such peanuts are recorded on the producer's marketing card as a marketing of quota peanuts.

(d) *Cost of supervision.* The handler shall bear the cost of supervision irrespective of the method of supervision such handler has chosen.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38329, Aug. 13, 1991]

§ 1446.403 Letter of credit.

(a) *Certification and financial guarantee (letter of credit)*—(1) *Certification.* In order to establish a letter of credit, each handler must certify to the applicable marketing association the quantity of additional peanuts the handler expects to contract for delivery by producers that are served by such marketing association. The certified poundage will be the basis for establishing the letter of credit for the applicable crop. If the certified poundage is less than the actual contracted poundage, the letter of credit required of the handler for the next marketing year shall be subject to increase, as provided in this section.

(2) *Letter of credit.* The handler must present an irrevocable letter of credit to each marketing association that serves the area in which a handler plans to contract or otherwise acquire contract additional peanuts. Such letter of credit shall be issued in a form and by a bank which is acceptable to CCC and except as provided in paragraph (d) of this section shall be submitted to the appropriate marketing association not later than July 31 and before marketing cards will be issued to producers for contract additional peanuts. Unless the provisions of paragraphs (b) and (c) of this section are applicable, the amount of the letter of credit for each area shall be equal to the amount determined by multiplying 140 percent of the national average quota price support rate by, for a handler selecting nonphysical supervision, 8 percent, or, for a handler selecting physical supervision, 5 percent, of the larger of:

(i) Ninety percent of the handler's contracted pounds as recorded on contracts approved by the county committee for the preceding marketing year and in the marketing area; or

(ii) The amount of additional peanuts the handler estimates will be contracted with producers, as certified to the marketing association, for delivery during the current marketing year and in that marketing area.

(b) *Increase in letter of credit.* (1) The amount of the letter of credit required under paragraph (a) of this section shall be increased for any handler:

(i) Who has a poor performance record, as evidenced by previous penalty assessments for violations of the provisions of this part; or

(ii) Who, for purposes of handling peanuts is, as determined by CCC, a partnership, merger, joint venture, or other similar business relationship having officials who were officials of an organization having such a record or is composed in whole or in part by merger, succession, consolidation, association or assimilation, of entities with such a record; or

(iii) Whose total acquisition of farmers stock peanuts during the preceding marketing year from purchases of contract additional peanuts exceeded, by more than 3.0 percent, the pounds on which the letter of credit for the preceding marketing year was based. Nothing in this part shall prohibit CCC from demanding an increase in the letter of credit for the current year in the event the handler has significantly underestimated the handler's purchases for the current year.

(2) The increase in the letter of credit shall be determined in accordance with the guidelines set forth in paragraph (c) of this section.

(c) *Guidelines for increasing letters of credit*—(1) *Increased letter of credit due to history of program violation.* If the handler and/or related entity was assessed penalties for program violations for any of the previous three crop years, the percentage of the pounds of contracted peanuts to which the increase specified in paragraph (b) of this section shall be applied, shall be increased by 6 percent for each year of the three-year period in which such a penalty was assessed, except that:

(i) Such increase for a particular crop year shall be 3 percent rather than 6 percent if, for all violations for that crop year:

(A) The penalties were reduced by the Executive Vice President, CCC, and paid; or

(B) Less than 120 days, or such further period as established by the Executive Vice President, have passed since the penalty assessment was made by the CCC Contracting Officer.

(ii) Previous penalty assessments, other than assessments for violations that involve the importation of additional peanuts, or the failure to properly dispose of additional peanuts, which have been paid shall not be considered as part of the violation history for any crop year if the total violations for such crop year by the handler, and related individuals or entities, involved less than 100,000 pounds of peanuts.

(2) *Waiver of increase.* Notwithstanding (c)(1) of this section, at the discretion of the Executive Vice President, CCC, the increase required under this section may be waived upon the presentment of adequate security as determined acceptable by the Executive Vice President, CCC.

(3) *Inaccurate certification of additional peanuts acquired.* In addition to the increase required by paragraph (c)(1) of this section, if the actual purchase of contract additional peanuts for the previous marketing year exceeds, by more than 3.0 percent, the poundage on which the previous marketing year's letter of credit was based, the pounds determined in accordance with paragraphs (a)(2) (i) and (ii) of this section shall be increased by an amount equal to 3 times the amount of such excess.

(4) *Basis for determining letter of credit amount.* Any letter of credit determination under this section shall be based upon the facts as they exist on June 1 of the calendar year in which the letter of credit is to be supplied.

(5) *Unpaid interest.* References to unpaid penalties in this section shall include associated unpaid interest and unpaid late payment charges.

(d) *Extension of time for filing letter of credit.* Notwithstanding any other provision of this section, upon a request from a handler, the Executive Vice President, CCC, may extend the time for filing of a required letter of credit if such an extension is considered necessary in order for the handler to have sufficient time to acquire necessary financing.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.404 Transfer of contracts prior to delivery.

An approved contract, by which a handler is to purchase additional peanuts from a producer, may not be sold, traded, or assigned except as provided in this section.

(a) *Contract transfer and delivery of contracted peanuts to other handlers.* (1) If a handler is otherwise unable to perform under any contract with a producer for the purchase of additional peanuts due to conditions beyond the handler's control, the handler and the producer may agree to the delivery of the peanuts to another handler under the terms of the original contract or under modified terms except that, the price, quantity, type, segregation or farm number as shown on the original contract may not be changed. Conditions considered beyond the handler's control may include, but are not limited to, insolvency, bankruptcy, death, or destruction of warehouse facilities.

(2) A contract for additional peanuts shall not be transferred to another handler without the prior written approval of the Deputy Administrator. Such transfer shall be approved by the Deputy Administrator only if the Deputy Administrator determines that such transfer will not impair the effective operation of the peanut program.

(3) If the receiving handler:

(i) Has an existing letter of credit, such handler may increase the existing letter of credit to cover the total amount of farmers stock peanuts that is to be transferred. However, any increase must be made within 14 days after the transfer is approved, otherwise any increased letter of credit will not be considered for purposes of determining whether an increase will be required in the next year's letter of credit because of a deficiency in the letter of credit.

(ii) Does not have an existing letter of credit, the transfer shall not be approved unless such handler secures an acceptable letter of credit to cover the amount of farmers stock peanuts that is to be transferred.