

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 718 and 729

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560-AF61

Amendments to Regulations Governing the Peanut Poundage Quota and Price Support Programs

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends regulations with respect to the following issues: Clarifying the definition of "considered produced credit"; clarifying that the Director, Tobacco and Peanuts Division maintains and allocates a national peanut quota reserve rather than a State-by-State reserve; adjusting the tolerance for certifying farm peanut acreage; clarifying that a farm which is ineligible to receive a quota allocation is also ineligible to receive an allocation of any increased quota and that any tenant on the farm is also ineligible to receive a tenant share of any increased quota; changing the provisions concerning the witnessing of signatures required for peanut quota transfers; clarifying that owner-to-owner permanent transfers are not restricted by the provision which otherwise prohibits an owner from permanently transferring quota from the farm if the quota was permanently transferred to the farm by sale of quota from another farm; allowing producers to receive separate marketing cards for contracts for Segregation 2 and Segregation 3 additional peanuts for crushing; and changing miscellaneous definitions and references to reflect U.S. Department of Agriculture and

regulatory reorganization. The rule also makes a technical amendment to 7 CFR part 718 to reinstate compliance regulations that are applicable to tolerance for peanut acreage reported to be planted.

This action is necessary to improve the administration of the peanut quota and price support programs.

DATES: Effective February 18, 2000. Comments received on or before March 20, 2000, are assured of consideration.

ADDRESSES: Submit comments on the interim rule to: Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture, STOP 0514, 1400 Independence Avenue, SW, Washington, DC, 20250-0514. The Director, Tobacco and Peanuts Division (TPD), will make all written submissions available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., during regular Federal workdays.

FOR FURTHER INFORMATION CONTACT: David Kincannon, (202) 720-7914.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

For purposes of Executive Order 12866, this rule was determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim rule because neither the Farm Service Agency (FSA) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

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.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate 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 the UMRA.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12372

This program 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).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule do not preempt State laws except to the extent that such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

National Appeals Division Rules of Procedure

The procedures set out in 7 CFR parts 11 and 780 apply to appeals of adverse decisions made under the regulations adopted in this notice.

Paperwork Reduction Act

The information reporting requirements contained in the regulations at 7 CFR parts 729 and 1446 include OMB Control Numbers 0560-0006 and 0560-0014 assigned by OMB. The 0560-0006 collection requirements have been approved by OMB and the 0560-0014 collection requirements have been forwarded for approval. The provisions of this rule do not impose new reporting requirements or changes in existing information collection requirements.

Background

1. Part 718

This rule amends regulations at 7 CFR part 718 to reinstate a tolerance rule for peanuts that was erroneously omitted when this part was revised in 1996 to implement the provisions of the Federal

Agriculture Improvement and Reform Act of 1996.

2. Part 729

This rule addresses amendments to the peanut poundage quota regulations at 7 CFR part 729 regarding the following issues:

Clarifying the definition of considered produced credit. This rule clarifies in § 729.103 the definition of “considered produced credit.” The current regulatory language could be interpreted to infer that if considered produced credit was granted for one criterion, no other criterion would apply. The change corrects this potential misinterpretation.

National quota reserve. In §§ 729.202 and 729.208(b), this rule clarifies that the Director, Tobacco and Peanuts Division, will hold and allocate the national quota reserve. Historically, each State held a quota reserve which the State FSA office could allocate to correct errors. The current regulations require that FSA hold a national quota reserve but do not specify who will be responsible for holding the reserve and for allocating the reserve when deemed appropriate. Also, the reference to “State reserve” in § 729.208, which provides for allocating quota for experimental and research purposes, is eliminated so that this reserve may be better monitored and allocated for greater flexibility and consistency.

Adjusting the tolerance for certification of peanut acreage for calculating temporary seed quota (TSQ) allocation. This rule changes the reporting tolerance in § 729.204(e) for certification of acres planted to peanuts. The reported acreage is used in § 729.204(e) to determine the amount of TSQ allocated to the farm. This change provides a less restrictive reporting tolerance. Under the current regulations, if the certified acreage on which the temporary seed quota allocation is made is greater than the acreage FSA determines was planted to peanuts by more than the smaller of 2 percent of the certified acreage or 5 acres, the producer is subject to a penalty assessment. The new tolerance would be the larger of 1.0 acre or 5 percent of the certified acreage, but not to exceed 10 acres. The new tolerance will provide a fairer line of demarcation between those certification errors which are inadvertent and those that are not. Intentional mis-certifications can be actionable even if committed within the tolerance but those errors within the tolerance will be presumed inadvertent. Adjustments were also made to § 729.305 so that the penalties for false certification could be addressed more clearly.

Tenants sharing in an increased quota. Under the provisions of the regulations, a farm owned by a municipality or a person who is not a peanut producer and is not a resident of the State in which the quota is allocated is ineligible to receive a quota allocation. This rule, by amendment to § 729.207, clarifies where a farm is ineligible to receive a quota allocation, that the farm is ineligible to receive increased quota allocation and any tenants on the farm are also ineligible to receive increased quota allocation.

Witnessing of signatures required to transfer quota. This rule amends § 729.214(b)(4) to specify that FSA county office personnel must witness both signatures for transfers requiring the signature of both the operator and owner on the transferring farm.

Transfer of quota by sale, lease, owner, or operator. This rule changes restrictions on owner transfers in § 729.214(f)(3) that prevent a permanent transfer of peanut quota from a farm if the quota was transferred to the farm during the 3 years preceding the current year. Under the amended provision, the FSA county committee may approve permanent transfer of quota from a farm that includes quota that was transferred to the farm by an owner-to-owner permanent transfer even during the 3-year base period. The provision in § 729.214(f)(3) is designed to discourage brokerage which is not implicated in owner-to-owner transfers.

References to other CFR parts. In § 729.103, the reference to part 704 in paragraph (v) of the definition of “Considered produced credit” is amended to reflect that provisions formerly in 7 CFR part 704 for the Conservation Reserve Program are now found in 7 CFR part 1410.

3. Part 1446

Definitions and references. In the definitions in § 1446.103, other references to CFR parts that have been deleted or incorporated into other CFR parts are deleted or corrected to reflect the proper references. Also, to reflect Departmental reorganization, the title of the Deputy Administrator responsible for the administration of the regulations at 7 CFR part 1446 was changed in the same section from “Deputy Administrator, State and County Operations” (DASCO) to “Deputy Administrator for Farm Programs” (DAFP).

Also, the term “ASCS” is changed to read “FSA” in each place it appears in part 1446 to reflect the reorganization of the Department. Likewise, in § 1446.801, the acronym “ASC” is removed and the acronym “FSA” is

added in its place. That change in acronyms also reflects the reorganization of the Agriculture Stabilization and Conservation Service into the Farm Service Agency.

Immediate buyback restriction. The provisions of § 1446.309 provide that a producer may not market peanuts through the “buyback” provisions of the regulations until all peanuts of the same type contracted for export or crushing are delivered under the terms of the contract. Under the buyback provisions, “additional” peanuts can be purchased out of the loan inventory at quota peanut prices to be used like quota peanuts. This rule modifies the buyback provision to prohibit a buyback of additional peanuts only if the producer has a contract for export or crushing of the same type and segregation. This action gives producers and handlers greater marketing flexibility and reflects that different segregations can have distinct contracts and markets.

Because these amendments are technical in nature and provide greater flexibility to producers and handlers without harm to third parties and because of the approach of the next marketing year, we have determined that this rule should be issued as an interim as a delay in implementation would be, for the reasons given, impracticable and contrary to the public interest.

List of Subjects

7 CFR Part 718

Acreage allotments, Loan programs—agriculture, Marketing quotas, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and Recordkeeping Requirements.

7 CFR Part 1446

Loan programs—agriculture, Peanuts, Price support programs. Reporting and recordkeeping requirements, Warehouses.

Accordingly, for the reasons set forth in the preamble, 7 CFR parts 718, 729 and 1446 are amended as set forth below.

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. The authority citation for part 718 continues to read as follows:

Authority: 7 U.S.C. 1373, 1374, 7201 *et seq.*; 15 U.S.C. 714b and 714c; and 21 U.S.C. 889.

2. Section 718.105 is amended by revising the section heading, adding a

new sentence at the beginning of paragraph (a), and adding paragraph (e) to read as follows:

§ 718.105 Tolerances, variances, and adjustments for tobacco and peanuts.

(a) Tolerance or variance for tobacco and peanuts is the amount by which the determined acreage may differ from the reported acreage or allotment and still be considered in compliance with program requirements. * * *

* * * * *

(e) Tolerance for peanuts is the larger of 1.0 acre or 5 percent of the reported acreage, not to exceed 10.0 acres.

PART 729—PEANUTS

3. The authority citation for part 729 is revised to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et. seq.*, 1372, 1373, 1375; 7 U.S.C. 7271; and 15 U.S.C. 714b and 714c.

4. The definition of “*Considered produced credit*” in § 729.103 is amended by:

(a) Adding the phrase “one or more of the following as may apply” after the phrase “the amount of” and before the colon in the introductory sentence.

(b) Removing “704” and adding “1410” in its place and removing the word “chapter” and adding the word “title” in its place in paragraph (v).

5. Section 729.202 is revised to read as follows:

§ 729.202 Reserve for corrections.

The Director, TPD, will hold a national reserve for purposes of correcting errors that are made in determining farm quotas. The Director will determine the reserve annually by multiplying the national quota announced by the Secretary by 0.0025. To the extent determined appropriate, the Director may authorize a State committee to correct any error in a farm’s quota.

6. Paragraph (e) of § 729.204 is amended by revising the first sentence to read as follows:

§ 729.204 Temporary seed quota allocation.

* * * * *

(e) *Penalty for erroneous certification.* If the certified acreage on which the temporary seed quota allocation is made is greater than the determined acreage, by more than the larger of 1 acre or 5 percent of the certified acreage not to exceed 10 acres, and the producer marketed the production for the acreage based upon an allocation of temporary seed quota on certified acres not determined, a penalty will be determined by multiplying the

difference between the certified and determined acreage times the applicable per acre seeding rate times 140 percent of the per pound quota support rate for the applicable crop year. * * *

7. Paragraph (a) of § 729.207 is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 729.207 Tenants sharing in increased quota.

(a) *General.* * * * Farms ineligible for quota allocation under § 729.205 do not receive a quota increase; therefore, the provisions of this section with respect to tenant share are not applicable to such farms.

* * * * *

§ 729.208 [Amended]

8. Paragraph (b) of § 729.208 is amended by removing the phrase “State reserve” and adding the phrase “national reserve” in its place.

§ 729.214 [Amended]

9. Section 729.214 is amended:

(a) In paragraph (b)(4) by removing the comma after the first occurrence of the word “witness” and adding with a period and removing the remainder of the first sentence.

(b) In paragraph (f)(3)(i) by adding the phrase “by sale” to follow the word “quota” in the heading and by removing the phrase “or otherwise” and adding in its place the word “and” in the text.

10. Paragraph (b) of § 729.305 is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 729.305 Peanuts on which penalties are due and refund of excess penalty collected.

* * * * *

(b) * * * In addition, in the case of a false certification, the sanctions provided for in § 729.204(e) shall apply except to the extent that it may be determined by the Deputy Administrator that a second assessment would be unduly redundant.

* * * * *

PART 1446—PEANUTS

11. The authority citation continues to read as follows:

Authority: 7 U.S.C. 7271; 15 U.S.C. 714b and 714c.

12. 7 CFR part 1446 is amended by removing the term “ASCS” in each occurrence in the regulations and adding the term “FSA” in its place.

13. Section 1446.103 is amended by:

(a) Adding “1400” in its proper numerical order, removing “1498”, and

moving the first occurrence of “and” to its proper grammatical place in the series of numbers in the first sentence of the introductory paragraph.

(b) Removing the definition of “DASCO” and adding in its proper alphabetical order the definition

* * * * *

DAFP. The Deputy Administrator for Farm Programs, FSA.

* * * * *

(c) Removing “1498” and adding “1400” in its place in paragraph (3)(iii) of the definition of “Eligible producer.”

14. Paragraph (a)(7) of § 1446.309 is amended by removing the word “type” in each occurrence and adding the term “type or Segregation” in its place.

15. Paragraph (b)(2) of § 1446.801 is amended by removing the acronym “ASC” in the second sentence of the introductory paragraph and adding the acronym “FSA” in its place.

Signed at Washington, D.C., on February 10, 2000.

Parks Shackelford,

Acting Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–3687 Filed 2–17–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV98–966–2 FIR]

Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Producer Field-Packed Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with a change, the provisions of an amended interim final rule changing the handling requirements prescribed under the Florida tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (committee). This rule continues to exempt shipments of producer field-packed tomatoes from the container net weight requirements and the requirement that all tomatoes must be packed at registered handler facilities. This rule also continues to exempt shipments of certain-sized producer field-packed tomatoes from a