Buyer or its agent, which initially contracted with Seller.

Section 2. Time of delivery is construed to mean at time of harvest, which is defined as a point in time which occurs immediately after peanuts are picked or combined, unless otherwise stated in the contract.

RULE 13. When the Seller finds that he will not be able to complete a contract within the agreed limits, it shall be his duty at once to notify the Buyer by electronic communication. Then it shall be the duty of the Buyer within 24 hours to elect either to:

- (1) agree with the Seller to an extension or modifications of the contract;
- (2) after having given notice to the Seller to complete the contract, the Buyer, by the exercise of due diligence, will buy-in for the account of the Seller or;
- (3) after having given notice to the Seller to complete the contract, the Buyer will cancel the defaulted portion of the contract at fair market value that day, and any loss incurred to Buyer shall be chargeable to and the responsibility of the Seller.

RULE 14. DEFINITIONS

1. **“Notice”** or **“Notify”** as used in these rules shall mean oral communication and when possible by electronic communication.

2. **“Buy-in”** in these rules shall mean an actual purchase of peanuts of like kind on the open market.

ARTICLE VI. SAMPLING AND INSPECTION

RULE 15. Sampling and inspection shall be performed in accordance with Federal or Federal State Inspection Service procedures as provided in the Code of Federal Regulations by an approved inspector.

In determining segregation I-A, I-B, and I-C farmers stock, damage percentage shall be determined by dividing the weight of the damaged kernels removed from the total sound mature kernels by the weight of the total sound mature kernels, as determined by the inspection certificate. This percent shall be carried two (2) decimal places and not rounded to the nearest whole percentage point. The sample for aflatoxin shall be a sub-sample of the original sample.

ARTICLE VII. REJECTIONS

RULE 16. The results of sampling and inspections performed by Buyer's Quality Control personnel, or the Quality Control personnel of any other party processing, storing, or otherwise handling any given shipment, do not qualify as grounds for rejection of subject shipment. Should an inspection by an approved inspector at the point of destination, and

the official inspection certificate issued thereon, indicate that a shipment of farmers stock peanuts is not equal to contract quality, subject shipment may be rejected by the Buyer under the following terms and conditions:

Section 1. The Buyer must notify the Seller by oral or written communication within two (2) working days after inspection of Buyer's intention to reject the shipment. After receipt of aforesaid notification from Buyer, the Seller has the option to request an appeal inspection within two (2) working days.

Section 2. In the event that the inspection certificate covering the appeal inspection referred to in Section 1 shows that the shipment is not equal to contract quality, the Seller is granted the privilege of replacing the rejected shipment by making another shipment of contract quality and quantity within seven (7) working days after receipt of Buyer's notice, or within seven (7) working days after receipt of notice that the appeal inspection shows the shipment not to be equal to the contract quality, whichever is later.

Section 3. If the Seller elects to replace the rejected shipment within the period of seven (7) working days as set forth in Section 2 above, the Seller must give written or oral notification within two (2) working days to the Buyer of his intent to replace subject quantity. Should Seller fail to furnish Buyer such notice of intent to make replacement shipment, or should Seller furnish such notice and then fail to provide such shipment the Buyer shall, then proceed in accordance with Article V, Rule 13 of these rules (Incomplete Delivery).

RULE 17. In the event Buyer has paid Seller purchase price for rejected shipment, the Seller must promptly refund purchase price to the Buyer.

RULE 18. If rejection has occurred under the provisions of Rule 16 above:

Section 1. The Seller shall move the rejected shipment from Buyer's facility in a timely manner.

Section 2. The Seller is responsible to the Buyer for the following:

- (a) Transportation cost incurred by Buyer of the rejected shipment.
- (b) Cost of inspection of rejected shipment as performed by an approved inspector.

ARTICLE VIII. ARBITRATION

RULE 19.

Any controversy or claim arising out of or relating to any contract or agreement which is subject to these rules, or the breach of such contract or agreement, including

any controversy or claim that arises out of any instrument or document related to the contract, and including any claim based on an alleged tort, shall be resolved by binding arbitration administered by the American Arbitration Association under its commercial arbitration rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any party to a contract subject to these rules may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which these rules apply in any court having jurisdiction over such action.

The arbitration shall be conducted by the Atlanta, Georgia, U.S.A. office of the American Arbitration Association.

AMERICAN PEANUT SHELLERS ASSOCIATION

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SHELLED, INSHELL PEANUTS TRADING RULES

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SHELLED, IN-SHELL PEANUTS TRADING RULES

ARTICLE I. GENERAL RULES

RULE 1.

Section 1. Quantity shipped to be 2.00% more or less of contract quantity at seller's option at contract price.

Section 2. The type and grade is to be specified at the time of sale. Any variations in tolerances are to be mutually agreed upon in writing prior to shipment.

Section 3. The terms of sale to be specified as:

1. F.O.B. (Origin Point)
2. F.A.S. Origin Port(s)
3. F.O.B. Vessel Origin Port(s)
4. C. & F. or CFR Destination Port(s)
5. C.I.F. Destination Port(s)

Section 4. On F.O.B. Vessel shipments, buyer is to nominate shipping line and port of destination prior to contract month. On C. & F. or CFR and C.I.F. shipments, buyer is to nominate port of destination one month prior to contract month if port option is allowed. The seller must nominate the origin port of F.A.S. sales and F.O.B. vessel sales if contract provides such option prior to the month of shipment as stated in the contract.

Section 5. All weights to be gross for net unless otherwise specified. USDA Certificate of Inspection for Quality and Inspection Certificate for aflatoxin from a USDA approved laboratory to be final.

Section 6. Goods to be packed in 50-kilo bags unless other packaging is agreed upon by buyer and seller.

RULE 2. Time of shipment will be determined as:

1. Shipments for F.O.B. sales are to be loaded at seller's option from any contract origin point during the month specified by the contract.
2. Shipments for F.A.S. sales are to be delivered to the port/container yard within the month specified in the contract.
3. Shipments for F.O.B. Vessel sales are to be at seller's option during the month specified in the contract.

4. Shipments for C.& F. or CFR and C.I.F. sales are to be at seller's option during the month specified in the contract.
5. Applicable bill of lading date to determine date of shipment for F.O.B., C.& F. or CFR and C.I.F. sales and applicable delivery receipt to determine date of shipment for F.A.S. and F.O.B. Vessel sales.

RULE 3. Unless previous mutual written agreement exists between buyer and seller the payment terms for F.O.B. and F.A.S. sales are net cash upon receipt of invoice and the payment terms of F.O.B. Vessel, C.& F. or CFR and C.I.F. sales are cash against documents on first presentation at buyer's bank unless otherwise agreed by the parties to the transaction.

RULE 4. Documentation to be provided in a timely manner, by the seller as follows:

1. For F.O.B. and F.A.S. Sales
 - a. Invoice
 - b. Inland Bill of Lading
 - c. USDA Certificate of Inspection (Certificate for each lot must reflect a weight not less than .5% of the invoiced weight of that lot.)
 - d. Certificate of Aflatoxin Analysis from a USDA-approved lab
 - e. A Certificate of Weight
 - f. Certificate of Fumigation (when applicable).
2. For F.O.B. Vessel and C.& F. or CFR Sales
 - a. All of the above.
 - b. On Board Ocean Bill of Lading in lieu of Inland Bill.
 - c. Certificate of Origin
 - d. Other documents as specified in the contract.
3. For C.I.F. Sales
 - a. All of the above
 - b. Certificate of Insurance

RULE 5. In case of a sale on F.O.B., F.A.S., F.O.B. Vessel, or C.& F. or CFR terms, insurance is to be covered by the buyer prior to the start of the transport against marine and war/strike risks, including the risks of heating, sweating and spontaneous combustion, all howsoever and wheresoever arising, irrespective of percentage as per

Institute Cargo Clauses (all risks)
Institute War Clauses
Institute Strikes, Riots and Civil Commotion Clauses

On the following conditions:

1. To the value of the contract price, plus 10%
2. In the currency of the contract
3. From the warehouse where the container(s) is/are stuffed to the warehouse in the port of destination as per bill of lading
4. With first class Underwriters and/or Insurance Companies

At seller's request, the buyer shall forward full particulars of such insurance to the seller before shipment and shall also deliver the valid policy or certificate to the seller. If so delivered, such policy or certificate made out in the name of bearer or seller's order, shall be attached to the documents presented to the buyer for payment. If, for any reason, whatsoever, the seller has an interest in the insurance, the buyer shall render every possible assistance to enable the seller to enforce his rights hereunder against the insurers.

For sales on C.I.F. terms, the insurance is to be covered by the seller prior to the start of the transport against marine and war/strike risks, including the risks of heating, sweating and spontaneous combustion, all howsoever and wheresoever arising, irrespective of percentage as per

Institute Cargo Clauses (all risks)
Institute War Clauses
Institute Strikes, Riots and Civil Commotion Clauses

On the following conditions:

1. To the value of the contract price, plus 10%
2. In the currency of the contract
3. From the warehouse where the container(s) is/are stuffed to the warehouse in the port of destination as per bill of lading
4. Including storage during a period of 15 days after the stripping of the container
5. Premium for war/strike risks insurance in excess of .50% shall be for account of the buyer.
6. With first class Underwriters and/or Insurance Companies
7. Claims, if any, shall be made payable in the country of destination

If for any reason whatsoever, the buyer has an interest in the insurance, the seller shall render every possible assistance to enable the buyer to enforce his rights against the insurers.

RULE 6. For F.O.B. sales, arranging for fumigation is the responsibility of the buyer and all charges are for the buyer's account. For F.A.S., F.O.B. Vessel, C.& F. or CFR and C.I.F. sales, arranging for fumigation is the responsibility of the seller upon instructions from the buyer and all charges are for the seller's account.

RULE 7. All periods of time referenced in these rules shall exclude Saturdays, Sundays and legally declared holidays in the country of either buyer or seller which shall not be considered as working days. All working days shall be considered to end at 1700 hours local time of the principal office of the party issuing a communication.

Section 1. All notices, instructions, declarations and so forth relative to these rules shall be given by electronic communication. All notices shall be under reserve for errors in transmission.

Section 2. In a string, all notices and declarations by intermediate sellers shall be accepted by their buyers, although received by them after the prescribed periods of time, provided they have been passed on with due dispatch.

RULE 8. On F.O.B. sales, the cost of the certificate of inspection for aflatoxin, or any other charges incurred by seller resulting from buyer's request, are for the account of the buyer. On F.A.S., F.O.B. Vessel, C.&F., and C.I.F. or CFR sales, the cost of the certificate of inspection for aflatoxin shall be for the account of the seller.

ARTICLE II. CONTRACTS

RULE 9.

Section 1. Nothing contained in these rules shall prohibit or interfere with the rights of the parties to enter into a special written contract setting forth terms of the agreement and any special conditions. Either party is entitled to have and receive a formal written contract as soon as the terms of the purchase and sale have been fully agreed upon.

Section 2. Each railroad carload or motor truck load of shelled or inshell peanuts bought or sold under these rules shall be treated and handled throughout as a separate purchase or sale, regardless of the number of railroad carloads or motor truck loads, or the time of shipment stipulated in any given contract. Adjustments as to weight and quality will be made on each individual railroad carload or motor truck load. All such contracts will be construed to be divisible, and not entire, so that the weight or quality of one or more railroad carloads or motor truck loads will not affect the remainder of the contract.

Section 3. Sales for shipment over more than one month are understood to be for equal shipments during the months named in the contract unless otherwise specified.

Section 4. If, on all or any part of contract for specified months, buyer fails to furnish shipping instructions and neither seller nor buyer exercises their rights under the contract or under these rules on all or any part of unfilled portions of contract, same shall be automatically deferred to and shall constitute a contract for the next succeeding month, but nonetheless still subject to all other provisions of these rules.

ARTICLE III. DECLARATION OF SHIPMENT

RULE 10.

Section 1. F.O.B. Vessel, C.&F. or CFR, and C.I.F. sales, declaration of shipment under usual reserves stating the quantity shipped, the container number(s) , the name of the vessel, the port of destination, and the date of bill of lading shall be made by the shipper to his buyer no later than ten days after the date of the bill of lading.

Section 2. For F.O.B. and F.A.S. sales, declaration of shipment stating the quantity shipped, the lot numbers, the number of bags/boxes/totes per lot, the carrier name and container number(s), tag number, or car number and the date of shipment, shall be made by the shipper to the buyer within 48 hours after the loading of the container.

Section 3. Declarations of intermediate sellers are to be accepted although received later than specified time if passed on by them with due dispatch.

ARTICLE IV. RELEASE OF GOODS

RULE 11.

Section 1. In the case where intermediate parties are involved in the transaction, and a seller will not be supplying his own goods to his buyer, a release for goods may be given from the seller to the buyer. Prior to the release being sent, the seller must contact his supplier to identify the exact location of goods. When a location is obtained, a seller may then send a release to his buyer with a copy to the supplier including full string details with all sales contract numbers referenced, the quantity released and the month of shipment.

If the release is passed to subsequent buyers, each subsequent buyer either issues shipping instructions to the original supplier or passes the release to his buyer, with a copy to the original supplier, adding pertinent sales contract numbers.

Section 2. In the event that the original supplier is unable to supply goods upon receipt of shipping instructions it is the responsibility of that original supplier to obtain an alternate supplier and location of goods. Once he has identified the alternate supplier, the original supplier must immediately notify all parties involved of the complete and final string, including all sales contract numbers.

Section 3. Upon shipment of goods, the physical supplier must issue a tender to all parties in the string within two working days. This tender shall include details of complete string with sales contract numbers, the contract month for shipment, and all details of the shipment of the goods.

Section 4. Seller to furnish original documents as requested by buyers pursuant to other conditions as specified in these rules. An authorized original signature constitutes an original document.

ARTICLE V. CIRCLES

RULE 12.

Section 1. In the event that a seller repurchases from his buyer or from any subsequent buyer, the same goods or part thereof, a circle may be established regarding those goods.

Section 2. It is the responsibility of the first party that identifies the circle to propose the circle to all other parties involved, requesting that each party confirm their agreement and advise missing details. All parties must address a response to the circle proposal back to the initiating party within five working days. At that time, the initiating party will advise all parties that a circle has or has not been established.

Section 3. Once it has been confirmed that a circle has been established, invoices shall be issued by each seller to his buyer based on the difference in his sales price and the lowest sale price in the circle for the quantity circled.

Section 4. Any late handling fee involved shall be settled separately between the seller and the buyer with no effect on the other parties in the circle.

Section 5. Payment of invoices shall be due no later than the tenth day of the month following the contract shipment month.

ARTICLE VI. WEIGHTS AND CLAIMS

In order for weight discrepancies to be entitled to consideration, the following must have occurred:

RULE 13.

Section 1. Goods must have been weighed as an entire truck/railcar on arrival at destination and a difference found to exceed one half of one percent (.5%) of invoiced weight. This weighing must consist of an actual gross and tare weight. Pre-determined and/or split axle weights are not acceptable.

Section 2. After weight difference has been determined to exceed allowable one half of one percent tolerance, the buyer or receiver of goods must advise the seller of the weight discrepancy within two working days; giving all pertinent details including the status of the seals, container count and the conditions of the goods. Should the seller wish to contest or investigate the buyer's weight claim, notification shall be given to the buyer within two working days after receipt of buyer's advice of discrepancy. If seller elects to investigate buyer's claim, the physical goods involved shall be held intact until the matter is resolved, but not to exceed 10 working days.

Section 3. If buyer and seller are unable to resolve discrepancy amicably between themselves, a public weigher shall be employed by the buyer and must immediately furnish both buyer and seller with a copy of his sworn weight certificate. If there is no public weigher at point of destination, then a sworn weigher or disinterested party (specifically not a processor or storer of subject goods) may weigh shipment and shall immediately furnish buyer and seller with a copy of his sworn weight certificate. Public weigher's or weigher's sworn certificate (as applicable) shall set forth all the facts, including date of arrival of goods at destination, seal numbers, and true gross and tare weights of each railroad carload or motor truck load against which claim is directed.

After which, if loss in weight is more than one half of one percent on arrival at destination, the costs of weighing shall be paid by the seller and the buyer shall be credited or refunded at the invoice price for any underweight in excess of one half of one percent of the invoice weights. If the weights are found to be correct or within one half of one percent of invoice weights, or overweight, the cost of weighing shall be paid by the buyer and the seller shall be paid at the invoice price for any overweight in excess of one half of one percent of the invoice weights.

Section 4. Spot weighing the shipment, pre-recorded or pre-determined tare weights covering railcars, trucks, tote bins, pallets and tote bins, or bags of any type are not allowable under any circumstance unless agreeable to both buyer and seller in advance of shipments.

ARTICLE VII. SHIPPING INSTRUCTIONS AND TIME OF SHIPMENT

RULE 14.

Section 1. All sales of shelled peanuts shall be for either prompt or specified shipment or monthly contractual commitment(s) with unspecified shipping dates.

Section 2. Prompt shipment shall be within ten (10) working days, date of contract not included.

Section 3. Specified shipment shall be in accordance with dates in the contract.

Section 4. Monthly contractual commitment with unspecified shipping dates shall be of equal shipment during the months named in the contract unless otherwise specified.

Section 5. In all cases, the Bill of Lading shall be evidence of the date of shipment, unless the date shall conflict with the railroad or motor truck line records, the time of actual loading may be determined by the railroad or motor truck line record, if additional collateral evidence is also submitted.

RULE 15.

Section 1. Where shelled peanuts are sold for prompt shipment, specified shipment, or monthly contractual commitment(s) with unspecified shipping dates, buyer shall furnish shipping instructions as follows:

- (a) Prompt shipment, within five (5) days (Sundays and legal holidays not included).
- (b) Specified shipments: If the buyer has not furnished seller with shipping instructions four (4) working days prior to shipping date specified in contract, seller shall ask the buyer in writing for instructions and buyer shall furnish same in writing within one (1) working day after seller's written request.
- (c) Monthly contractual commitment with shipping dates unspecified: Buyer must notify seller with shipping instructions at least ten (10) working days prior to actual shipping date. If seller is unable to comply with all or part of buyer's instructions, seller must advise within two (2) working days of receipt of notice, of his inability to comply with instructions and advise an alternate shipping schedule within contract terms.

If buyer has not issued instructions by the 15th day of the contract month, the seller may request shipping instructions and the buyer must respond within two (2) working days with instructions or buyer must agree to accept seller's shipping terms.

Peanuts not shipped due to buyer's failure to give instructions as outlined in subsection (c) above will incur a late handling fee as specified in the contract.

Section 2. Late handling fees as applied in these rules do not relieve buyer of his obligation to furnish shipping instructions.

Section 3. If the buyer fails or refuses to furnish the seller with shipping instructions in accordance with the contract by the end of the month following the contracted month, the seller may advise the buyer by written notice that the seller intends to cancel or resell for the account of the buyer (specifying which) the undelivered portion of the contract for which shipping instructions are due and have not been furnished; and, if the buyer has not furnished the seller with shipping instructions within one working day after dispatch of the written notice, the seller may at any time during the following two (2) working days cancel or resell for the account of the buyer (as specified in the written notice) the undelivered portion of the contract for which shipping instructions were due and not furnished.

In the case of resale for the account of the buyer, the sale shall be through a peanut broker, and the buyer shall be responsible to the seller for the difference between contract price and the resale price, for all other related losses or expenses and for the expense of reselling. The resale shall be for shipment conforming as nearly as practicable to that of the contract.

Section 4. The seller must make physical delivery or shipment of the goods of the description specified in the contract during the contract period.

Section 5. After receipt of buyer's instructions, if the seller fails or refuses to make shipment by the end of the month following the contractual month, the buyer may:

- (a) Give the seller written notice that the buyer intends to cancel or repurchase for the account of the seller (specifying which) the undelivered portion of the contract for which shipment is due and shipping instructions have been given; and if the seller has not furnished the buyer with proof within one (1) working day after the dispatch of such written notice that the undelivered portion of the contract for which shipment is due is in fact in route to the buyer according to buyer's instructions, the buyer may at any time during the following two (2) working days cancel or repurchase for the account of the seller (as specified in the written notice) the undelivered portion of the contract for which shipment is due and shipping instructions have been given.
- (b) In the case of repurchase for the account of the seller, the purchase shall be through a peanut broker, and the seller shall be responsible to the buyer for all loss and the expense of repurchasing. The repurchase shall be for shipment conforming as nearly as practicable to that of the contract.

Section 6. In case of contracts specifying buyer's option as to time of shipment, shipping instructions must be in seller's possession not less than ten (10) working days prior to expiration of contract period. Conversely, where contract stipulates seller's option as to time of shipment, seller must notify buyer of shipping date not later than ten (10) working days prior to expiration of contract period.

ARTICLE VIII. SAMPLES AND INSPECTIONS

RULE 16.

Section 1. Sampling and inspection shall be performed in accordance with Federal or Federal-State Inspection Service procedures and be performed by an approved inspector.

Such samples shall be considered the official sample and such sample shall be binding upon both buyer and seller. A copy of the inspection certificate shall be the official Inspection Certificate and shall accompany seller's invoice to buyer.

Either party shall have the right at his own expense to request additional samples for quality assurance and other internal use.

Section 2. Either party shall have the right at his own expense to request an appeal inspection, which shall be made in accordance with established procedures of the Federal-State Inspection Service.

A request for an appeal inspection must be made promptly by telephone followed by written confirmation within three working days after arrival of peanuts at destination for processing.

RULE 17. When the appeal is based on aflatoxin, inspection procedures must comply with standards in 7CFR , Part 996.

ARTICLE IX. REJECTIONS

RULE 18.

Section 1. The results of sampling and inspections performed by buyer's Quality Control personnel or the Quality Control personnel of any other party processing, storing, or otherwise handling any given shipment do not qualify as grounds for rejection of subject shipment; however, should an appeal inspection by an approved inspector at the point of destination, and the official inspection certificate (either grade or aflatoxin certificate) issued thereon, indicate that a shipment of shelled peanuts is not equal to contract quality (as set forth in applicable contractual agreement duly negotiated by buyer and seller to govern terms and conditions of purchase and sale of suspect shipment) subject shipment may be rejected by the buyer under the following terms and conditions:

- (a) The buyer must notify the seller by electronic communication within three working days after arrival of shipment at destination of the deficiencies noted in the shipment. After receipt of aforesaid notification from buyer, the seller has the option to request an official appeal inspection within three (3) working days.
- (b) In the event that the inspection certificates covering the official appeal inspection referred to in paragraph (a) shows that the shipment IS NOT equal to contract quality, the seller is granted the privilege of replacing the rejected shipment by making another shipment of contract quality and quantity within seven (7) working days after receipt of Buyer's notice referred to in paragraph (a) above or within seven (7) working days after receipt of notice that the appeal inspection referred to in paragraph (a) above shows the shipment not to be equal to the contract quality, whichever is later or, seller may elect to not replace the rejected shipment. In such an event the seller must reduce the contract quantity by the pounds of the rejected shipment.

Should contract terms require that replacement shipment be supplied in bulk railcar/truck, the aforementioned seven (7) day replacement period will be interpreted to mean seven (7) working days after placement (by buyer) of bulk railcar/truck at seller's facility.

- (c) In the event that the inspection certificates covering the official appeal inspection referred to in paragraph (a) shows that the shipment IS equal to

contract quality, then all rights of rejection are forfeited, and the buyer is responsible for all costs incurred.

- (d) If the seller elects to replace the rejected shipment within the period of seven (7) working days as set forth in paragraph (b) above, the seller must give written notification of this intent to replace subject quantity within three (3) working days after receipt of notice that the shipment is not equal to contract quality as determined by the later of destination inspection or the appeal inspection as described in paragraph (a). Once aforementioned notice is given to the buyer, seller must actually make replacement shipment within the time period set forth in paragraph (b) above. Should seller furnish buyer such notice of intent to make replacement shipment and actually fail to provide such shipment the buyer shall then exercise option to cancel rejected contract portion or repurchase rejected quantity under the procedures set forth in Section 2 of this Article IX.

Section 2. In the event buyer has paid seller purchase price for rejected shipment, upon transfer of title to seller the seller must promptly refund purchase price to the buyer.

Section 3. Given that rejection has occurred under the provisions of Section 1 above:

- (a) The seller shall move the rejected shipment from buyer's facility in a timely manner.
- (b) The seller is responsible to the buyer for the following:
1. Return transportation costs on rejected shipment.
 2. Cost of inspection of rejected shipment as performed by the official Inspectors or Federal-State Inspection Service.
- (c) In the event that buyer's contract terms cause seller to supply shelled peanuts in "bulk" railcar/truck and subject peanuts are rejected under provisions set forth herein - it is the responsibility of the buyer to either unload and transfer subject peanuts from "bulk" railcar/truck to standard containers of seller's choice (i.e. burlap bags, fibre board tote bins or tote bags) while maintaining positive lot identity, or to equalize any excess freight charges incurred by seller as well as reimburse seller for any charges incurred by seller in transferring (or hiring goods transferred by third party with transfer capabilities) subject peanuts from "bulk" railcar/truck to standard containers as stipulated above.

ARTICLE X. ARBITRATION

RULE 19.

Any controversy or claim arising out of or relating to any contract or agreement which is subject to these rules, or the breach of such contract or agreement, including any controversy or claim that arises out of any instrument or document related to the contract, and including any claim based on an alleged tort, shall be resolved by binding

arbitration administered by the American Arbitration Association under its commercial arbitration rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any party to a contract subject to these rules may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which these rules apply in any court having jurisdiction over such action.

The arbitration shall be conducted by the Atlanta, Georgia, U.S.A. office of the American Arbitration Association.

ARTICLE XI. DELAYED OR EXCUSED DELIVERY

RULE 20.

Section 1. Delay in delivery or nondelivery in whole or in part by seller, if seller complies with Sections (2) and (3) below, is not a breach of seller's duty under the contract if performance under the contract has been made impracticable by the occurrence of a contingency, the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

Section 2. Where the causes mentioned Section 1 of this rule affect only a part of the seller's capacity to perform, seller shall allocate production and deliveries among his customers but may, at his option, include regular customers not then under contract, as well as his own requirements for further manufacture. Seller may so allocate in any manner which is fair and reasonable.

Section 3. The seller must notify the buyer seasonably that there will be delay or nondelivery. When allocation is required under Section (2) of this rule seller must notify buyer of the estimated quota thus made available for the buyer.

Section 4. If the parties do not agree that the contingency has or will delay the execution of the contract, then the matter shall be arbitrated in accordance with the provisions of Article X of these Rules. If neither party files a request for arbitration within twenty (20) days from the date contingency occurs, both parties shall be barred from recovering damages from the other.

Section 5. The foregoing rule shall not apply in cases of shipments delivered to a carrier prior to the receipt of notice of disabling event.

ARTICLE XII. PEANUT HULLS

RULE 21.

Section 1. In the absence of any special contract to the contrary, Articles I, II, VI, VII, VIII, IX, X and XI of the foregoing Shelled, In-Shell Rules, and each provision thereof whenever applicable, shall apply with equal force and effect and shall govern all offers, sales and purchases of peanut hulls.

Section 2. A ton of peanut hulls shall be 2,000 pounds, including weight of bags, unless otherwise specified.

ARTICLE XIII. PEANUT OIL STOCK

RULE 22.

Section 1. In the absence of any special contract to the contrary, Article I, II, VI, VII, VIII, IX, X and XI of the foregoing Shelled, In-Shell Rules, and each provision thereof whenever applicable, shall apply with equal force and effect to and shall govern all offers, sales, and purchases of Peanut Oil Stock.

Section 2. A ton of peanut oil stock shall be 2,000 pounds of total kernel content, exclusive of foreign material, hulls, or any other object that is not a whole, or portion of a peanut kernel, as defined by the Federal-State Inspection Service's regulations.

ARTICLE XIV. DEFINITION OF TERMS

1. **C. & F. or CFR**

Cost and freight. All charges to destination port for account of seller. Buyer to insure cargo.

2. **C.I.F.**

Cost, insurance and freight. All charges to destination port for account of seller.

3. **Circle**

When a seller repurchases the same goods from his buyer or a subsequent buyer.

4. **Destination Port**

Port where goods are discharged from vessel as specified in the contract.

5. **Electronic Communications**

Any means of rapid communication that can be confirmed by all parties either orally or written, including, but not limited to: telephone, fax or email.

6. **F.A.S.**

Free along side vessel. Any port charges including terminal handling, wharfage, and freight forwarding fees are for the buyer's account. The seller is responsible for delivery to the container yard.

7. F.O.B.

Free on board inland carrier from any shipping point as specified in the contract. All charges are for the buyer's account.

8. F.O.B. Vessel

Free on board vessel. The seller is responsible for inland freight, terminal handling, wharfage, and freight forwarding fees. All other charges are for the account of the buyer.

9. Inspector(s)

An individual that has been approved by USDA to take official samples and to make official inspections for quality.

10. Origin Port

Port at which seller delivers goods to the steamship line as specified in the contract.

11. Release

A written or electronic communication from a seller to a buyer, giving the buyer authority to obtain goods from a third party.

12. String

When more than one buyer and one seller are involved in the shipment and delivery of goods.

13. Written Notice

Where specified, to mean any verified means of written or electronic communication such as Telegram, Telex, Facsimile (receipt confirmed), e-mail, private courier, or Certified Mail that can be sent and received in the stated time period

AMERICAN PEANUT SHELLERS ASSOCIATION

Shelled, Inshell Peanut Grade Standards



SHELLED, INSHELL PEANUT GRADE STANDARDS

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APSA SHELLED, IN-SHELL GRADES

APSA SHELLED RUNNER PEANUTS - GRADES

Section 1. Jumbo Runner. **Jumbo Runner** consists of shelled Runner type peanut kernels of similar varietal characteristics which are whole and free from foreign material, damage, and minor defects, and which will not pass through a screen having 21/64 x 3/4 inch openings.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (1) 1.00 percent for other types of peanuts;
- (2) 3.00 percent for sound peanuts which are split or broken;
- (3) 1.00 percent for damage;
- (4) 2.00 percent for damage and minor defects combined;
- (5) 0.10 percent for foreign material;
- (6) 9.00 percent for moisture;
- (7) 5.00 percent for sound whole kernels which will pass through the prescribed screen as to fall through; and
- (8) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through.

Section 2. Medium Runner. **Medium Runner** consists of shelled Runner type peanut kernels of similar varietal characteristics which are whole and free from foreign material, damage, and minor defects, milled through a screen having 21/64 x 3/4 inch openings and which will not pass through a screen having 18/64 x 3/4 inch openings.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (1) 1.00 percent for other types of peanuts;
- (2) 3.00 percent for sound peanuts which are split or broken;
- (3) 1.00 percent for damage;
- (4) 2.00 percent for damage and minor defects combined;
- (5) 0.10 percent for foreign material;
- (6) 9.00 percent for moisture;
- (7) 5.00 percent for sound whole kernels which will pass through the prescribed screen as to fall through; and
- (8) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through.

Section 3. APSA No. 1 Runner. No. 1 Runner consists of shelled Runner type peanut kernels of similar varietal characteristics which are whole and free from foreign material, damage, and minor defects, milled through a screen having 18/64 x 3/4 inch openings and which will not pass through a screen having 16/64 x 3/4 inch openings.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (1) 1.00 percent for other types of peanuts;
- (2) 3.00 percent for sound peanuts which are split or broken;
- (3) 1.50 percent for damage;
- (4) 2.50 percent for damage and minor defects combined;
- (5) 0.10 percent for foreign material;
- (6) 9.00 percent for moisture;
- (7) 5.00 percent for sound whole kernels which will pass through the prescribed screen; and
- (8) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through.

Section 4. Runner Grades with Splits. Runner grades described in foregoing Sections 1, 2 and 3 and further identified by the words "with splits" as follows: "Jumbo Runner with Splits", "Medium Runner with Splits", and "No. 1 Runner with Splits". Tolerances to allow variations incident to proper grading and handling shall be the same as those set forth in the above sections; except 15.00 percent for sound peanuts which are split or broken, of which not over 6.00 percent will pass through a 17/64 inch round opening screen, shall be permitted.

Section 5. Runner Splits. Runner Splits consists of shelled Runner type peanut kernels of similar varietal characteristics which are split or broken, but which are free from foreign material, damage and minor defects and which will not pass through a screen having 17/64 inch round openings.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight shall be permitted:

- (1) 2.00 percent for other types of peanuts;
- (2) 1.50 percent for damage;
- (3) 2.50 percent for damage and minor defects combined;
- (4) 0.20 percent for foreign material;
- (5) 9.00 percent for moisture; and
- (6) otherwise meet Minimum Quality Standards for splits published in 7CFR, Part 996 as to fall through and percent split and broken kernels.

Section 6. APSA No. 2 Runner. No. 2 Runner consists of shelled Runner type peanut kernels of similar varietal characteristics which may be split or broken, but which are free from foreign material, damage, and minor defects, and which will not pass through a screen having 17/64 inch round openings.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (1) 2.00 percent for other types of peanuts;
- (2) 1.50 percent for damage;
- (3) 2.50 percent for damage and minor defects combined;
- (4) 0.20 percent for foreign material;
- (5) 9.00 percent for moisture; and
- (6) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through.

Section 7. Application of Tolerances. The tolerances provided in these standards are on a lot basis and shall be applied to a composite sample representative of the lot. However, any container or group of containers in which peanuts are obviously of a quality materially different from that in the majority of containers shall be considered a separate lot, and shall be sampled separately.

DEFINITIONS

Section 8. Similar Varietal Characteristics. "Similar varietal characteristics" means that the peanut kernels in the lot are not of distinctly different varieties. For example, Spanish type shall not be mixed with Runner type.

- (a) **Whole:** the peanut kernel is not split or broken.
- (b) **Split:** the separate half of a peanut kernel.
- (c) **Broken:** more than one-fourth of the peanut kernel is broken off.
- (d) **Foreign Material:** pieces of loose particles of any substance other than peanut kernels or skins.
- (e) **Unshelled:** a peanut kernel with part or all of the hull (shell) attached.
- (f) **Portion:** a part or parts of a peanut kernel other than a whole.
- (g) **Minor Defects:** the peanut kernel is not damaged but is affected by one or more of the following:
 1. Skin discoloration which is dark brown, dark gray, dark blue or black and covers more than one-fourth of the surface.
 2. Flesh discoloration which is darker than a light yellow color or consists of more than a slight yellow pitting of the flesh;
 3. Sprout extending more than one-eighth of an inch from the tip of the kernel and the kernel is otherwise not damaged; and
 4. Dirt when the surface of the kernel is distinctly dirty, and its appearance is materially affected.
- (h) **Damage:** that the peanut kernel is affected by one or more of the following:

1. Rancidity or decay;
 2. Mold;
 3. Insect or worm cuts, web or frass;
 4. Freezing injury causing hard, translucent or discolored flesh;
 5. Dirt when the surface of the kernel is heavily smeared, thickly flecked or coated with dirt, seriously affecting its appearance; and
 6. Unshelled.
- (i) **Sound:** whole peanuts or portions free from damage or minor defects.

Section 9. Charges or other consequences for variation in excess of those grades specified in Sections 1,2,3,4,5, and 6 hereof are such as have been agreed upon by the parties, or in the absence of such agreement, such as are provided by law.

APSA SHELLED SPANISH PEANUTS - GRADES

Section 1. No. 1 Spanish. No. 1 Spanish consists of shelled Spanish type peanut kernels of similar varietal characteristics which are whole and free from foreign material, damage and minor defects, and which will not pass through a screen having 15x64 x 3/4 inch openings.

In order to allow for variations to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (1) 1.00 percent for other types of peanuts;
- (2) 3.00 percent for sound peanuts which are split or broken;
- (3) 1.50 percent for damage;
- (4) 2.50 percent for damage and minor defects combined;
- (5) 0.10 percent for foreign material;
- (6) 9.00 percent for moisture;
- (7) 5.00 percent for sound whole peanuts which will pass through the prescribed screen; and
- (8) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through.

Section 2. Spanish Splits. Spanish Splits consists of shelled Spanish type peanut kernels of similar varietal characteristics which are split or broken but are free from foreign material, damage and minor defects, and which will not pass through a screen having 16/64 inch round openings.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight shall be permitted:

- (1) 2.00 percent for other types of peanuts;
- (2) 1.50 percent for damage;
- (3) 2.50 percent for damage and minor defects combined;
- (4) 0.20 percent foreign material;

- (5) 9.00 percent for moisture; and
- (6) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through and percent split and broken kernels.

Section 3. No. 2 Spanish. **No. 2 Spanish** consists of shelled Spanish type peanut kernels of similar varietal characteristics which may be split or broken, but which are free from foreign material, damage and minor defects, and which will not pass through a screen having 16/64 inch round openings.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (1) 2.00 percent for other types of peanuts;
- (2) 1.50 percent damage;
- (3) 2.50 percent damage and minor defects combined;
- (4) 0.20 percent foreign material;
- (5) 9.00 percent for moisture; and
- (6) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through.

Section 4. Application of Tolerances. The tolerances provided in these standards are on a lot basis and shall be applied to a composite sample representative of the lot. However, any container or group of containers in which the peanuts are obviously of a quality materially different from that in the majority of containers shall be considered a separate lot, and shall be sampled separately.

DEFINITIONS

Section 5. Similar Varietal Characteristics. "*Similar Varietal Characteristics*" means that the peanut kernels in the lot are not of distinctly different types. For example, Runner type shall not be mixed with Spanish type.

- (a) **Whole:** the peanut kernel is not split or broken.
- (b) **Split:** the separate half of a peanut kernel.
- (c) **Broken:** more than one-fourth of the peanut kernel is broken off.
- (d) **Foreign Material:** pieces or loose particles of any substance other than peanut kernels or skins.
- (e) **Unshelled:** a peanut kernel with part or all of the hull (shell) attached.
- (f) **Portion:** part or parts of a peanut kernel other than a whole.
- (g) **Minor Defects:** the peanut kernel is not damaged but is affected by one or more of the following:
 1. Skin discoloration which is dark brown, dark gray, dark blue or black and covers more than one-fourth of the surface;

2. Flesh discoloration which is darker than a light yellow color or consists of more than a slight yellow pitting of the flesh;
 3. Sprout extending more than one-eighth of an inch from the tip of the kernel and the kernel is otherwise not damaged; and
 4. Dirt when the surface of the kernel is distinctly dirty, and its appearance is materially affected.
- (h) **Damage:** the peanut kernel is affected by one or more of the following:
1. Rancidity or decay;
 2. Mold;
 3. Insect or worm cuts, web or frass;
 4. Freezing injury causing hard, translucent or discolored flesh;
 5. Dirt when the surface of the kernel is heavily smeared, thickly flecked or coated with dirt, seriously affecting its appearance; and
 6. Unshelled.
- (i) **Sound:** whole peanuts or portions free from damage or minor defects.

Section 6. Charges or other consequences for variations in excess of those grades specified in Section 1, 2, and 3 hereof are such as have been agreed upon by the parties or, in the absence of such agreement such as are provided for by law.

APSA SHELLED VIRGINIA PEANUTS

Section 1. Extra Large Virginia. **Extra Large Virginia** consists of shelled Virginia type peanut kernels of similar varietal characteristics which are whole and free from foreign material, damage and minor defects, and which will not pass through a screen having 20/64 x 1 inch openings. In order to allow for variations incident to proper grading and handling the following tolerances, by weights, shall be permitted:

- (1) 0.75 percent for other varieties of peanuts;
- (2) 3.00 percent for sound peanuts which are split or broken;
- (3) 1.00 percent for damaged or unshelled peanuts;
- (4) 0.75 percent for minor defects; provided, that in addition, any unused part of the tolerance for damaged or unshelled peanuts shall be allowed for minor defects;
- (5) 0.10 percent for foreign material; and
- (6) 9.00 percent for moisture
- (7) 5.00 percent for sound, whole peanuts which will pass through the prescribed screen; and

- (8) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through.

Section 2. Medium Virginia. **Medium Virginia** consists of shelled Virginia type peanut kernels of similar varietal characteristics which are whole and free from foreign material, damage and minor defects, and which will not pass through a screen having 18/64 x 1 inch openings.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (1) 1.00 percent for other varieties of peanuts;
- (2) 3.00 percent for sound peanuts which are split or broken;
- (3) 1.25 percent for damaged or unshelled peanuts;
- (4) 0.75 percent for minor defects; provided, that in addition, any unused part of the tolerance for damaged or unshelled peanuts shall be allowed for minor defects;
- (5) 0.10 percent for foreign material
- (6) 9.00 percent for moisture;
- (7) 5.00 percent for sound, whole peanuts which will pass through the prescribed screen; and
- (8) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through.

Section 3. No. 1 Virginia. **No. 1 Virginia** consists of shelled Virginia type peanut kernels of similar varietal characteristics which are whole and free from foreign material, damage and minor defects, and which will not pass through a screen having 15/64 x 1 inch openings.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (1) 1.00 percent for other varieties of peanuts;
- (2) 3.00 percent for sound peanuts which are split or broken;
- (3) 1.50 percent for damaged or unshelled peanuts;
- (4) 2.50 percent damage and minor defects combined;
- (5) 1.00 percent for minor defects; provided, that in addition, any unused part of the tolerance for damaged or unshelled peanuts shall be allowed for minor defects;
- (6) 0.10 percent for foreign material
- (7) 9.00 percent for moisture
- (8) 5.00 percent for sound, whole peanuts which will pass through the prescribed screen; and
- (9) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through.

Section 4. Virginia Splits. **Virginia Splits** consists of shelled Virginia type peanut kernels of similar varietal characteristics which are free from foreign material, damage

and minor defects, and which will not pass through a screen having 20/64 inch round openings. Not less than 90.00 percent, by weight, shall be splits.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (1) 2.00 percent for other varieties of peanuts;
- (2) 1.50 percent for damaged or unshelled peanuts;
- (3) 2.50 percent for damaged or unshelled peanuts and minor defects;
- (4) 0.20 percent for foreign material;
- (5) 9.00 percent for moisture;
- (6) 5.00 percent for sound portions of peanuts and sound whole kernels which will pass through the prescribed screen; and
- (7) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through and percent split and broken kernels.

Section 5. No 2 Virginia. **No. 2 Virginia** consists of shelled Virginia type peanut kernels of similar varietal characteristics which may be split or broken, but which are free from foreign material, damage and minor defects, and which will not pass through a screen having 17/64 inch round openings.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (1) 2.00 percent for other varieties of peanuts;
- (2) 1.50 percent for damaged or unshelled peanuts;
- (3) 3.00 percent for damaged or unshelled peanuts and minor defects;
- (4) 0.20 percent for foreign material;
- (5) 9.00 percent for moisture; and
- (6) otherwise meet Minimum Quality Standards published in 7CFR, Part 996 as to fall through.

Section 6. Application of Tolerances. The tolerances provided in these standards are on a lot basis and shall be applied to a composite sample representative of the lot. However, any container or group of containers in which the peanuts are obviously of a quality materially different from that in the majority of containers shall be considered a separate lot, and shall be sampled separately.

D E F I N I T I O N S

Section 7. Similar Varietal Characteristics. "Similar varietal characteristics" means that the peanut kernels in the lot are not of distinctly different varieties. For example, Spanish type shall not be mixed with Virginia type.

- (a) **Whole:** the peanut kernel is not split or broken.
- (b) **Split:** the separated half of a peanut kernel.
- (c) **Broken:** more than one-fourth of the peanut kernel is broken off.

- (d) **Foreign Material:** pieces or loose particles of any substance other than peanut kernels or skins.
- (e) **Unshelled:** a peanut kernel with part or all of the hull (shell) attached.
- (f) **Portion:** a part or parts of a peanut kernel other than a whole.
- (g) **Minor Defects:** the peanut kernel is not damaged but is affected by one or more of the following:
 - 1. Skin discoloration which is dark brown, dark gray, dark blue or black and over more than one-fourth of the surface;
 - 2. Flesh discoloration which is darker than a light yellow color or consists of more than a slight yellow pitting of the flesh;
 - 3. Sprout extending more than one-eighth of an inch from the tip of the kernel and the kernel is otherwise not damaged; and
 - 4. Dirt when the surface of the kernel is distinctly dirty and its appearance is materially affected.
- (h) **Damage:** the peanut kernel is affected by one or more of the following:
 - 1. Rancidity or decay;
 - 2. Mold;
 - 3. Insects, worm cuts, web or frass;
 - 4. Freezing injury causing hard, translucent or discolored flesh; and
 - 5. Dirt when the surface of the kernel is heavily smeared, thickly flecked or coated with dirt, seriously affecting its appearance.
- (i) **Sound:** whole peanuts or portions free from damage or minor defects.

Section 8. Charges or other consequences for variation in excess of those grades specified in Sections 1, 2, 3, 4 and 5 hereof are such as have been agreed upon by the parties, or in the absence of such agreement, such as are provided for by law.

APSA IN-SHELL VIRGINIA PEANUTS - GRADES

Section 1. Jumbo Hand Picked. **Jumbo Hand Picked** shall consist of cleaned Virginia type peanuts in the shell which are mature, dry, and free from loose peanut kernels, dirt or other foreign material, pops, paper ends, and from damage caused by cracked or broken shells, discoloration or other means. The kernel shall be free from damage from any cause. In addition, the peanuts either shall not pass through a screen having 37/64 x 3 inch perforations or shall not average more than 176 count per pound.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

1. 10.00 percent total for pops, peanuts having paper ends or damaged shells, loose undamaged peanut kernels, and dirt or other foreign material, but not more than one-twentieth of this amount, or 0.50 percent shall be allowed for dirt or other foreign material.
2. 5.00 percent for peanuts which will pass through the prescribed screen, but which are free from pops and from peanuts having paper ends or damaged shells, or if the size is based on count per pound, the average count per pound shall not be more than 176 count per pound.
3. 3.50 percent for peanuts with damaged kernels and damaged loose kernels.

Section 2. Fancy Hand Picked. **Fancy Hand Picked** shall consist of cleaned Virginia type peanuts in the shell which are mature, dry, and free of loose peanut kernels, dirt or other foreign material, pops, paper ends, and from damage caused by cracked or broken shells, discoloration or other means. The kernels shall be free from damage from any cause. In addition, the peanuts either shall not pass through a screen having 32/64 x 3 inch perforations, or shall not average more than 225 count per pound.

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted.

1. 11.00 percent total for pops, peanuts having paper ends or damaged shells, loose undamaged peanut kernels, and dirt or other foreign material, but not more than one twenty-second of this amount, or 0.50 percent, shall be allowed for dirt or other foreign material.
2. 5.00 percent for peanuts which will pass through the prescribed screen, but which are free from pops and from peanuts having paper ends or damaged shells, or if the size is based on count per pound, the average count per pound shall not be more than 225 count per pound.
3. 4.50 percent for peanuts with damaged kernels, and damaged loose kernels.

Section 3. Unclassified. Unclassified shall consist of cleaned Virginia type peanuts in the shell which fail to meet the requirements of either of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no definite grade has been applied to the lot.

Section 4. Application of Tolerances. The tolerances provided in these standards are on a lot basis and shall be applied to a composite sample representative of the lot. However, any container or group of containers in which peanuts are obviously of a quality materially different from that in the majority of containers shall be considered a separate lot, and shall be sampled separately.

Section 5. DEFINITIONS

- (a) **Mature:** the shells are firm and well developed.
- (b) **Pops:** fully developed shells which contain practically no kernels.
- (c) **Paper ends:** peanuts which have very soft and/or very thin ends.
- (d) **Damage:** any injury or defect which materially affects the appearance, edible or shipping quality of the individual peanut or the lot as a whole. The following shall be considered as damage:
 - 1. Cracked or broken shells which have been broken to the extent that the kernel within is plainly visible without minute examination and with no application of pressure, or the appearance of the individual peanut is materially affected.
 - 2. Discolored shells which have dark discoloration caused by mildew, staining or other means affecting one-half or more of the shell surface. Talc powder or other similar material which may have been applied to the shells during the cleaning process shall not be removed to determine the amount of discoloration beneath, but the peanut shall be judged as it appears with the talc.
 - 3. Kernels which are rancid or decayed.
 - 4. Moldy kernels.
 - 5. Kernels showing sprouts extending more than one-eighth inch from the end of the kernel.
 - 6. Distinctly dirty kernels.
 - 7. Kernels which are wormy, or have worm frass adhering, or have worm cuts which are more than superficial.

8. Kernels which have dark yellow color penetrating the flesh, or yellow pitting extending deep into the kernel.
- (e) **Count Per Pound:** the number of peanuts in a pound. When determining the count per pound, one single kernel shall be counted as one-half peanut.

Section 6. Charges or Other Consequences. Charges or other consequences for variations in excess of those grades specified in sections 1, 2 & 3 hereof are such as have been agreed upon by the parties, or in the absence of such agreement, such as are provided by law.

APSA GRADE CHARTS

Summary of Screen Sizes and Tolerances (by weight) for American Peanut Shellers Association's Grades for RUNNER PEANUTS

Grade & Minimum Screen Size	% Fall-Thru Prescribed Screens for SWK	% Fall-Thru 17/64" Round Screen for SWK and/or SS+Broken	% Other Types	% Splits	% Damage	% Damage & Minor Defects	% Foreign Material	% Moisture
JUMBO 21/64 x 3/4" Slot	5.00	6.00	1.00	3.00	1.00	2.00	0.10	9.00
MEDIUM 18/64 x 3/4" Slot	5.00	6.00	1.00	3.00	1.00	2.00	0.10	9.00
NO. 1 16/64 x 3/4" Slot	5.00	6.00	1.00	3.00	1.50	2.50	0.10	9.00
NO. 2 17/64" Round	---	6.00	2.00	---	1.50	2.50	0.20	9.00
SPLITS 17/64 Round	---	6.00	2.00	Not less than 90.00	1.50	2.50	0.20	9.00
"With Splits"	Each of the above whole grades may be certified "with splits" providing all requirements of the grade are met; except a tolerance of 15% is allowed for split kernels.							

**Summary of Screen Sizes and Tolerances (by weight)
for
American Peanut Shellers Association's Grades for
IN-SHELL VIRGINIA PEANUTS**

Grade & Minimum Screen Size	% Fall-Thru Prescribed Screen for SWK	% Cracked or Broken Shells, Pops, Paper & Foreign Material	% Damaged Kernels
JUMBO 37/64 x 3" or 176 count per pound	5.00	*10.00	3.50
FANCY 32/64 x 3" or 225 count per pound	5.00	*11.00	4.50

* 0.5% allowed for dirt or other foreign material.

**Summary of Screen Sizes and Tolerances (by weight)
for
American Peanut Shellers Association's Grades for
SHELLED VIRGINIA PEANUTS**

Grade & Minimum Screen Size	% Fall-Thru Prescribed Screens for SWK	% Fall-Thru 17/64" Round Screen for SWK and/or SS+Broken	% Other Types	% Sound Split or Broken Kernels	% Damage	% Damage & Minor Defects	% Foreign Material	% Moisture
EXTRA LARGE 20/64 x 1" Slot	5.00	6.00	.75	3.00	1.00	1.75	0.10	9.00
MEDIUM VIRGINIA 18/64" x 1" Slot	5.00	6.00	1.00	3.00	1.25	2.00	0.10	9.00
NO. 1 VIRGINIA 15/64 x 1" Slot	5.00	6.00	1.00	3.00	1.50	2.50	0.10	9.00
VIRGINIA SPLITS 20/64" Round	*5.00	6.00	2.00	Not Less Than 90.00	1.50	2.50	0.20	9.00
NO. 2 VIRGINIA 17/64" Round	---	6.00	2.00	--	1.50	3.00	0.20	9.00

*
"With Splits" Includes both sound split and broken and sound whole kernels which pass through prescribed screens. Each of the above APSA whole grades may be certified as "with splits" providing all requirements of the grade are met; except a tolerance of 15% is allowed for split kernels.

**Summary of Screen Sizes and Tolerances (by weight)
for
American Peanut Shellers Association's Grades for
SHELLED SPANISH PEANUTS**

Grade & Minimum Screen Size	% Fall-Thru Prescribed Screens for SWK	% Fall-Thru 16/64" Round Screen for SWK and/or SS+Broken	% Other Types	% Splits	% Damage	% Damage & Minor Defects	% Foreign Material	% Moisture
No. 1 15/64 x 3/4" Slot	5.00	6.00	1.00	3.00	1.50	2.50	0.10	9.00
SPLITS 16/64" Round	---	6.00	2.00	Not Less Than 90.00	1.50	2.50	0.20	9.00
NO. 2 16/64" Round	---	6.00	2.00	---	1.50	2.50	0.20	9.00
"With Splits"	Each of the above APSA whole grades may be certified as "with splits" providing all requirements of the grade are met; except a tolerance of 15% is allowed for split kernels.							



DEPARTMENT OF JUSTICE

Antitrust Division

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February 2, 2006

Evans J. Plowden, Jr.
Watson, Spence, Lowe and Chambless, LLP
329 Residence Avenue
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Albany, Georgia 31702-2008

Dear Mr. Plowden:

This letter responds to your request for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's current enforcement intentions with respect to a proposal by your client, the American Peanut Shellers Association ("APSA"), to promulgate revised Farmers Stock Trading Rules; Shelled, Inshell Trading Rules; and Shelled, Inshell Peanut Grade Standards (collectively, "APSA Trading Rules and Grade Standards" or the "Rules").

APSA is a non-profit trade association composed of commercial peanut shellers and crushers located in Alabama, Florida, and Georgia. APSA has nine active members, who represent about 90% of U.S. peanut shellers.¹ APSA members purchase farmers stock peanuts (peanuts in the condition they are picked) from peanut growers in the United States, shell and mill those peanuts, and sell the product to manufacturers in the United States and abroad. APSA historically has promulgated voluntary trading rules for use in the trade and its rules have found use both among its members and others involved in the trade in the United States and overseas. The Department of Justice issued favorable business reviews of trading rules and grade standards proposed by the Southeastern Peanut Association, the APSA predecessor association, in 1989 and 1992. APSA represents that it created this new version of its Trading Rules and Grade Standards to remove obsolete terms and to respond to changes to the federal peanut program legislated in the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 STAT. 134 ("2002 Farm Bill") and the regulations promulgated pursuant to that statute.

¹The APSA active members are Anderson Peanuts, Birdsong Peanuts, Damascus Peanut Company, Doster Warehouse, Inc., Golden Peanut Company, McCleskey Mills, Inc., Reeves Peanut Company, Inc., Tom's Foods, Inc., and Williston Peanuts.

As explained by APSA in the introduction to the Rules, uniform rules and grade standards covering offers, sales, and purchases of peanuts help contracting parties avoid misunderstandings, make more definite the terms of contracts of purchase and sale, avoid the necessity of drafting in each instance a lengthy and cumbersome document, and otherwise increase the efficiency of transactions. APSA expects that its Rules and Grade Standards will be used by the peanut trade not only for domestic purposes but also for export purposes, which APSA claims as an important benefit in light of its representations that peanut exports are a significant part of the peanut industry and that domestic demand currently is not sufficient to fully utilize the U.S. peanut crop.

The Farmers Stock Trading Rules establish standards for various farmer stock peanut grades and establish standard non-price contractual terms and provisions as to weights, delivery, sampling and inspection, and rejections and arbitration. Article I states that the rules apply where the buyer and seller agree in writing that they will apply.

The Shelled, Inshell Trading Rules establish terms for standard non-price contractual terms and provisions as to declaration of shipment, release of goods, weights and claims, shipping instructions and time, samples and inspections, rejections, arbitration, delayed or excused delivery, and circles (repurchases). The Shelled, Inshell Trading Rules state that tolerances in type and grade of peanuts can be agreed upon in writing prior to shipment (Article I, Section 2) and that nothing in the rules prohibits or interferes with the rights of the parties to enter into a special written contract setting forth terms of the agreement (Article II, Section 1).

The APSA Shelled, Inshell Peanut Grade Standards define the grades for each type of peanut sold. For each type of peanut, the grades define size, percentage of other types of peanuts, split peanuts, damage, minor defects, foreign material and moisture allowed for each grade. APSA represents that the grade standards provide a common language for buyers and sellers and facilitate transactions. APSA also represents that domestic buyers of shelled peanuts generally have their own requirements and those requirements are more stringent than the APSA Shelled, Inshell Peanut Grade Standards.

Based on the representations made in your submission and our meeting with two members of APSA, the documents and information submitted in support of APSA's request, and the information obtained during our own investigation, we conclude that the APSA Trading Rules and Grade Standards, as submitted, are not likely to reduce competition. The Trading Rules appear to use general commercial language that should enhance the ability of parties to enter into contracts to buy and sell peanuts. In addition, the grade standards, which have been in effect since at least 1989, appear to be used only as base standards, whereas buyers of shelled peanuts frequently apply their own standards. Finally, because use of the Trading Rules and Grade Standards is voluntary, buyers and sellers of peanuts will remain free to compete by using their own contract terms and standards for peanuts instead of those in the APSA Trading Rules and Grade Standards.

For these reasons, the Department has no present intention to challenge the proposed APSA Trading Rules and Grade Standards. This letter expresses the Department's current enforcement intention solely with respect to the proposed APSA Trading Rules and Grade

Standards and is issued in reliance on the information and representations contained in APSA's submissions. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future should the APSA Trading Rules and Grade Standards prove to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to this procedure, your business review request and this letter will be made publicly available immediately, and any supporting documentation will be made publicly available within 30 days of the date of this letter, except for any part of the materials for which you request and justify confidential treatment in accordance with Paragraph 10(c) of the Business Review Procedure.

Yours sincerely,

A handwritten signature in black ink that reads "Thomas O. Barnett". The signature is written in a cursive style with a prominent horizontal line above the first name.

Thomas O. Barnett
Acting Assistant Attorney General