

grade for cleaned Virginia type peanuts in the shell.

(2) *Credit for exporting SS kernels.* Credits for SS kernels of the same crop year, of like type, may be earned for:

(i) The total pounds in a lot of exported peanuts which meet the U.S. Standard grade for splits; or

(ii) The total pounds, excluding SMK's as determined in paragraph (f)(1)(ii) of this section, in a lot of peanuts which meets PAC standards for:

(A) Whole kernel with splits, or

(B) No. 2 Virginia; or

(iii) The total pounds determined to be SS kernels in a lot of exported in-shell peanuts which meet U.S. Standard grade for cleaned Virginia type peanuts in the shell.

(3) *Export credits for contract additional peanuts processed into products for export.* To receive disposition credit for contract additional peanuts used in products for export, the shelled peanuts must be identified with positive lot identity tags before being moved for processing in accordance with provisions of this part. The peanuts shall be processed under supervision of the marketing association unless the processing handler selects to process such peanuts under nonphysical supervision.

(4) *Export credits for in-shell peanuts.* With respect to peanuts exported in-shell, in accordance with instructions issued by CCC, credits may be earned for SMK, SS or AO kernels on the respective portions of the TKC of the lot that are SMK, SS or AO kernels.

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

§ 1446.603 Disposition credit for peanuts in exported products made from quota peanuts.

A handler who has selected nonphysical supervision and who manufactures peanut products from quota peanuts may export such products to an eligible country and receive disposition credit to apply to such handler's obligation to dispose of contract additional peanuts by crushing or by exporting.

(a) *Eligible peanuts.* In order to receive such credit, the quota peanuts used in such products shall be:

(1) Of the same crop year as the crop year of the contract additional peanuts

for which the obligation, to crush or export, was established.

(2) Of the same type as the contract additional peanuts to which such credit shall be applied.

(b) *Handler requirements* (1) The handler, with respect to each marketing year and each area in which such handler will apply for export credit for manufactured products, shall submit a certification to the applicable marketing association:

(i) With respect to any marketing year in which such handler intends to request disposition credit for exported products made from quota peanuts, prior to requesting such disposition credit;

(ii) On a product-by-product basis; and

(iii) Of the peanut product content of peanut products manufactured by such handler for which disposition credit will be requested.

(2) Such certification of peanut product content, as required in accordance with paragraph (b)(1) of this section, must indicate by type of peanuts, with respect to each individual product, the respective portion of such peanut kernels that are:

(i) SS kernels;

(ii) SMK's;

(iii) AO kernels.

(3) If any change is made in any peanut product formula, as certified in accordance with this section, the handler shall notify the applicable area marketing association of such change within 90 days after such change is implemented.

(c) *Disposition credit.* (1) To the extent that a handler provides satisfactory proof, to the applicable marketing association, of the export of peanut products made from quota peanuts, such handler who has complied with the provisions of paragraph (b) of this section may receive disposition credit for eligible peanuts in peanut products exported to an eligible country.

(2) Disposition credit received in accordance with paragraph (c)(1) of this section shall be prorated by type to SS kernels, SMK's and AO kernels in the same proportion as the handler certified with respect to the peanut product content in accordance with paragraph (b)(2) of this section.

(d) *Records.* Any handler who receives disposition credit under paragraph (c) of this section shall maintain records, as required in this part, to support:

(1) The accuracy of such handler's certification made in accordance with this section; and

(2) Any disposition credit that is requested by such handler in accordance with this section.

(e) *Annual review.* The marketing association or employees of TPD shall conduct an annual review of the certifications made by handlers in accordance with this section.

(f) *Inaccurate certification.* In the case of an inaccurate certification, the disposition credit shall be adjusted accordingly. Such action shall be in addition to any other remedy, including, but not limited to, any civil or criminal remedy for fraud, as may apply.

Subpart G—Penalties and Liquidated Damages

§ 1446.701 Excess marketing of quota peanuts.

A handler will be subject to a penalty for noncompliance with this part, if, as determined under this part, from any crop of peanuts, such handler markets, for domestic edible use, a larger quantity, or higher grade or quality of peanuts, than could reasonably be produced from the quantity of peanuts having the grade, kernel content, and quality of farmers stock peanuts purchased by the handler during the applicable marketing year as quota peanuts, including those peanuts purchased in accordance with the "immediate buyback" provisions of this part. In such case, the penalty will be an amount equal to 140 percent of the national average quota support rate for the applicable crop, times that quantity of farmers stock peanuts which are determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts marketed.

§ 1446.702 Peanuts ineligible for quota loan.

Any person who causes or permits peanuts that are not eligible peanuts to be pledged as collateral for a loan at the quota loan rate shall be considered to have agreed that:

(a) CCC may incur serious and substantial damage to its program to support the price of quota peanuts because such peanuts were pledged as collateral for a quota loan;

(b) The amount of such damages will be difficult, if not impossible, to ascertain exactly; and

(c) Such person shall, with respect to any ineligible peanuts placed under quota loan, pay to CCC, as liquidated damages and in addition to any penalty that is due, the difference between the quota loan rate for such peanuts and the additional loan rate that would apply to peanuts of the same type and quality, times the amount of such peanuts that were placed under loan. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer. Such person shall pay the damages to CCC promptly upon demand in addition to penalties as may be due or assessed. Liquidated damages under this section may be reduced by CCC based upon consideration of the following factors:

(1) Whether the person causing or permitting ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged as loan collateral;

(2) The degree of damage or potential damage to the price support program caused by the violation;

(3) The nature and circumstances of the violation;

(4) The extent of the violation; and

(5) Any other pertinent information.

§ 1446.703 Assessment of penalties against handlers.

(a) *Penalty liability.* A handler shall be subject to the penalty for a violation of any provision of this part including, but not limited to, any or all of the following violations:

(1) Failure to register as a handler of peanuts;

(2) Failure to examine and make entries on marketing card;

(3) Failure to keep or make available records as required by this part;

(4) Marketing excess quota peanuts, as set forth in this part, including any marketing of reentered contract additional peanuts or peanut products