U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 31 1992

Evans J. Plowden, Esquire
Watson, Spence, Lowe and Chambless
320 Residence Ave. at North Jefferson St.
Albany, Georgia 31703-2001

Dear Mr. Plowden:

This letter responds to your request for a statement by the Department of Justice, pursuant to the Business Review Procedure, 28 C.F.R. § 50.6, of its enforcement intentions with respect to proposed trading rules for farmer stock peanuts.[1/] The Southeastern Peanut Association ("SEPA"), an association of all the major peanut shellers located primarily in the states of Alabama, Florida and Georgia, seeks to promulgate these rules. You have indicated that the proposed rules would be voluntary ones and that SEPA's members would not be required to implement them.

We understand that the proposed trading rules would establish general contract terms, standards for various farmer stock peanut grades, shipping instructions, methods of resolving weight discrepancies, methods of sampling and handling of any resulting rejection, and arbitration procedures in the purchase and sale of farmer stock peanuts.

With respect to the standards for grades, in addition to using the three grades of peanuts specified by the United States Department of Agriculture, additional subcategories

---

1/ Farmer stock peanuts are picked or threshed peanuts produced in the United States that 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 before such peanuts are marketed. (See, 7 C.F.R. § 998.5.)

which further define the grades of peanuts would be specified. You have indicated that by adopting these subcategories buyers and sellers would have more information about the quality of the peanuts available for sale. The proposed rules would also require chemical testing to determine the level of aflatoxin. This testing would be more extensive than that presently done under the government inspection standards and would assist shellers in purchasing decisions.

Finally, SEPA has represented that implementation of these rules would have several beneficial effects. In a time of increasing sheller-to-sheller transactions, many of which are conducted on the telephone, the rules are expected to facilitate trading in peanuts by eliminating misunderstandings between the parties and by minimizing trade disputes. Additionally, adoption of the rules may assist in the development of a futures market for peanuts.

Based on the information SEPA has provided, the Department has no present intention of challenging implementation of SEPA's proposal on antitrust grounds. The Department would be concerned if the rules had the purpose or effect of increasing the likelihood that SEPA or its members could successfully coordinate their behavior. Such coordinated behavior may involve fixing or lowering the prices paid to growers for farmer stock peanuts or fixing or raising the prices paid in subsequent trades between shellers. We have concluded, however, that these rules are unlikely to enable SEPA or any of its members to reach terms of agreement, or to detect or punish deviations from any agreement. Instead the proposed rules establish more finely defined quality grades of unshelled peanuts and provide other standardized trading terms that should serve to facilitate trading in peanuts and increase the efficiency of transactions in the industry. In accordance with our normal practice, the Department reserves the right to bring an enforcement action if the rules prove to be anticompetitive in purpose or effect.

This statement of the Department's enforcement intention is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which has previously been sent to you. Pursuant to its terms, your business review request and this response will be made publicly available on

the date of this letter. Thirty days from the date of this letter any materials you submitted in support of the business review also will be made publicly available, unless you request that any of the materials be withheld in accordance with subparagraph 10(c) of the Business Review Procedure.

Sincerely,

J. Mark Gidley

J. Mark Gidley
Acting Assistant Attorney General

Enclosure