

(b), (c), and (d) may be modified by the Secretary, upon recommendation of the committee or other information, whenever he finds that such modification would tend to effectuate the objectives of this agreement.

**§ 998.35 Above parity situations.**

Minimum standards established under §§998.31 and 998.32, the grading and inspection requirements, and the provisions of this agreement relating to administration and indemnification shall continue in effect irrespective of whether or not the estimated season average price for peanuts is in excess of the parity level specified in section 2(1) of the Act.

**§ 998.36 Indemnification.**

The committee shall, upon such terms and conditions as it may establish with the approval of the Secretary, indemnify any handler, to the extent specified, for losses incurred by him on peanuts which have been milled for sale for human consumption and which meet the applicable grade and other requirements but which are determined by the committee or the U.S. Food and Drug Administration to be unsuitable for human consumption because of aflatoxin including such peanuts returned, resold or rejected to a handler by a purchaser. Any peanuts for which the handler is indemnified pursuant to this paragraph shall be delivered to the committee or disposed of as the committee may direct. Funds for such indemnification shall be obtained pursuant to §998.48. The period of indemnification on any crop may extend to December 31 of the calendar year following the year in which the crop was produced.

[53 FR 20294, June 3, 1988; 54 FR 227, Jan. 4, 1989]

REPORTS, BOOKS AND RECORDS

**§ 998.40 Confidential information.**

All reports and records furnished or submitted by handlers to the committee which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handlers or their customers shall be received by, and at all times

kept in the custody and under the control of, one or more employees of the committee, who shall disclose such information to no person except the Secretary. Notwithstanding the above provisions of this section, information may be disclosed to the committee when reasonably necessary to enable the committee to carry out its functions under this agreement.

**§ 998.41 Reports of acquisitions and shipments.**

Each handler shall file such reports of his acquisitions and shipments of peanuts, as may be requested by the committee.

**§ 998.42 Other reports.**

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such other reports and information as are needed to enable the committee to perform its functions under this agreement.

**§ 998.43 Records.**

Each handler shall maintain such records of peanuts received, held and disposed of by him, as will substantiate any required reports and will show performance under this agreement. Such records shall be retained for at least 2 years beyond the crop year of their applicability.

**§ 998.44 Verification of reports.**

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this agreement, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all peanuts which may be held or which may have been disposed of by him.

EXPENSES AND ASSESSMENTS

**§ 998.47 Expenses.**

The committee is authorized to incur such expenses as the Secretary finds

are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this agreement, determine to be appropriate.

**§998.48 Assessments.**

(a) Each handler shall pay to the committee, upon demand, with respect to peanuts received by him, including his own production, his pro rata share of all expenses, indemnification and other, which the Secretary finds are reasonable and likely to be incurred by the committee during each crop year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary per net ton of farmers stock peanuts received or acquired other than those peanuts described in §998.31 (c) and (d). During a crop year the Secretary may not increase the rate of assessment to cover a deficit in the indemnification fund but may assess for a deficit in a subsequent year. An assessment rate may be increased to cover a deficit in the administrative fund.

(b) In order to provide funds to carry out the functions of the committee, the committee may borrow money or may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler.

(c) *Indemnification reserve.* The committee, with the approval of the Secretary, may establish and maintain during one or more crop years a monetary reserve in an amount approximating anticipated expenses for indemnification pursuant to §998.36.

(d) *Refunds.* Administrative funds held by the committee at the conclusion of the crop year in excess of the crop year's expenses, other than indemnification funds, may be used to defray expenses for no more than the ensuing four months, and thereafter within a reasonable time the committee shall credit the aforesaid administrative excess to handlers who contributed to such excess: *Provided*, That the excess due any handler shall be applied, in whole or in part, by the committee to any outstanding obligation due the

committee from such handler. Should any handler discontinue handling peanuts, such excess shall be refunded to him. A handler's share of such excess funds shall be the amount of such assessments he paid in excess of his actual pro rata share of the administrative expenses of the committee. Upon termination of this agreement any indemnification money in possession of the committee shall be turned over to any successor committee or disposed of, with the approval of the Secretary, for projects of benefit to the industry and any residual together with any administrative money shall be distributed in such manner as the Secretary may direct: *Provided*, That, to the extent practicable, such residual funds shall be returned pro rata to the persons from whom collected.

MISCELLANEOUS PROVISIONS

**§998.50 Rights of the Secretary.**

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

**§998.51 Personal liability.**

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

**§998.52 Separability.**

If any provision of this agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof