Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AF79

Contract Violations and Diminution in Payments: Fruits and Vegetable Planting Payment Reduction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) prohibited, with exceptions, the planting of fruits or vegetables on land enrolled in a Production Flexibility Contract (PFC). If a producer planted fruits or vegetables on acreage covered by a PFC and one of the exceptions in the 1996 Act did not apply, the producer violated the PFC. If the degree of the violation did not warrant termination of the contract, future PFC payments were reduced in accordance with the respective regulations. The Commodity Credit Corporation (CCC) published an advance notice of proposed rulemaking in May of 1999, seeking public comment on this issue. This proposed rule seeks additional public comment on the payment reductions applicable to a PFC when there has been a violation due to the planting of fruits or vegetables.

DATES: Comments must be received by November 6, 2000 to be assured consideration.

ADDRESSES: Submit comments to: Rebecca Davis, Production, Emergencies and Compliance Division (PECD), Farm Service Agency (FSA), USDA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–9882, e-mail Rebecca_Davis @wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Rebecca Davis at (202) 720–9882.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that Regulatory Flexibility Act is not applicable to this proposed rule because FSA is not required by 5 U.S.C. 553 or any other provisions of the law to publish a notice of proposed rule making.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

Information collected in this rule has been approved by OMB and assigned OMB Control Number 0560–0092. This rule does not contain any new information collection requirements.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Discussion of the Proposed Rule

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) provided producers the opportunity to enter into a Production Flexibility Contract (PFC) but generally prohibited the planting of fruits or vegetables on PFC acreage except as provided by three specific exceptions in the Statute. See 7 U.S.C. 7218. Two of the exceptions in the 1996 Act require that the PFC payment applicable to an acre to be reduced for each acre on which fruits or vegetables were planted.

When the exceptions do not apply, the planting of a fruit or vegetable on PFC acreage is a violation of the PFC. In such cases, the 1996 Act provides that the PFC shall be terminated on each farm in which that producer has an interest, except that if the Secretary, through designated representatives, determines that termination of the contract is not warranted, reductions in PFC payments may be applied in lieu of termination. Regulations addressing those reductions are found at 7 CFR 1412.401.

Under the current regulations, if the Farm Service Agency (FSA) county committee determines that a planting violation involving fruits or vegetables does not warrant termination of the PFC, a reduction may be made in the current or future PFC payments equal to the market value of the fruits or vegetables planted on contract acreage. This reduction is in addition to an acre-for-acre payment reduction for each acre of fruits or vegetables planted on contract acres. Acre-for-acre reductions are calculated starting with the contract commodity with the lowest contract payment rate per acre and proceeding to the contract commodity with the next lowest contract payment rate per acre until the PFC payment has been reduced for each acre of fruits or vegetables planted on contract acres. The planting violation payment reduction is applied

to current PFC payments and any future PFC payments for the farm on which the violation occurred and any other farm in which the producers who share in PFC payments on the violating farm have an interest.

A producer who violates this provision can simply, instead, accept the termination remedy, in which case the producer must refund with interest all payments otherwise payable at the time of the violation and forfeit all future payments. Nonetheless, the non-termination and payment reduction now allowed is viewed by some to be out of proportion to the severity of the fruit or vegetable planting violation. In the past, some producers have accepted the payment reduction in lieu of termination, while others have chosen to terminate their PFC.

In the interim, a conference report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Pub. L. 105–277), addressed this issue and ''urged [the Secretary] to exercise reasonable treatment of producers to avoid harmful consequences.'' 144 Cong. Rec. H 11301 (daily ed. Oct. 19, 1998).

Because of this concern and in order to provide a full discussion of this issue, advance notices of proposed rule making were published in the **Federal Register** on May 5, 1999 (64 FR 24091), and June 25, 1999 (64 FR 34154), seeking comments on the fruits and vegetables payment reduction provisions. More than 100 responses were received within the comment periods. Based on a review of the comments received, CCC has decided to proceed with the proposed rule set out in this notice and to seek additional public comment. This proposed rule, if adopted, would amend 7 CFR 1412.401 to change the payment reduction for both prior and future violations. Under the proposed rule, where termination is determined not to be warranted, in addition to the acre-for-acre payment reduction, the reduction for the planting violation would be calculated as follows: (1) For the initial offense for the producer, twice the payment rate for each acre on which the violation occurred, not to exceed the market value the producer could have expected to receive when planting the fruits or vegetables on the acreage; and (2) For subsequent violations, the expected market value of the fruits or vegetables planted on each contract acre. Generally, the result for first-time violators is that the payment reduction will be three times the lowest payment rates applicable to the number of acres in violation. The result for subsequent violations is that the payment reduction will be the loss of the lowest payment rates applicable to the number of acres in violation and the expected market value of the fruit or vegetable planted in violation of the contract. The rationale for this provision is that in all cases where a producer plants fruits or vegetables on contract acreage, the contract acreage should not earn a contract payment. The 1996 Act provides that in permissive cases of planting fruits or vegetables there is an acre-for-acre payment reduction, such that, at a minimum, contract violators should have the acre-for-acre payment reduction apply in all circumstances so as to not end up in a better position than permissive planters. Because some producers qualify for PFC payments based on different historical rates, the acres with the lowest payment rates will be used in determining the payment reduction.

This rule should, for first offenses involving fruits or vegetables, result in a lower payment reduction because the total impact of the violation on the producer would now be no greater than three times the applicable per-acre PFC payment rate, whereas under the current rule the loss can be equal to the per-acre payment plus the total expected value of the crop. This will allow for a uniform and less onerous payment reduction. At the same time, the payment reduction will be significant enough to avoid the possibility that the leniency would be an invitation to attempt to circumvent the policy of the PFC to the detriment of traditional producers of fruits or vegetables whose interests are protected by the limitation.

Producers have an obligation to make themselves aware of program restrictions and to abide by those restrictions. For second offenses, and additional offenses that might occur, where the seriousness of the matter would be beyond doubt and where a misunderstanding would not appear plausible, the sanction under the proposed rule would be the same as it is now—namely, the full value of the crop would be taken into account, as well as eliminating a payment amount on the land equal to the payment rate for the lowest contract commodity.

In order to provide even greater uniformity in the administration of the sanctions, the proposed rule would allow refunds, or claim reductions, to those producers who on their first offenses had the current payment reduction applied. To the extent that a refund will be paid, however, no interest will be paid on such sums as the original charge was valid (given that the producer was, in fact, in violation of the contract). Any payments earned due to this recalculation are not payments for a past-due debt, but simply reflect a change in policy.

Likewise, the rule only addresses changes in the monetary implications for fruit and vegetables violations. Farmers with prior violations who chose to terminate the contract will not be allowed to re-enroll the land in the program. Compliance cannot be performed retroactively and, as to future performance, re-enrollment of the property is contrary to the very limited enrollment window allowed by the 1996 Act. Furthermore, while those farmers who did opt for termination might have, in some cases, been influenced by the size of the alternative payment reduction sanction for their violation, determining the significance of that factor would be very difficult. In any event, those producers choose to cease participation in this program in which their production would have been limited over the life of the full PFC period. Accordingly, those producers did achieve a flexibility which those that remained in PFC did not have and which is not consistent with the long-term commitments except for continued benefits under the program.

Refunds made under the rule, if adopted, would not count against the producer's payment limitations for the current year, but will be applied to the program year for which the original payment was reduced. These payments, moreover, will have only a limited effect on current payments to other producers as the amounts involved are small; moreover, those reductions that were made in payments in prior years for fruit or vegetable violations were added into the PFC payments made in subsequent years to other producers. Accordingly, overall, there is no net effect on other farmers involved with the PFC program though the results with individual producers could be impacted in a very minor way.

List of Subjects in 7 CFR Part 1412

Contract acreage, Contract payments, Cotton, Feed grains, Price support programs, Rice, Wheat.

PART 1412—PRODUCTION FLEXIBILITY CONTRACTS FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON.

1. The authority citation for part l412 continues to read as follows:

Authority: 7 U.S.C. 7201 *et seq*; 15 U.S.C. 714b, 714c; Sec. 734, Pub. L. 105–86; Pub. L. 105–228; Sec 727, Pub. L. 105–277; Secs. 727, 811, Pub. L. 106–78, 113 Stat. 1181.

2. Revise § 1412.401 to read as follows:

§ 1412.401 Contract violations.

(a) Except as provided further in this section, if a producer subject to a contract violates a requirement of the contract the Deputy Administrator shall terminate the contract with respect to the producer on each farm in which the producer has an interest. Upon such termination, the producer shall forfeit all rights to receive future contract payments on each farm in which the producer has an interest and shall refund all contract payments received by the producer during the period of violation, plus interest with respect to the contract payments as determined in accordance with part 1403 of this chapter.

(b) Except for violations of § 1412.206, if the county committee determines that a violation is not serious enough to warrant termination of the contract, the county committee may in lieu of termination allow the contract to continue subject to a reduction in contract payments for the period of the violation.

(c) If there is a violation of § 1412.206, and the county committee determines that the violation is not serious enough to warrant termination of the contract the County Committee may in lieu of termination allow the contract to continue but reduce the contract payments as set forth below.

(1) For the initial violation for the producer, the contract payment will be reduced by an amount that is twice the payment rate on the acre or acres found to be in violation, but not to exceed the market value the producer could have expected to receive when planting the fruits or vegetables on the acreage, as determined by the State committee.

(2) For subsequent violations for the producer, the contract payment will be reduced by an amount that is equal to the market value the producer could have expected to receive when planting the fruits or vegetables on the acreage, as determined by the State committee.

(d) The standard rule applicable to acreage planted to fruits or vegetables which provides for an acre-for-acre reduction will apply in addition to the payment reductions in paragraph (c) of this section.

(e) If the county committee determines not to terminate the contract, the producer shall be required as a condition of contract continuance to refund to CCC that part of the contract payment received by the producer during the period of the violation, plus interest determined in accordance with part 1403 of this chapter.

(f) Payment reductions will be applied in ascending order beginning with the acreage with the lowest contract payment rate.

(g) For producers who violated § 1412.206 in 1997, 1998, 1999, or 2000, and had their payments reduced under § 1412.401(b) in effect on January 1, 2000, payment reductions will be calculated under the new formula now provided in § 1412.401. Refunds will be issued to those producers as appropriate but without the payment of interest or other fees. Acreage affected by any contract termination cannot be re-enrolled in the program.

(h) Refunds made under the rule would not count against the producer's payment limitations for the current year, but rather will be applied to the program year for which the original payment was reduced.

(i) Producers who do not plant a crop on contract acreage must protect any such land from weeds and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision by a producer will result in a reduction in the producer's payment for the farm by an amount equal to three times the cost of maintenance of the acreage, but not to exceed 50 percent of the payment for the farm for that fiscal year. The second violation of this provision will result in a reduction in the payment for the farm by an amount equal to three times the cost of maintenance of the acreage, not to exceed the payment for the farm for that fiscal year.

Signed at Washington, D.C., on October 2, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM/STD–00–550]

RIN 1904–AB08

Energy Conservation Standards for Distribution Transformers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop and availability of the Framework Document for Distribution Transformer Efficiency Standards.

SUMMARY: The Department of Energy (DOE or Department) will hold an informal public workshop to discuss and receive comments on issues it will address and the process it will follow in considering the adoption of energy conservation standards for electric distribution transformers. The Department also encourages written comments on these subjects. To facilitate this process, the Department prepared a Framework Document, a draft of which was made available on October 2, 2000.

DATES: The public workshop will be held on Wednesday, November 1, 2000, from 9:00 a.m. to 5:00 p.m. Written comments should be submitted by December 1, 2000.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.)

On October 2, 2000, the draft Framework Document was placed on the DOE website at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/dist_transformer.html.

Written comments are welcome, especially following the workshop. Please submit written comments to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, ''Energy Conservation Program for Consumer Products: Energy Conservation Standards for Distribution Transformers, Docket No. EE–RM/STD–00–550'', EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. You should label comments both on the envelope and on the documents, and submit them for DOE receipt by December 1, 2000. Please submit one signed copy and a computer diskette (WordPerfect 8) or 10 copies (no telefacsimiles). The Department will also accept electronically-mailed comments, e-mail to Brenda.Edwards-Jones@ee.doe.gov,