

Research, and Information Order (7 CFR part 1216). However, that form has been discontinued and the new "First Handler's Report" form used under that research and promotion program does not require disclosure of volume handled, peanut variety, or Segregation of the peanuts acquired. Thus, the form cannot be used for the purposes needed under this program.

The new form, Handlers/Importers Monthly Report, must be sent to USDA. Facsimile or express mail deliveries may be used to ensure timely receipt of certificates and other required documentation. Mail deliveries must be addressed to the DC Marketing Field Office, MOAB, FVP, AMS, USDA, 4700 River Road, Unit 155, Riverdale, MD 20737, Attn: Report of Peanuts. The Fax number is (301) 734-5275.

Falsification of any report submitted to USDA is a violation of Federal law and is punishable by fine or imprisonment, or both.

**Documentation of edible and non-edible peanuts:** This program continues the procedures previously used under the Agreement to monitor disposition of edible and failing quality peanuts. The Inspection Service sends copies of all grade inspections and the chemical laboratories send copies of all aflatoxin assays to USDA. USDA uses this information to monitor proper disposition of all lots failing either grade or aflatoxin certification.

This represents a relaxation of reporting requirements for importers. Under the previous peanut import program, non-signatory handlers and importers were required to file copies of all failing grade and aflatoxin certificates with AMS. Importers are no longer required to do so, unless specifically requested by USDA or unless the Customs Service demands such documentation of importers. These certificates will be provided by the Inspection Service, USDA laboratories, or USDA-approved laboratories, as the case may be.

**Recordkeeping:** Handlers and importers are required to maintain all relevant documentation on the disposition of inedible peanuts. If a lot is remilled, blanched, or roasted, the handler or importer must maintain grade certificate(s) and/or aflatoxin certificate(s) showing that the lot has been reconditioned and subsequently meets outgoing, edible quality standards. Grade and aflatoxin inspections conducted on reconditioned lots reference the applicable lot number and previous grade and aflatoxin certificate numbers so that a record of the lot's reconditioning is maintained. Documents showing the disposition of

non-edible residuals (pick-outs, etc.) must be maintained by each handler and importer. For example, if the lot is crushed for oil, the oil mill's report of crushing must be maintained. That crushing report must tie the crushed residual peanuts to their original failing lots. If the failing lot is sold for seed or for animal feed, the sales receipt of the transaction must tie the purchased lot to the failing lot through the inspection certificate number. If the failing lot is exported, an export certificate must be filed showing the inspection certificate number of the failing peanut lot. Failing peanut lots sent to a landfill or buried also must be reported with proof of such disposition through the inspection certificate number.

In total, the documentation maintained and distributed to USDA must be sufficient to document and substantiate the proper disposition of all peanut lots failing grade or aflatoxin quality standards, as well as the residuals resulting from those failing lots.

Documentation on lot dispositions must be maintained for at least two years after the crop year of applicability.

#### **Confidentiality**

This rule includes a confidentiality provision in § 996.72 to protect handler and importer reports and records required to be submitted to USDA under this program. Confidential information includes data or information constituting a trade secret or disclosing a trade position, financial condition, or business operations of handlers or their customers. Confidentiality provisions do not extend to disclosure of peanut lots determined to be within the provisions in § 996.74(b).

#### **Verification of Reports**

Provisions are included in § 996.73 of this part that allows USDA access to any premises where peanuts may be held or processed, and access to any business files containing information regarding the handling, importing, and disposition of peanuts. USDA, at any time during regular business hours, is permitted to inspect any peanuts held and any and all records with respect to the acquisition, holding, or disposition of any peanuts which may be held or which may have been disposed of by that handler or importer.

#### **Compliance Oversight**

USDA will take action against any handler or importer in violation of the Act or this part. Such action includes instances when a handler or importer: (1) Acquires farmers stock peanuts without official incoming inspection; (2)

fails to obtain outgoing inspection on shelled or cleaned-in-shell peanuts and ships such peanuts for human consumption use; (3) ships failing quality peanuts for human consumption use; (4) commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use; (5) fails to maintain PLI on peanut lots certified for human consumption use; (6) fails to maintain and provide access to records on the reconditioning or disposition of failing quality peanuts; or (7) otherwise violates any provisions of the Act or this program.

USDA will use injunctions to restrain violations and withdraw inspection services from alleged violators.

AMS will notify the FDA of the names of any handlers or importers known to have shipped un-inspected or failing peanuts into human consumption channels and the lot numbers of such peanuts. AMS also will publish on the AMS Web site the names of any handler and importer and the failing lots not reported as reconditioned or disposed to non-edible outlets.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS had prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There were approximately 45 peanut handlers and 38 importers that were subject to regulation under the Agreement and non-signer program, and the peanut import regulation. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on the documents and reports received by USDA. Small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (SBA) (13 CFR 121.201), as those having annual receipts of less than \$5,000,000.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition (less than \$750,000 in annual receipts from agricultural sales) can be obtained from the 1997 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 10,505 peanut farms with sales valued at less than \$500,000 in 1997,