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(1) The violation for which the penalty was assessed was minor or inadvertent;

(2) A reduction in the amount of the penalty would not impair the effective operation of the peanut program; and

(3) The assessment of penalty was not made for failure to export contract additional peanuts.

(d) *Reduction limits.*

(1) If the reduction criteria in paragraph (c) of this section has been met, the CCC Contracting Officer or the Executive Vice President, CCC, or the Executive Vice President's designee, as applicable, may reduce the penalty by such amount as such person considers appropriate (including a full reduction of the entire penalty) after taking into account the severity of the violation and the violation history of the handler.

(2) If one of the criteria in paragraphs (c) (1) and (2) of this section has not been satisfied and the remaining criteria has been satisfied, the penalty shall not be reduced to less than an amount which is equal to 40 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts involved in the violation.

(3) There shall not be a limit on the amount by which an assessment of liquidated damages may be reduced by the CCC Contracting Officer or the Executive Vice President, CCC, or the Executive Vice President's designee.

[65 FR 64595, Oct. 30, 2000]

**§ 1446.705 Appeals.**

A handler may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at 7 CFR parts 11 and 780 of this title.

[65 FR 64596, Oct. 30, 2000]

**§ 1446.706 Statutory liens against peanuts.**

(a) *Lien on peanuts.* Until the amount of any penalty which is imposed upon a handler or other person in accordance with this part is paid, a lien shall exist in favor of the United States for the amount of the penalty. Such lien shall apply on the peanuts with respect to

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which such penalty is incurred and on any other peanuts purchased or otherwise acquired in the same or subsequent marketing year in which the person liable for payment of such penalty has an interest.

(b) *Debt record.* The lien specified in paragraph (a) of this section shall be considered to attach at the time the penalty is entered on the debt records which shall be maintained for this purpose by the marketing associations, unless an earlier time is prescribed by law.

(c) *List of peanut marketing penalty debts.* Each marketing association shall maintain a debt record for all handlers indicating the amounts due from each handler. This list will be available for examination upon written request to the marketing association by any interested party.

[56 FR 16230, Apr. 19, 1991. Redesignated at 65 FR 64596, Oct. 30, 2000]

**§ 1446.707 Schemes and devices.**

If CCC or the marketing association, with approval of the CCC, determines that a handler has knowingly adopted any scheme or device which tends to defeat the purpose of the regulations of this part or has made any fraudulent representation, or has misrepresented any fact affecting a program determination, such handler will be subject to a penalty which shall be assessed in such manner as is determined will correct for such scheme, device, fraud, or misrepresentation.

[56 FR 16230, Apr. 19, 1991. Redesignated at 65 FR 64596, Oct. 30, 2000]

**Subpart H—Recordkeeping, Reporting and Paperwork Reduction**

**§ 1446.801 Recordkeeping and reporting requirements.**

(a) *Persons required to keep records.* Any person involved in the peanut industry in any of the following capacities shall keep records for each such business:

(1) A person who dries farmers stock peanuts by artificial means for a producer;

(2) A handler;

(3) A warehouse operator;

- (4) A common carrier of peanuts;
- (5) A broker or dealer in peanuts;
- (6) A processor of peanuts;
- (7) A farmer engaged in the production of peanuts;
- (8) An agent marketing peanuts for a producer or acquiring peanuts for a handler or marketing association; or
- (9) A person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanuts products.

(b) *Handler records and reports of peanuts acquired.* As required by this section and in accordance with instructions issued by CCC, each handler shall keep records and make reports, with respect to each lot of farmers stock peanuts such handler acquires, as follows:

(1) *Inspected peanuts.* (i) If the Federal-State Inspection Service inspects a lot of peanuts, the handler shall complete a form FSA-1007 or such other form approved by CCC or FSA and on which the following information must be entered:

(A) The name and address of the farm operator, and the State and county codes and farm number of the farm on which the peanuts were produced, if the peanuts are marketed by the producer;

(B) The handler number if the peanuts are marketed by a handler;

(C) The buying point number assigned to identify the physical location of the buying point where the peanuts were marketed;

(D) Either the name, address and handler number of the handler, or if the peanuts are accepted for loan through the marketing association, the marketing association name, number and address;

(E) The net weight of the peanuts;

(F) The quantity of peanuts marketed as either loan quota, loan additional, commercial quota, or contract additional;

(G) The date of purchase; and

(H) The amount of any penalty, assessment or claim collected.

(ii) Handlers described in paragraph (c) of this section shall cause electronic records of the data recorded on form FSA-1007 to be generated and transmitted to FSA. The data shall be

transmitted in the manner and by the time prescribed by the Director, TPD.

(2) *Noninspected peanuts.* A handler who acquires farmers stock peanuts which have not been inspected by the Federal-State Inspection Service shall complete a form FSA-1030 or such other form approved by CCC or FSA for general use, for each lot of farmers stock peanuts acquired. The handler shall use FSA-1030-P, Handler's Report of Purchases of Noninspected Peanuts, or such other form approved by CCC or FSA for general use, to transmit the form FSA-1030 or other approved form to the State FSA committee in the State in which the handler's business is located or such other location or entity approved by CCC or FSA. The handler shall complete the form FSA-1030 or other approved form to show the following:

(i) Name and address of the seller;

(ii) Name and address of the farm operator and the State and county codes and farm number of the farm on which the peanuts were produced, if the peanuts are marketed by the producer;

(iii) The handler's name, address and registration number when the peanuts are purchased from another handler;

(iv) Type of peanuts purchased;

(v) Date of purchase;

(vi) Quantity purchased;

(vii) Method of determining the weight; and

(viii) Signature of the seller and the date the seller signed the form FSA-1030 or other approved form.

(c) *Handler certification of computer software.* Each handler who is required to coordinate records with USDA electronic records system for peanuts shall prepare and use computer software that will generate records, files, reports or other electronic information as required in accordance with paragraph (b)(1) of this section, and will transmit such records, files, reports or other electronic information in the form or format and in a timely manner as may be required by FSA or CCC. Such handler shall certify by the final date prescribed by the Director, TPD, that the handler's software meets the requirements prescribed for such software.

(d) *Handler records of resales of farmers stock peanuts.* Each handler who resells

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farmers stock peanuts shall keep records of:

(1) Name and address of the buyer, and if the peanuts are sold to a handler, the buyer's handler number;

(2) Date of the sale;

(3) Type of peanuts sold; and

(4) Pounds (net weight) of peanuts sold.

(e) *Handler records of peanuts shelled or milled for a producer.* The handler shall maintain records of peanuts shelled for a producer including the following information:

(1) Date of shelling or milling;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Quantity of peanuts (farmers stock basis) shelled or milled;

(5) Quantity of shelled or milled peanuts retained by the sheller; and

(6) Quantity returned to the producer.

(f) *Handler records of peanuts dried for a producer.* The handler shall maintain records of peanuts dried for a producer including the following information:

(1) State and county codes and the farm number of the farm where the peanuts were produced;

(2) Name and address of the producer; and

(3) Quantity dried as determined by the farmers stock basis weight after drying, and the date the drying was completed.

(g) *Handler records of peanuts from which LSK's or pods are removed for a producer.* The handler shall maintain records of the peanuts from which the LSK's or pods were removed for a producer if such LSK's or pods are removed in commercial quantities or, when removed with foreign material, are recoverable in commercial quantities. The records must contain the:

(1) Date of removal;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Gross weight of:

(i) Peanuts prior to removal of LSK's or pods;

(ii) Peanuts removed as LSK's;

(iii) Peanuts removed as pods;

(iv) Foreign material removed; and

(v) Peanuts remaining after removal of foreign material and LSK's or pods;

(5) Quantity of peanuts which the person performing the service retains in the form of pods and LSK's; and

(6) Quantity of peanuts returned to the producer as:

(i) Pods;

(ii) LSK's; and

(iii) LSK's and pods.

(h) *Handler records of sales and disposal of peanuts.* Each handler shall maintain records of all sales or other disposal of peanuts. Such records shall show:

(1) The date of sale or disposal of such peanuts;

(2) The quantity of peanuts sold;

(3) The type of peanuts sold;

(4) The name of the purchaser;

(5) That the peanuts were sold either as:

(i) Farmers stock peanuts; or

(ii) Milled peanuts;

(6) That the peanuts were sold either as:

(i) Edible peanuts; or

(ii) Peanuts for crushing; and

(7) Any other information which may be required by this part.

(i) *Method of keeping records.* Each handler shall maintain the records required by this part in a manner which will enable the marketing association, CCC, FSA, and other representative of the Secretary to readily reconcile the quantities, grades and qualities of all peanuts acquired and disposed of by such a handler. Records concerning the acquisition and disposal of contract additional peanuts must also be kept in a manner that allows the marketing association, CCC, FSA, or any other representative of the Secretary to readily determine whether there has been compliance with the provisions of this part.

[56 FR 16230, Apr. 19, 1991, as amended at 65 FR 8247, Feb. 18, 2000]

**§ 1446.802 Examination of records and reports.**

The Executive Vice President, CCC, the Deputy Administrator, FSA, the Director, TPD, the State Executive Director and any person authorized by any one of such persons, and any auditor or agent of the Office of Inspector General is authorized to examine any records that such person has reason to