

USDA believes that the current standards and procedures should continue during the 2003–04 crop year. This will allow the peanut industry to study this issue further.

Increase Sound Whole Kernel Tolerance

The Minimum Quality Standards table in § 996.31(a) provides standards for split kernel lots. Historically, lots of split kernels may contain a maximum percentage of sound whole kernels in the lot. For Virginia variety peanuts, sound whole kernel content is limited to 10 percent of the lot by weight. For Runner, Spanish, and Valencia varieties, the sound whole kernel content is limited to 4 percent. The Board recommended that the sound whole tolerance for Runner, Spanish, and Valencia peanuts be relaxed to 10 percent, to bring the tolerance into conformity with the tolerance for Virginia variety peanuts. This rule change is expected to result in fewer split lot rejections for Runner, Spanish, and Valencia variety peanuts, which should reduce handler-reconditioning costs. No adverse impact is expected from making this standard uniform for all four varieties.

Effective Time

Section 996.75, Effective time, also is revised so that these changes apply to 2003–04 and subsequent crop year peanuts, to 2002 and 2001 crop year peanuts not yet inspected, and to failing peanuts that have not yet met disposition standards.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Analysis Act (RFA) the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS had prepared this initial 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 are currently 77 peanut handlers (shellers) and 25 importers subject to regulation under the peanut program. 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 (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, representing 86 percent of the total number of peanut farms in the U.S. (12,221). Since the Agricultural Census does not use \$750,000 in sales as a category, \$500,000 in sales is the closest approximation. Assuming that most of the sales from those farms are attributable to peanuts, the percentage of small peanut farms in 1997 (less than \$750,000 in sales) was likely a few percentage points higher than 86 percent, and may have shifted a few percentage points since then. Thus, the proportion of small peanut farms is likely to be between 80 and 90 percent.

The two-year average peanut production for the 2001 and 2002 crop years was 3.799 billion pounds, harvested from 1.354 million acres, yielding 2,806 pounds per acre. The average value of production for the two-year period was \$797.469 million, as reported on the National Agricultural Statistics Service (NASS) Web site as of February 2003 (<http://www.nass.usda.gov:81/idepd/report.htm>). The average grower price over the two-year period was \$0.21 per pound, and the average value per harvested acre was \$611. Dividing the two-year average value of production (\$797.5 million) by the estimated 12,221 farms yields an estimated revenue per farm of approximately \$65,254.

The Agricultural Census presents farm sizes in ranges of acres, and median farm size in 1997 was between 50 and 99 acres. The median is the midpoint ranging from the largest to the smallest. Median farm size in terms of annual sales revenue was between \$100,000 and \$250,000.

Several producers may own a single farm jointly, or, conversely, a producer may own several farms. In the peanut industry, there is, on average, more than one producer per farm. Dividing the two-year average value of production of \$948.8 million by an estimated 23,000 commercial producers (2002 Agricultural Statistics, USDA, Table 11–10) results in an estimate of average revenue per producer of approximately \$41,250.

The current 14 custom blanchers, 8 custom remillers, 4 oilmill operators, 4 USDA and 15 USDA-approved private chemical (aflatoxin) testing laboratories

are subject to the peanut standards to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71. These requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection programs (Inspection Service) that will perform inspection under this peanut program.

Importers of peanuts cover a broad range of business entities, including fresh and processed food handlers and commodity brokers who buy agricultural products on behalf of others. Under the 2003 import quotas, approximately 25 business entities have only imported approximately 40 percent of the 126 million pounds of low duty quota peanuts (sometimes called duty free quota peanuts) compared with 37 entities which had imported 100 percent of the quotas by April 5, 2002. The current import quota period began January 2, 2003, for Mexico, and April 1, 2003, for Argentina, and “other countries.” Some large, corporate handlers are also importers of peanuts. AMS is not aware of any peanut producers who imported peanuts during any of the recent quota years. The majority of peanut importers have annual receipts under \$5,000,000. Some importers use customs brokers’ import services and brokers are regulated under this rule to the extent that they must comply with entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71. These requirements are not applied disproportionately to small customs brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, importers, and above-mentioned entities may be classified as small businesses. Also, financially interested persons who may appeal quality inspection results, and “holders of the title” to any lot of peanuts who may appeal aflatoxin test results may include small entities.

This rulemaking action: (1) Changes screen sizes specified in the outgoing quality standards to allow smaller peanut kernels of all varieties to be used for edible purposes; (2) specifies in the text of the regulations that financially interested persons may appeal quality inspection results and “holders of the title” may appeal aflatoxin test results; (3) allows peanut lots which meet minimum damage and minor defect standards, but fail for other reasons, prior to blanching, to be exempt from the damage and minor defect standards upon re-inspection after blanching; and