

the Department of Agriculture shall be kept confidential to the extent required by law.

PART 729—PEANUTS

Subpart A—General Provisions

- Sec.
- 729.101 Paperwork Reduction Act assigned number.
- 729.102 Applicability.
- 729.103 Definitions.
- 729.104 Administration.
- 729.105 Types of peanuts.
- 729.106 Extent of calculations and rule of fractions.
- 729.107 Location of farms for administrative purposes.
- 729.108 Request for reconsideration or appeal.
- 729.109 Instructions and forms.

Subpart B—Poundage Quotas, Notices of Quotas, Transfers, and Release and Reapportionment

- 729.201 Apportionment of National poundage quota to States.
- 729.202 Reserve for corrections.
- 729.203 Quota not produced.
- 729.204 Temporary seed quota allocation.
- 729.205 Farms ineligible for farm poundage quota.
- 729.206 Determining a farm's basic quota.
- 729.207 Tenants sharing in increased quota.
- 729.208 Allocation of quota for experimental and research programs.
- 729.209 Tillable cropland limitation.
- 729.210 Determining a farm's effective quota.
- 729.211 Determination of farm yields.
- 729.212 Approval of farm yield and farm poundage quota and notice to farm operator.
- 729.213 Erroneous notice of effective farm poundage quota.
- 729.214 Transfer of quota by sale, lease, owner, or operator.
- 729.215 Release and reapportionment of quota.
- 729.216 National poundage quota.

Subpart C—Marketing Cards, Marketings, Penalties, and Assessments

- 729.301 Issuance of cards.
- 729.302 Identification of producer marketings.
- 729.303 Designation of category for marketing peanuts.
- 729.304 Marketing card entries.
- 729.305 Peanuts on which penalties are due and refund of excess penalty collected.
- 729.306 Farms with one acre or less of peanuts.

- 729.307 Assessment of penalties; joint and several liability.
- 729.308 Lien for penalty.
- 729.309 Persons to pay penalty or collect debts.
- 729.310 Payment of penalty or other debt.
- 729.311 Peanuts on which penalties are not to be assessed.
- 729.312 Reduction or waiver of penalty.
- 729.313 Failure to comply with program.
- 729.314 Schemes and devices.
- 729.315 Handling Segregation 3 peanuts.
- 729.316 Marketing assessments.
- 729.317 Increased marketing assessments.

Subpart D—Recordkeeping and Reporting Requirements

- 729.401 Peanuts marketed to persons who are not registered handlers.
- 729.402 Report on marketing card.
- 729.403 Report of marketing green peanuts.
- 729.404 Report of acquisition of seed peanuts.
- 729.405 Report of production and disposition.
- 729.406 Persons engaged in more than one business.
- 729.407 Penalty for failure to keep records and make reports.
- 729.408 Examination of records and reports.
- 729.409 Length of time records and reports are to be kept.

AUTHORITY: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375, and 7271.

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Subpart A—General Provisions

§ 729.101 Paperwork Reduction Act assigned number.

The information collection requirements contained in 7 CFR part 729 have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0560-0006.

§ 729.102 Applicability.

The regulations contained in 7 CFR part 729 are issued in accordance with the Agricultural Adjustment Act of 1938, as amended, and are applicable to the 1996 through 2002 crops of peanuts. They govern the establishment of farm poundage quotas, the issuance of marketing cards, the identification of marketings of peanuts, the collection and refund of penalties, the keeping of

records, and the making of reports incident thereto. The peanut marketing quota and disposition requirements for peanuts for the 1991 through 1995 crops shall, as applicable, continue to be governed by the regulations codified at 7 CFR part 729, as of April 1, 1996.

[56 FR 16211, Apr. 19, 1991, as amended at 61 FR 36999, July 16, 1996]

§ 729.103 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration for peanuts except as may otherwise be indicated. The definitions in, and provisions of, parts 718, 719, and 720 of this chapter and 1446 of this title are hereby made applicable to these regulations unless the context or subject matter or the provisions of these regulations require otherwise.

(b) *Terms.* The following terms shall be defined as set forth in this paragraph.

Act. The Agricultural Adjustment Act of 1938, as amended.

Additional peanuts. Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

Base period. The 3 crop years immediately preceding the current year for which a basic quota is being established.

Basic penalty rate. The per pound amount determined by multiplying the national support level per ton for quota peanuts, as announced by the Secretary for the applicable marketing year, by 1.4 and dividing the result by 2000.

Basic quota. A farm's share of the peanut poundage quota allocated to a State. The basic quota for the current year is the preliminary quota as adjusted pursuant to this part for any:

(i) Increase or decrease in the State poundage quota from the poundage quota allocated to the State for the preceding year;

(ii) Reduction in the quota due to nonproduction;

(iii) Reduction for permanent release of quota from the farm in the current year;

(iv) Permanent transfers of quota to or from the farm for the current year; and

(v) Reallocation of quota to the farm from quotas;

(A) Reduced for nonproduction.

(B) Permanently released.

Buyer. A person, who also may be known as a handler, who:

(i) Buys or otherwise acquires peanuts in any form;

(ii) Markets, as a commission merchant, broker, cooperative, agent, or in any other capacity, any peanuts for the account of a producer and is responsible to the producer for the amount received for the peanuts; or

(iii) Receives peanuts as collateral for, or in settlement of, a price support loan.

CCC. The Commodity Credit Corporation, a financial instrumentality within the United States Department of Agriculture.

Commingled peanuts. Peanuts that were produced on 2 or more farms and loaded into a single conveyance in such manner that the peanuts become, or can become, intermingled and as a result making it impossible to divide the peanuts into separate lots in such manner that the peanuts may be identified accurately as to the farm of production at the time of marketing.

Considered produced credit. If the marketings of peanuts from a farm in the current year are less than such farm's basic quota, the credit granted in the current year (but not to exceed the basic quota established for the farm for the current year less the pounds of peanuts which were produced and marketed from the farm during the current marketing year) for the amount of:

(i) Peanuts that the county committee determines, according to instructions provided by the Deputy Administrator, were not produced because of drought, flood or any other natural disaster or any other condition beyond the control of the producer. Conditions beyond the control of the producer are for this purpose:

(A) Unavailability of an adequate supply of seed to plant an acreage of peanuts that is sufficient to produce the basic quota.

(B) A court order that prevents access to the farm or otherwise prevents the release or transfer of the peanut quota in a manner in which considered produced credit could be earned.

(ii) A peanut poundage quota that was leased and transferred by a transfer agreement that was filed before August 1 of the current year to the extent the quota was produced or considered produced on the receiving farm; provided further, that to the extent that for any base period a farm receives credit under this paragraph, such farm may not receive credit under paragraph (iii) of this definition.

(iii) Peanut poundage quota that was voluntarily released for the current year, or was leased and transferred by a transfer agreement that was filed before August 1 of the current year, if neither of the following are applicable:

(A) Part, or all, of the quota was voluntarily released during any 2 or more years of the base period, or

(B) Part, or all, of the quota was leased and transferred to another farm within the same county during any 2 or more years of the base period.

(iv) A farm's basic quota that was not produced if the Farmers Home Administration or the Farm Service Agency had control of, or title to, such farm.

(v) Peanut quota converted from the production of peanuts in accordance with part 704 of this chapter.

(vi) Quota in an eminent domain pool.

Converted penalty rate. The per pound amount determined by multiplying the basic penalty rate by the result obtained when the absolute value (positive or negative) of the difference between the acreage of peanuts reported by the farm operator and the acreage of peanuts determined to have been planted on the farm as determined in accordance with part 718 of this chapter is divided by the acreage of peanuts determined for such farm.

Deputy Administrator. The Deputy Administrator for Farm Programs, Farm Service Agency.

Director. The Director, or Acting Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture.

Effective quota. The basic quota as adjusted for the applicable crop year for:

(i) Temporary transfers of quota to or from the farm;

(ii) Temporary releases of quota from the farm;

(iii) Temporary reapportionment of quota to the farm;

(iv) Quota converted and reduced in the current year from the production of peanuts pursuant to regulations in part 704 of this chapter for the Conservation Reserve Program, or in any other regulations for that program or similar program; and

(v) Temporary seed quota allocated to the farm.

Electronic (smart) marketing card. A CCC approved standard card for use in identifying peanuts when marketed, and which contain a micro computer chip on which applicable:

(i) Farm data is recorded by the county FSA office before the marketing card is issued to the farm operator.

(ii) Marketing data is recorded at the buying point when the peanuts are marketed.

Excess peanuts. The quantity of peanuts:

(i) Marketed or considered marketed as quota peanuts from the farm in the current marketing year in excess of the farm's effective quota, or

(ii) Marketed as contract additional peanuts from the farm in the current marketing year in excess of the amount contracted in accordance with part 1446 of this title.

False identification. The deliberate or inadvertent identification of peanuts at the time of marketing as being produced on a farm when the peanuts were not produced on such farm.

Farm production history. The sum of the produced and considered produced quantity of peanuts for a farm during the base period.

Farm yield. The yield established for a farm for the immediately preceding year on the basis of peanut production on the farm or on similar farms during the years 1973 through 1977 or, if a farm yield was not established for the preceding year, the yield appraised by the county committee that is fair and reasonable on the basis of farm yields established on other farms in the locality on which the soil and other physical factors affecting production are similar.

Farmers stock peanuts. Picked or threshed peanuts produced in the United States which have not been

changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

Final acreage. The acreage devoted to peanuts on a farm, excluding any acreage devoted to green peanuts, as determined in accordance with part 718 of this chapter.

First purchaser. Any person acquiring peanuts from a producer except that in the case of peanuts forfeited by a producer to CCC or brought from the price support loan inventory, the term means the person acquiring the peanuts from CCC or the inventory.

FSA. The Farm Service Agency of the Department of Agriculture.

Green peanuts. Peanuts which, before drying or removal of moisture from the peanuts either by natural or artificial means, are marketed by the producer for consumption exclusively as boiled peanuts.

Inspector. A Federal or Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture to grade peanuts.

Loan additional peanuts. Peanuts which are pledged as collateral for a price support loan at the applicable additional loan rate established by or for CCC.

Market. To dispose of peanuts (including farmers stock peanuts, shelled peanuts, cleaned peanuts, or peanuts in processed form) by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. The terms "marketed", "marketing", and "for market" shall have corresponding meanings to the term "market" in the connection in which they are used. The terms "barter" and "exchange" shall include the use of any quantity of peanuts by the producer as payment to another for any reason including payment for the harvesting, picking, threshing, cleaning, crushing, or shelling of peanuts, or for any other service rendered to the producer. Any lot of farmers stock peanuts will be considered as marketed when acquired from the producer. Peanuts which are deliv-

ered by the producer as collateral for, or in settlement of, a price support loan will be considered as marketed at the time of delivery. Delivery shall be deemed to have occurred when the peanuts are unloaded at the delivery point. Any peanuts produced on a farm which are retained on the farm after January 31, or such later date as may be established by the Executive Vice President, CCC, of the year following the year in which the peanuts were produced shall be considered as marketed for domestic edible use as of January 31, or such later date.

Marketing year. The 12 month period beginning on August 1 of a current year in which the peanuts are grown and ending July 31 of the following year.

National poundage quota. The poundage quota announced by the Secretary for the relevant crop year.

Nonquota farm. A farm that does not have a basic quota greater than zero for the current year.

Peanut quantity marketed or considered marketed. With respect to a lot of farmers stock peanuts, the quantity of such peanuts that is marketed or considered marketed shall be:

(i) *Inspected peanuts.* For peanuts inspected by the Federal-State Inspection Service at the time of marketing, the gross weight of the lot less foreign material in the lot and less moisture in excess of 7 percent of gross weight for the lot.

(ii) *Noninspected peanuts.* For peanuts not inspected by the Federal-State Inspection Service at the time of marketing, the gross weight of the lot.

(iii) *Shelled peanuts.* For shelled peanuts marketed by a producer, the poundage of the shelled peanuts in the lot multiplied by a factor of 1.5.

Peanuts. All peanuts produced, excluding:

(i) Any peanuts which were not dug;

(ii) Any dug peanuts not picked or threshed which are disposed of under the direction and supervision of FSA personnel; and

(iii) Green peanuts.

Planted acreage. The acreage on which peanuts were planted in a workmanlike manner determined in accordance with the provisions of part 718 of this chapter.

§ 729.104

7 CFR Ch. VII (1-1-00 Edition)

Preliminary quota. For the current year and an eligible farm, the basic quota established for the farm for the preceding year to the extent that the farm is not subject to a reduction in quota.

Quota farm. A farm having a basic quota greater than zero in the current year.

Quota peanuts. Peanuts (except green peanuts) which are marketed or considered marketed from a farm for domestic edible use. Quota peanuts shall be considered to be all peanuts which are dug on a farm except the following:

- (i) Green peanuts;
- (ii) Peanuts which are placed under loan at the additional loan rate and not redeemed by the producer;
- (iii) Peanuts which are marketed in accordance with the requirements of this part as contract additional peanuts.
- (iv) Peanuts considered marketed but because of conditions beyond the control of the producer had no commercial value as determined by the FSA at the time the peanuts were marketed.

Seed sheller. A person who in the course of such person's usual business operations shells peanuts for use as seed for the subsequent year's crop.

Temporary seed quota. Quota temporarily allocated for the current crop year only and in an amount determined by FSA to account for the amount of seed peanuts planted on the farm for production of peanuts, excluding green peanuts and peanuts produced under the one-acre exemption set forth in § 729.306 of this part.

Tillable cropland. Cropland (excluding orchards, vineyards, land devoted to trees, and land being prepared for non-agricultural uses) which the county committee determines can be planted to crops without unusual preparation or cultivation.

Yield per acre or actual yield. The yield of peanuts for a farm for a crop year computed by dividing the total production of peanuts for the farm by the final acreage of peanuts for the farm.

[56 FR 16211, Apr. 19, 1991, as amended at 56 FR 38327, Aug. 13, 1991; 57 FR 27144, June 18, 1992; 61 FR 36999, July 16, 1996; 62 FR 25438, May 9, 1997]

§ 729.104 Administration.

(a) The regulations in this part will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees.

(b) State and county committees, and representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee:

(1) Shall instruct a county committee to:

- (i) Correct any action taken by such committee which is not in accordance with the regulations of this part, or
- (ii) Withhold taking any action which such committee is known to be contemplating if such action is not in accordance with the regulations of this part.

(iii) Take any action required in accordance with the regulations of this part if such county committee has knowingly failed to take such action.

(2) May, after duly instructing a county committee in accordance with paragraph (c)(1) of this section, correct or modify any action required by these regulations that such committee has failed or refused to take.

(d) The Deputy Administrator:

(1) Shall instruct a State committee to:

- (i) Correct any action taken by such committee which is not in accordance with the regulations of this part, or
- (ii) Withhold taking any action which such committee is known to be contemplating if such action is not in accordance with this part.

(iii) Take any action required in accordance with regulations of this part if such State committee has knowingly failed to take such action.

(2) Shall after duly instructing the State committee in accordance with paragraph (d)(1) of this section, correct or modify any action required by these regulations that such committee has failed or refused to take.

(3) May waive or modify deadlines and other program requirements in cases for which the Deputy Administrator determines that lateness, or failure to meet such other requirements, as applicable, does not affect adversely the operation of the peanut program.

Farm Service Agency, USDA

§ 729.201

Such authority shall include, but not be limited to, the delegation of the authority to the State FSA committee to, acting in accordance with such instructions as the Deputy Administrator may issue, modify deadlines for the filing of transfer of peanut quotas.

(e) Notwithstanding any provisions in the regulations of this part, the Administrator, FSA, or a designee, may determine any question arising under the regulations of this part or may reverse or modify any determination made by a State or county committee.

[56 FR 16211, Apr. 19, 1991, as amended at 61 FR 36999, July 16, 1996; 62 FR 25438, May 9, 1997]

§ 729.105 Types of peanuts.

Peanuts shall be classified by type into one of the following types as identified and determined by the Federal-State Inspection Service:

- (a) Runner;
- (b) Spanish;
- (c) Valencia; or
- (d) Virginia.

§ 729.106 Extent of calculations and rule of fractions.

(a) Computations made pursuant to this part shall be rounded in accordance with the provisions of part 793 of this chapter.

(b) Acreages shall be determined in tenths of an acre.

(c) Per pound penalties and liquidated damages shall be determined in tenths of a cent.

(d) The following calculations shall be determined in whole pounds:

- (1) Peanuts produced;
- (2) Considered produced;
- (3) Marketed;
- (4) Preliminary quotas;
- (5) Basic quotas;
- (6) Effective quotas;
- (7) Farm yields; and
- (8) Actual yields per acre.

§ 729.107 Location of farms for administrative purposes.

The location of a farm in a county for administrative purposes shall be as provided in part 719 of this chapter.

§ 729.108 Request for reconsideration or appeal.

Any producer who is dissatisfied with a determination rendered by the county FSA committee under this part may file a request for reconsideration or appeal in accordance with part 780 of this chapter.

[56 FR 16211, Apr. 19, 1991, as amended at 61 FR 36999, July 16, 1996]

§ 729.109 Instructions and forms.

The Director shall cause to be prepared and issued such forms and instructions as are necessary for carrying out this subpart. The forms and instructions shall be approved by, and the instructions shall be issued by, the Deputy Administrator.

Subpart B—Poundage Quotas, Notices of Quotas, Transfers, and Release and Reapportionment

§ 729.201 Apportionment of National poundage quota to States.

The national poundage quota for peanuts for each of the 1996 through 2002 crops less a reserve for the correction of errors shall be apportioned to States in the same proportion that the national poundage quota was allocated to farms in the State for the 1995 crop year. Accordingly, based on the poundage quota allocated to farms in the State for the 1995 crop year, 16 States shall share in the 1996 through 2002 national poundage quotas for peanuts and the following factors shall be used to allocate such quota to the respective States: Alabama—0.13445344, Arizona—0.00062508, Arkansas—0.00208329, California—0.00043493, Florida—0.04275200, Georgia—0.41291226, Louisiana—0.00091430, Mississippi—0.00379765, Missouri—0.00015357, New Mexico—0.00580694, North Carolina—0.11052130, Oklahoma—0.06677613, South Carolina—0.00735223, Tennessee—0.00042788, Texas—0.13183290, and Virginia—0.07915610.

[56 FR 16211, Apr. 19, 1991, as amended at 56 FR 38328, Aug. 13, 1991; 61 FR 36999, July 16, 1996]

§ 729.202

§ 729.202 Reserve for corrections.

A national reserve will be held for purposes of correcting errors that are made when determining a farm's basic quota. The reserve will be determined annually by multiplying the national quota announced by the Secretary by 0.0025. To the extent determined appropriate, the Deputy Administrator may authorize a State committee to correct any error in a farm's basic quota.

§ 729.203 Quota not produced.

(a) *Determining nonproduced quota.* For purposes of making a reduction in a farm's basic quota when the quantity of peanuts produced and considered produced on such farm during any 2 or more years of the base period is less than the basic quota established for such farm for the respective year, the nonproduced quota shall be determined, for any year of the base period for which the sum of the farm's produced and considered produced quota is less than such farm's basic quota established for such year. The nonproduced quota shall be determined by subtracting the sum of the farm's produced and considered produced quota for such year from the basic quota established for the farm for such year.

(b) *Adjustment to nonproduced quota.* For purposes of determining basic quota for subsequent crop years, if the basic quota for a farm is reduced for nonproduction in accordance with this subpart, the nonproduced quota for the base period of the year of the reduction, as determined in accordance with paragraph (a) of this section, shall be adjusted downward by the amount that the basic quota was reduced. The adjustment shall be made in the nonproduced quota by starting with the year in which the nonproduced quantity was smallest during the most recent 2 years of that base period. If the nonproduced quota was equal in each of the most recent 2 years of that base period the adjustment shall begin with the most recent year of such 2 year period. If the nonproduced quota for the year the adjustment begins is less than the amount by which the farm's basic quota was reduced for nonproduction, the adjustment to the nonproduced quota shall continue in the remaining year of the most recent 2 years of that

7 CFR Ch. VII (1-1-00 Edition)

base period until the nonproduced quota has been adjusted by an amount equal to the amount that the basic quota was reduced for nonproduction or until the nonproduced quota in each of the most recent 2 years of that base period has been reduced to zero.

§ 729.204 Temporary seed quota allocation.

(a) *Applicability.* The temporary allocation of quota pounds, as provided in this section shall be determined:

(1) For the marketing year only in which the crop is planted;

(2) For eligible producers for each of the 1996 through 2002 marketing years; and

(3) To exclude the production of green peanuts and peanuts produced under the one-acre exemption provided for in 7 CFR 729.306.

(b) *Quantity of allocation.* The temporary quota allocated to a producer shall be the farmers stock equivalent pounds of qualifying seed peanuts considered planted on the farm as determined by FSA by multiplying the acres determined planted to qualifying peanuts times the per-acre planting rates of:

(1) 95 pounds for Runner-type peanuts;

(2) 110 pounds for Virginia peanuts;

(3) 80 pounds for Spanish peanuts; and

(4) 80 pounds for Valencia peanuts.

(c) *Conversion factor.* For the purpose of determining the farmers stock basis for temporary seed quota allocations under this section, the amount of seed planted as determined in accord with paragraph (b) of this section shall be multiplied by a factor of 1.5.

(d) *Time of notification.* The notice of determination for temporary seed quota allocations shall be made by the Deputy Administrator as soon as practicable following the deadline for filing certifications of planted acres.

(e) *Penalty for erroneous certification.* If the certified acreage on which the temporary seed quota allocation is made is greater than the acreage determined by FSA to be planted to peanuts by more than the smaller of 2 percent of the certified acreage or 5 acres, the producer shall be assessed a penalty based on this difference. The penalty

amount shall be calculated by multiplying the difference between the certified and determined peanut acreage by the applicable per acre seeding rate used in the calculation of the temporary seed quota by 140 percent of the applicable per pound quota support rate for the crop year involved. In addition, a commensurate penalty at the same rate may be assessed in cases within the tolerance allowed by the previous sentence in any instance in which the variance is determined to be due to a scheme or device to defeat the purposes of the program, or is repeated. Further, all errors may in all cases result in a commensurate diminution of the quota allowed the farm for the following year.

[61 FR 36999, July 16, 1996, as amended at 62 FR 25438, May 9, 1997]

§ 729.205 Farms ineligible for farm poundage quota.

(a) *Ineligible farms.* Except for quota allocated under the provisions of § 729.208 for experimental and research programs, effective beginning with the 1998 crop year, farm poundage quotas shall not be established for farms which are determined by FSA to be owned or controlled by:

(1) Municipalities, airport authorities, schools, colleges, refuges, and other public entities (other than a university used for research purposes).

(2) A person:

(i) Who is not a peanut producer; and

(ii) Whose primary domicile, as determined by FSA, in the case of any individual is in a State outside the State in which the quota is allocated or, in the case of an entity, does not qualify under this section to be considered to be a resident of the State in which the quota is allocated.

(b) *Determination of residency and related rules.* (1) For purposes of administering paragraph (a) of this section, an entity may be considered a resident of the State in which the quota is located if:

(i) It is determined that a person or persons with at least a cumulative 20-percent interest in any such entity are individuals whose primary residence is in the State in which the quota is allocated; or

(ii) As determined appropriate by the Deputy Administrator, the corporation or other entity, but not a general partnership or an entity not recognized as a separate and distinct legal entity from its members, has been created under the laws of the State in which the quota is allocated.

(2) For purposes of the provisions of (a)(2)(i) of this section, a person shall not be considered to be a producer of a crop of peanuts unless such person is at risk for at least 15 percent of the proceeds from the marketing of the production of the quota at issue.

(c) *Exemption for involuntary acquisition.* Paragraph (a)(2) of this section shall not apply to any involuntary acquisition of a farm by foreclosure, or otherwise, resulting directly from the conduct of a public business in the State in which the quota is allocated, or an acquisition resulting directly by reason of a death. The exemption for involuntary farm acquisitions allowed under the preceding sentence shall only apply to the establishment of quota in the three crop years immediately following the date of the involuntary acquisition of the quota farm.

(d) *Applicable crop year.* For purposes of applying the rules in paragraph (a) of this section as they regard production, the determination of whether paragraph (a)(2) of this section applies shall be made based on the crop last planted before the date on which the determination is to be made.

(e) *Allocating forfeited quota and sales of quotas subject to paragraph (a).* Except for the exemption for involuntary acquisition in § 729.205(c), beginning in 1997 any farm poundage quota held on or after August 1 of 1997 by an ineligible person as determined under paragraph (a) of this section shall be allocated from the quota farm to other farms in the same State in accordance with § 729.206 of this part; provided, however, that if the ineligibility arises solely because of a purchase of a farm after August 1, 1997, or involves a quota which is acquired because of the expiration of a CRP contract after August 1, 1997, the quota shall not be forfeited but may not be used to market peanuts until the ineligibility is determined by

the county committee to have been removed or the quota is sold to an eligible farm. Such reallocations shall be made to the extent practicable but shall take into account those instances in which the regulations call for an ineligibility for quota allocation rather than forfeiture of the quota.

[61 FR 37000, July 16, 1996, as amended at 62 FR 25438, May 9, 1997]

§ 729.206 Determining a farm's basic quota.

(a) *No change in State poundage quota.* If the poundage quotas allocated to the State for the current year is the same as the State's poundage quota for the preceding year, the current year's basic quota for each quota farm in the State shall be the same as such farm's preliminary quota for the current year.

(b) *Increase in State poundage quota—*(1) *Eligible farms.* If the poundage quota allocated to a State for the current year is greater than the poundage quota allocated to such State for the preceding year, the amount of increase in the poundage quota shall be allocated proportionately, on the basis of each farm's production history as determined under this part, among:

(i) All quota farms in the State.

(ii) All other farms in the State that were nonquota farms in the preceding year and on which peanuts were produced and marketed in at least 2 years of the base period.

(2) *Factor.* A factor shall be determined to apportion, to eligible farms, the increase in the State's poundage quota. The factor shall be determined by dividing the amount of increase in the State poundage quota by the total of the farm production history for all eligible farms determined in accordance with paragraph (b)(1) of this section.

(3) *Basic quota.* The current year basic quota for each:

(i) Quota farm in the State shall be the preliminary quota plus an amount determined by multiplying the farm's production history by the factor determined in accordance with paragraph (b)(2) of this section.

(ii) Eligible farm that was a nonquota farm in the preceding year shall be the result obtained by multiplying such farm's production history

by the factor determined in accordance with paragraph (b)(2) of this section.

(c) *Decrease in State poundage quota.* If the poundage quota allocated to a State for the current year is less than the poundage quota allocated to such State for the preceding year, the current year's basic quota for each quota farm in the State shall be determined by multiplying the current year's preliminary quota by a factor determined by dividing the State quota by the total of the current year's preliminary quotas on all farms in the State.

(d) *Reduction for nonproduction of quota—*(1) *Reconstitutions.* If the farm resulted from a farm reconstitution during the base period, any reduction determined according to this paragraph for nonproduction of the basic quota shall be made separately for the individual tracts in the farm in such manner as the Deputy Administrator determines to be appropriate.

(2) *Reduction amount.* The current year's basic quota otherwise determined for a farm in accordance with paragraph (a), (b), or (c) of this section shall be reduced if, with respect to any 2 years of the base period, the county committee determines that part, or all, of the basic quota for such farm was not produced or considered produced on the farm. The amount of the reduction shall be the sum of the two smallest quantities, including zero pounds if applicable, of nonproduced quota determined in accordance with this subpart for such farm during the base period.

(e) *Reallocation of quota reduced or permanently released—*(1) *Eligible farms.* The total of quotas permanently released and quotas reduced for nonproduction according to paragraph (d) of this section, hereinafter referred to as the State quota available for reallocation, shall be reallocated to farms on which peanuts were produced and marketed in at least 2 years of the base period.

(2) *Factor for reallocation of quotas.* The factor(s) for reallocating the State quota available for reallocation shall be determined as follows:

(i) Determine State totals of farm production history separately for eligible:

(A) Quota farms.

(B) Nonquota farms.

(ii) If the totals of the farm production history from eligible quota farms is equal to or greater than 3 times the total of the farm production history from eligible nonquota farms, determine a factor by dividing the State quota available for reallocation by the sum of the separate State totals of farm production history from eligible quota and nonquota farms.

(iii) If paragraph (e)(2)(ii) of this section is not applicable, determine separate factors for eligible quota and nonquota farms as follows:

(A) For eligible quota farms, determine the factor by multiplying the State quota available for reallocation by .75 and dividing the result by the State total of the farm production history from eligible quota farms.

(B) For eligible nonquota farms, determine the factor by multiplying the State quota available for reallocation by .25 and dividing the result by the State total of farm production history from eligible nonquota farms.

(iv) Notwithstanding paragraphs (e)(2)(ii) and (iii) of this section, if the factor determined for a nonquota farm is greater than 0.3333 a factor of 0.3333 shall be used to reallocate to the nonquota farm such nonquota farm's share of the State quota available for reallocation.

(3) *Application of factor.* The current year's basic quota for each eligible farm determined according to paragraph (e)(1) of the section shall be determined by multiplying such farm's production history by the applicable factor determined in accordance with paragraph (e)(2) of this section. If a current year's basic quota otherwise has been determined for the farm in accordance with this section, the basic quota determined in accordance with this paragraph shall be added to any basic quota otherwise determined for such farm in accordance with this section.

(f) *Reallocation in Texas of quota reduced for nonproduction and permanently released quota—(1) Special provisions for certain Texas Counties.* Notwithstanding the provisions in paragraphs (b) and (e) of this section, all of the quota reduced for nonproduction on all Texas farms, except that portion reallocated to nonquota farms in accordance with

paragraph (e) of this section, shall be reallocated to farms having 1990-crop basic quotas in any Texas county in which the production of additional peanuts in 1989 exceeded the total of 1989-crop basic quotas on all farms in such county. The production of additional peanuts in 1989 exceeded the total of 1989-crop basic quotas on all farms in each of the following Texas counties: Andrews, Bailey, Briscoe, Childress, Collingsworth, Dickens, Donley, Gaines, Hale, Hall, Hardeman, Haskell, Hidalgo, Hockley, Knox, Lamb, Terry, Wheeler, Wilbarger, and Yoakum counties.

(2) *Allocation to counties.* Any quota to be allocated to eligible Texas counties in accordance with paragraph (f)(1) of this section shall be apportioned to the eligible counties on the basis of the total production of additional peanuts in the respective counties for the 1988 crop. Accordingly, based on the production of additional peanuts in 1988, such quota shall be apportioned to eligible counties according to the following factors: Andrews—0.005342, Bailey—0.003007, Briscoe—0.016039, Childress—0.008190, Collingsworth—0.184498, Dickens—0.000000, Donley—0.03 1981, Gaines—0.413627, Hale—0.000647, Hall—0.063101, Hardeman—0.010278, Haskell—0.137459, Hidalgo—0.026700, Hockley—0.000679, Knox—0.002818, Lamb—0.026475, Terry—0.009885, Wheeler—0.003102, Wilbarger—0.000000, and Yoakum—0.056172.

(3) *Exception to allocation to counties.* In that Gaines county is the only county listed in paragraph (f)(1) of this section for which the total of farm basic quotas exceeded 20,000,000 pounds for the 1989 crop of peanuts and the total of farm basic quotas in Gaines County for the 1989 crop was 22,853,615 pounds, if the cumulative increase in the basic quota for Gaines County, granted under any special rules for Texas under this section and its predecessor for the 1991 and subsequent crops exceeds 22,853,615 pounds, the amount in excess of 22,853,615 pounds shall, in accordance with the provisions of the authorizing legislation, be apportioned to the remainder of the counties listed in paragraph (f)(1) of this section on the basis of the total production of additional

§ 729.207

7 CFR Ch. VII (1-1-00 Edition)

peanuts in the respective counties for the 1988 crop.

(4) *Determining factor for reallocation of quota*—(i) To receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section, a farm must have had a basic quota greater than zero for the 1990 crop of peanuts. If a farm that had a basic quota greater than zero in 1990 is reconstituted subsequent to 1990:

(A) By division, the resulting farms will be considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section.

(B) By combination, the resulting farm will not be considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section unless, prior to the combination, each farm that is involved in the combination was considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive an increased quota under paragraph (f)(2) of this section.

(ii) A farm allocation factor shall be determined for each eligible farm as follows:

(A) Using data from the year preceding the year for which the reallocation is being made, determine a factor by dividing the quantity of contract additional peanuts delivered to handlers from the farm by the total remaining peanuts marketed from the farm.

(B) Total all factors determined in accordance with paragraph (f)(4)(ii)(A) of this section.

(C) Except as may be determined by the Deputy Administrator to avoid schemes and devices in contravention of the purposes of this part to avoid inequities, the farm allocation factor shall be determined by dividing the factor determined in accordance with paragraph (f)(4)(ii)(A) of this section by the total determined in accordance with paragraph (f)(4)(ii)(B) of this section.

(5) *Increase in basic quota.* The basic quota otherwise determined for a farm

in accordance with the provisions of this section shall be increased by an amount determined by multiplying any quota allocated to the county in accordance with paragraph (f)(2) of this section by the farm allocation factor determined in accordance with paragraph (f)(4)(ii)(C) of this section.

(6) *Quotas for eligible nonquota farms.* Quotas for eligible nonquota farms in any Texas county shall be determined in the same manner as provided for other States in paragraph (e) of this section.

(7) *Allocation of increase in State poundage quota.* Any increase in the State poundage quota for Texas, shall be reallocated to eligible farms in any Texas county, including the counties in paragraph (f)(1) of this section, in accordance with paragraph (b) of this section.

[56 FR 16211, Apr. 19, 1991, as amended at 56 FR 38328, Aug. 13, 1991; 57 FR 27144, June 18, 1992. Redesignated and amended at 61 FR 36999, 37000, July 16, 1996]

§ 729.207 Tenants sharing in increased quota.

(a) *General.* If the poundage quota allocated to a State is greater than the poundage quota allocated to such State for the preceding year, an eligible tenant who leased a part or all of a farm in any county in such State for the production of peanuts shall share equally with the farm owner, in accordance with the provisions in this section, in that quantity of basic quota that is allocated, as a result of the tenants production of additional peanuts on the farm during the base period to such farm, from the State's increased poundage quota.

(b) *Eligible tenant.* If a person leased part or all of a farm, and had a 100 percent producer interest in one or more fields of peanuts that were produced on such farm during the base period, and such farm's basic quota is increased as a result of an increase in a State's poundage quota, such person shall be considered as an eligible tenant on such farm and shall share in such increase in the farm's basic quota if such person:

(1) *Ownership interest.* Does not have any ownership interest in such farm;

(2) *Shared in previous year's production of peanuts.* Shared in the production of any peanuts produced on the farm in the crop year immediately preceding the crop year for which such increase in basic quota is granted;

(3) *Application for share of increase.* Files an application at the county FSA office of the county in which such farm is located for administrative purposes, by February 15 of the crop year for which such increase in basic quota is granted, for a share of such increase;

(4) *Supporting proof.* Provides supporting proof, that is acceptable to the county committee, of the quantity of additional peanuts produced on such farm by such person during each year of the base period.

(c) *Tenant's share of increase.* An eligible tenant's share of the increase in a farm's basic quota shall be one half of an amount determined by multiplying the quantity of additional peanuts produced by such tenant and for which acceptable proof was provided in accordance with paragraph (b)(4) of this section by the factor determined in accordance with § 729.206(b)(2) of this part.

(d) *Disposition of tenant's share of increase-*(1) *By tenant.* An eligible tenant may dispose of any basic quota determined for such tenant in accordance with paragraph (c) of this section. Such disposition must take place by:

(i) *Time for disposition.* The later of April 1 of the current year or 30 days after the date of notification of the amount of such basic quota.

(ii) *Manner of disposition.* Filing an application at the county FSA office to transfer such basic quota:

(A) *Farm owned by tenant.* To a farm within the county that is owned by such tenant.

(B) *Sale of quota.* By sale to the owner of any farm within the county in accordance with § 729.214 of this part.

(2) *Allocation to other farms.* Any basic quota determined for an eligible tenant in accordance with paragraph (c) of this section that is not disposed of by such eligible tenant in accordance with paragraph (d)(1) of this section shall, to the extent practicable, be reallocated to other farms within the State in accordance with § 729.206(e) of this part.

(e) *Other provisions.* Any increase in a farm's basic quota that results from a tenant's production of additional peanuts on such farm during the base period shall remain on such farm if the:

(1) Tenant who otherwise might have qualified to receive a share of such increase in basic quota does not file an application for a share of such quota in accordance with paragraph (b) of this section; or

(2) Additional peanuts were produced by a person who was a tenant on such farm only during the beginning year of the base period or the second year of the base period.

[56 FR 16211, Apr. 19, 1991. Redesignated and amended at 61 FR 36999, 37000, July 16, 1996]

§ 729.208 Allocation of quota for experimental and research programs.

(a) *General.* A basic quota shall be established for the 1991 crop for each land-grant institution identified in the Act of May 8, 1914 (38 stat. 372, chapter 79; 7 U.S.C. 341 et seq.), colleges eligible to receive funds under the Act of August 30, 1890 (26 stat. 419 chapter 841; 7 U.S.C. 321 et seq), including Tuskegee Institute and, as appropriate, the Agricultural Research Service of the Department of Agriculture if such institution possessed basic quota for the 1985 crop year or was authorized under this part at that time to market peanuts from the 1985 crop for quota purposes without incurring marketing penalties.

(b) *Amount of allocation.* The amount of quota allocated from the State reserve to an eligible institution shall not exceed the poundage quota allocated to the institution for the 1985 crop year and shall not exceed the quantity of peanuts that was exempted from payment of marketing penalties by such institution for the 1985 crop year, as applicable, except that the total pounds allocated for the 1991 crop to all institutions in the State shall be allocated so as not to exceed one-tenth of one percent of the poundage quota allocated to the State in which the respective institutions are located.

(c) *Limitation.* The quantity of peanuts marketed by such institution by use of the quota granted in accordance with paragraph (b) of this section shall

§ 729.209

not exceed the quantity needed for experimental and research purposes. The director of each such institution shall be responsible for providing information as needed to determine compliance with this section.

(d) *Quota for 1996 through 2002 crops.* For each institution with continuing eligibility for which a 1995 basic quota was determined in accordance with this section or its predecessor, a basic quota shall be established for the 1996 through 2002 crops in the same manner as for other farms within the State.

[56 FR 16211, Apr. 19, 1991. Redesignated and amended at 61 FR 36999, 37000, July 16, 1996]

§ 729.209 Tillable cropland limitation.

If any person owns a farm for which the basic quota exceeds an amount determined by multiplying the larger of the farm yield or the highest actual yield for the farm during the base period by the tillable cropland on the farm, the person shall take steps, such as the sale of quota, the purchase of tillable cropland, the permanent transfer of quota, or other similar means that will result in elimination of the excess. If such person fails to take such action, the farm's preliminary quota for the next year, and the basic quota permanently shall be reduced by the amount of the excess.

[56 FR 16211, Apr. 19, 1991. Redesignated at 61 FR 36999, July 16, 1996]

§ 729.210 Determining a farm's effective quota.

The effective quota for a farm shall be the basic quota adjusted by:

(a) *Upward adjustment.* Adding the:

(1) The temporary seed quota allocated to the farm;

(2) Quota temporarily reapportioned to the farm; or

(3) Quota temporarily transferred to the farm by either lease, owner, or operator.

(b) *Downward adjustment.* Subtracting the quota:

(1) Temporarily transferred from the farm by either lease, owner or operator;

(2) Temporarily released; or

(3) Converted in the current year from the production of peanuts in accordance with part 704 of this chapter

7 CFR Ch. VII (1-1-00 Edition)

or similar program as determined by the Deputy Administrator.

[56 FR 16211, Apr. 19, 1991. Redesignated and amended at 61 FR 36999, 37000, July 16, 1996]

§ 729.211 Determination of farm yields.

(a) *Farm yield—(1) Quota farm in previous year.* The farm yield for the current year for a farm that was a quota farm in the previous year shall be the same as the farm yield established for the farm in the previous year.

(2) *Nonquota farm.* If a farm was a nonquota farm in the year preceding the current year and such farm becomes a quota farm in the current year, a farm yield shall be determined by the county committee if a farm yield has not been established previously for such farm. Such farm yield shall be determined on a fair and reasonable basis by the county committee after considering the farm yields that have been established on other similar farms in the same locality.

(b) *Reconstituted farms.* For reconstituted farms, the farm yield for such farm shall be:

(1) *Combination of quota farms.* For combined quota farms, the weighted average of the farm yields for the tracts being combined.

(2) *Combinations of quota and nonquota farms.* For a combination of a quota and nonquota farm, the farm yield of the tract(s) with an established quota, even though a farm yield had been previously established for such nonquota tract(s).

(3) *Combination of nonquota farms.* For a combination of a nonquota farm, established by the county committee in the same manner as for farms under paragraph (a)(2) of this section, even though a farm yield had been previously established for the individual tracts.

(4) *Divisions.* For tracts resulting from the division of a farm, the same farm for each tract that results from the division as the farm yield for the parent farm, except that should one or more tracts within the divided farm have a previously established farm yield, the farm yield for such tract(s)

Farm Service Agency, USDA

§ 729.214

shall be that previously established for such tract(s).

[56 FR 16211, Apr. 19, 1991. Redesignated at 61 FR 36999, July 16, 1996]

§ 729.212 Approval of farm yield and farm poundage quota and notice to farm operator.

(a) *Approval.* Each farm yield, basic quota, and effective quota shall be determined under the supervision of, and approved by, the county committee of the county in which the farm is administratively located, subject to the concurrence of the State committee or a representative of the State committee.

(b) *Notice to farm operator.* (1) As soon as practicable after the basic quota or the effective quota is approved, an official notice of such quota shall be mailed to the farm operator.

(2) If the basic quota is reduced to zero for the current year, the county committee shall mail to the farm operator a notice of such determination.

(3) A revised notice of basic quota or effective quota shall be mailed to the farm operator as soon as possible after the county committee determines that an incorrect notice has been mailed, or the county committee takes an action which requires a revision of the previously determined quota.

(4) The notice to the operator shall constitute notice to all persons, including, but not limited to, any person who as operator, landlord, tenant, or sharecropper has an interest in the farm for which the quota is established.

(c) A failure to provide the notice provided for in paragraph (b) of this section shall not entitle any person to a quota to which they are otherwise entitled, unless otherwise provided in this part.

[56 FR 16211, Apr. 19, 1991. Redesignated at 61 FR 36999, July 16, 1996]

§ 729.213 Erroneous notice of effective farm poundage quota.

If the official notice of effective quota issued for a farm erroneously stated a quota larger than the correct effective quota, the quota shown on the erroneous notice shall serve as the basis for marketing penalty computations for the farm for the current marketing year only if the county com-

mittee determines and the State Executive Director concurs that:

(a) *Extent of error.* The error was not so substantial as to place the operator on notice that such notice of quota was incorrect; and

(b) *Response to notice.* The operator, relying upon such notice and acting in good faith:

(1) Has made plans, or is engaged in activities, to produce the quota in the amount set forth on the erroneous notice (for example, land preparation; purchase of seed, fertilizer, and other production materials; or reducing the acreage of other crops); or

(2) Has planted the acreage of peanuts needed to produce the erroneous farm poundage quota.

[61 FR 37000, July 16, 1996]

§ 729.214 Transfer of quota by sale, lease, owner, or operator.

Peanut quota may be transferred between eligible farms, or between separately owned tracts within a farm, in accordance with the provisions of this section.

(a) *Basis of transfers.* A transfer of quota may be either permanent or temporary to the extent provided for in this section.

(1) *Permanent.* A permanent transfer shall be based on a part or all of the farm's basic quota. The maximum quota that may be permanently transferred from a farm in the current year is the farm's basic quota. A permanent transfer may be by:

(i) *Sale.* The sale of a farm's basic quota.

(ii) *Owner.* The owner transferring basic quota between two farms when such farms have identical ownership as determined by FSA under instructions of the Deputy Administrator.

(2) *Temporary.* A temporary transfer is for one year and shall be based on a part or all of the farm's effective quota. The maximum quota that may be temporarily transferred from a farm in the current year is the farm's effective quota. A temporary transfer, to the extent permitted by this section, may be by:

(i) *Lease.* The lease and transfer of a farm's effective quota.

(ii) *Owner*. The owner transferring effective quota to another farm owned or operated by such owner.

(iii) *Operator*. The operator transferring effective quota to another farm owned or operated by such operator.

(b) *Transfer agreement*. In order to transfer poundage quota in the current year between two eligible farms, the transfer agreement must be:

(1) *Form*. Recorded on Form FSA-375.

(2) *Where to file*. Filed in the county FSA office which serves the county in which the transferring farm is located for administrative purposes.

(3) *Signatures*. Agreed upon and signed by:

(i) *Sale or lease*. In the case of a sale or lease, the owner(s) and operator of the transferring farm and the owner(s) or operator of the receiving farm. However, if a lease is filed after July 31 by a farm operator who cash leased the farm the signature of the owner(s) of such farm is not required.

(ii) *Owner transfer*. In the case of an owner transfer, the owner of the transferring farm who also must be the owner or operator of the receiving farm.

(iii) *Operator transfer*. In the case of an operator transfer, the operator of the transferring farm who also must be the owner or operator of the receiving farm.

(iv) *Lienholder*. In all cases, any person who holds a mortgage or other lien against the transferring farm.

(4) *Witness*. Signed on Form FSA-375, by each person whose signature is required by paragraph (b)(3) of this section, in the presence of a State or county committee member or an FSA employee who shall sign Form FSA-375 as a witness, except that when both the owner and the operator of a transferring farm must sign, such witness is required for the signature of either the owner or operator, but not both. If such signatures cannot be witnessed in the county FSA office where the farm is administratively located, they may be witnessed in any State or county FSA office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers that are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced

may be waived provided the county FSA office mails Form FSA-375 for the required signatures.

(5) *When to file*. Filed at any time after all required signatures have been recorded.

(i) *Permanent transfer*. If filed:

(A) Before August 1, the transfer shall be effective for the current year.

(B) After July 31, the transfer agreement shall not be approved until the next year's quota is determined for the transferring farm.

(ii) *Temporary transfer*. If filed after July 31 and before February 1, the transfer agreement shall not be approved unless both the transferring farm and the receiving farm meet applicable provisions in paragraph (f) of this section that apply to transfers filed during such period.

(c) *Location of farms*. In order to transfer poundage quota between two farms, such farms must be located within the same State and, to the extent required by paragraph (d) of this section, in the same county. It is not necessary for the receiving farm to have had a basic quota in the current or prior year, except as provided in paragraph (d)(4) of this section.

(d) *Limitations on transfer by sale or lease*. Subject to the provisions of paragraph (m) of this section:

(1) *States with less than 10,000 tons of quota*. With respect to farms in any State for which the State's poundage quota for the year preceding the current year was less than 10,000 tons, transfers of peanut quota by sale or lease may be made to any other farm in any county within the State.

(2) *States with 10,000 tons or more of quota*. For farms in States with 10,000 tons or more of quota:

(i) Poundage quota may be transferred to any other farm within the same county.

(ii) If the farm is in a county with less than a total of 50 tons of quota, the poundage quota may be transferred to any other farm within the same State without regard to the limitations set forth in paragraph (d)(2)(iii) of this section.

(iii) If the farm is in a county with a total of 50 tons or more of quota, poundage quota transferred out of county shall be limited to 40 percent of

the quota in the transferring county as of January 1, 1996. Further, the cumulative unexpired out-of-county transfers for a crop year may not exceed the following percentages of the quota in the transferring county as of January 1, 1996:

- (A) 15 percent for the 1996 crop;
- (B) 25 percent for the 1997 crop;
- (C) 30 percent for the 1998 crop;
- (D) 35 percent for the 1999 crop; and
- (E) 40 percent for the 2000 and subsequent crops.

(iv) *Selecting approved transfers.* For purposes of administering the limitations on the amount of transfers, the Director shall establish a method for selecting, by lot or other method, those applications which are to be approved. The Director may give preference to permanent transfers.

(3) *Fall transfers.* The limitations in paragraph (d)(2)(iii) of this section do not apply to 1-year fall transfers, which may, in all cases, be made to any farm in the same State, subject to such restrictions as otherwise apply for fall transfers.

(4) *Owner or operator transfer.* Owner or operator transfers of poundage quota are permitted to contiguous counties within the same State without regard to the percentage limitations of paragraph (d)(2)(iii) of this section; provided that, the receiving farm had a basic quota established for the preceding year's crop and has the same owner, in an owner transfer, or the same operator, in an operator transfer.

(e) *Transfers to and from the same farm (subleasing)*—

(1) *Transfer agreement filed after January 31 and before August 1.* The county committee shall not approve a transfer agreement which is filed after January 31 of any year and before August 1 of the same year, if the approval would result in a temporary transfer both to and from either the transferring or receiving farm during such period, except that such transfer agreement may be approved if the farm that otherwise would be eligible to transfer or receive such quota resulted from a farm reconstitution that was approved subsequent to a transfer of quota.

(2) *Record of transfer filed after July 31 and before February 1.* The county committee shall not approve a temporary

transfer of effective quota if the transfer agreement is filed after July 31 of any year and before February 1 of the following year and approval would result in a temporary transfer both to and from either the receiving farm or transferring farm during such period.

(f) *Other transfer provisions*—(1) *Temporary transfer of quota from a farm.* A temporary transfer of quota from a farm by lease, owner, or operator shall not be approved:

(i) *Effective quota includes reapportioned quota.* If the transfer agreement was filed before August 1 of a crop year and the effective quota for the farm includes temporarily reapportioned quota from quota released from other farms of that crop year.

(ii) *Peanut poundage quota penalty.* If any person whose signature is required to perfect the transfer is known to owe a peanut poundage quota penalty. However, this provision shall not apply if the penalty is paid or, in the case of a transfer by lease, the entire proceeds of the lease are applied to the penalty and the county committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(iii) *Filed after July 31 and before February 1 ("Fall transfers").* If filed after July 31 of the crop year and before February 1 of the following year, unless:

(A) The reported or determined acreage of peanuts plus prevented planted credit for the transferring farm for the current year, when multiplied by the larger of the farm yield or the highest actual yield during the base period, is equal to or greater than 90 percent of the farm's effective quota prior to adjustment for temporary seed quota allocated to the farm;

(B) The county committee determines that the producers on the farm made a good faith effort to produce a normal crop of peanuts on the acreage devoted to peanuts.

(C) The quantity to be transferred does not exceed the quota balance remaining on the farm's marketing card(s); and

(D) For a lessee, such lessee provides satisfactory evidence that the lease is a cash lease or the owner signs the transfer agreement.

(2) *Temporary transfer of quota to a farm.* A temporary transfer of quota to a farm by lease, owner, or operator shall not be approved:

(i) *Tillable cropland limitation.* If the transfer agreement was filed before August 1 of the crop year and the effective quota after the transfer would exceed an amount determined by multiplying the acreage of tillable cropland on the farm by the larger of the farm yield or the highest actual yield per acre during the base period.

(ii) *Filed after July 31 and before February 1.* If the transfer agreement is filed after July 31 of the crop year and before February 1 of the following year unless the quantity being transferred:

(A) Is needed in order to market all eligible peanuts from the receiving farm as quota peanuts, and

(B) Does not exceed an amount by which the receiving farm's effective quota before the transfer is less than the entire production of peanuts from the farm exclusive of any peanuts that have been graded as Segregation 2 or Segregation 3 peanuts.

(3) *Permanent transfer of quota from a farm.* A permanent transfer of quota from a farm by sale or by owner shall not be approved:

(i) *Permanent transfer of quota to the farm.* For the amount of quota purchased or otherwise permanently transferred to the farm in the current year and during the base period, as adjusted for any increase or decrease in such quota due to adjustment in the national quota during the base period, except that a transfer of a tenant's share of any peanut quota increase shall not be considered for purposes of determinations made under the provisions of this paragraph.

(ii) *Peanut poundage quota penalty.* If the owner is known to owe a peanut poundage quota penalty. However, this provision shall not apply if the penalty is paid, or in the case of a sale of quota, the entire proceeds from the sale of quota are applied to the penalty and the county committee determines that the amount paid for the quota represents a reasonable price for the pounds of quota being sold.

(iii) *Conservation Reserve contract.* If the peanut quota is subject to an ap-

proved Conservation Reserve Program contract.

(4) *Permanent transfer of quota to a farm.* A permanent transfer of quota to a farm by sale or by owner shall not be approved if the basic quota after transfer would exceed an amount determined by multiplying the acreage of tillable cropland on the farm by the larger of the farm yield or the highest actual yield per acre during the base period.

(g) *Approval or disapproval of a transfer agreement.* The county committee shall approve or disapprove each transfer agreement. The county committee shall approve each transfer agreement which meets the eligibility conditions as set forth in this section or in this part. However, the county committee may delegate authority to the county executive director or other county FSA employee to act on behalf of the county committee and approve a transfer agreement which meets the eligibility conditions as set forth in this section. Such delegation may authorize the approval of any eligible transfer agreement or the delegation of authority may be restrictive as to the type of transfer agreements that may be approved. Only the county committee shall disapprove a transfer agreement.

(1) *Time for determination.* Any approval or disapproval of a transfer agreement should be made within 30 days after the transfer agreement is filed with the county committee unless additional time is required as the result of conditions beyond the control of the county committee. However, if a transfer agreement is filed after July 31 of the crop year that provides for a permanent transfer of poundage quota, the transfer agreement shall not be approved until the next year's quota is determined for the transferring farm.

(2) *Effective date.* An approved transfer agreement shall become effective during the current crop year, except that if an agreement to permanently transfer quota is filed after July 31 of the crop year, such agreement shall become effective for the next crop year.

(h) *Effect of permanent transfer of quota.* In the event of a permanent transfer of a quota, applicable farm data for each year of the base period shall be transferred to the receiving

farm from the transferring farm in proportion to the quantity of basic quota which has been transferred from the transferring farm.

(i) *Notice of revised quotas.* A revised notice of farm poundage quota shall be issued for each farm affected by the transfer of farm poundage quota.

(j) *Cancellation of transfer*—(1) A transfer approved on the basis of incorrect information furnished by the parties to the transfer agreement, or approved due to error by the county committee, shall be void and canceled effective as of the date of approval except as may be provided by the Deputy Administrator to accomplish the purposes of this part. The cancellation shall not be effective for the current marketing year if:

(i) The transfer approval was made on the basis of incorrect information unknowingly furnished in good faith by the parties to the transfer agreement or the transfer approval was made in error by the county committee, and

(ii) The parties to the transfer agreement were not notified of the cancellation prior to the marketing of quota peanuts in excess of the revised effective farm poundage quota.

(2) If cancellation of a transfer is required, the county committee shall issue revised notices of poundage quota showing the reasons for, and effect of, the cancellation.

(k) *Withdrawal or minor revision.* The county committee may permit withdrawal or minor revisions of a transfer upon a:

(1) Written request by all parties to the transfer, and

(2) County committee determination that such withdrawal or revision is clearly in the best interest of all the producers and will not impair the effective operation of the peanut program.

(l) *Adjustment of marketings.* For the purpose of computing production history for quota increase based on production, in the case of temporary transfers by owner to the same owner or operator to the same operator, if the current year's produced or considered-produced credit from the receiving farm exceeds such farm's basic quota, such produced or considered-produced credit on the receiving farm shall be reduced by the amount of such excess,

to the extent of the quota temporarily transferred to such farm by owner or operator, and such reduced amount shall be added to the current year produced or considered-produced credit for the transferring farm.

(m) *Considered produced credit.* Quota that is leased and transferred from a farm shall be considered produced on such farm to the extent of considered produced credit set forth in the definition of "Considered produced credit" in § 729.103 of this part.

[56 FR 16211, Apr. 19, 1991, as amended at 57 FR 27144, June 18, 1992. Redesignated and amended at 61 FR 36999, 37001, July 16, 1996; 62 FR 2719, Jan. 17, 1997; 62 FR 25438, May 9, 1997]

§ 729.215 Release and reapportionment of quota.

(a) *Release.* By filing Form FSA-278 with the county FSA office that serves the county in which the farm is located for administrative purposes, part or all of the farm's:

(1) *Temporary release.* Effective quota may be temporarily released to the county committee for the current year.

(2) *Permanent release.* Basic quota may be permanently released to the county committee. If the farm consists of separately identifiable tracts having different ownership, the owner(s) of any tract may permanently release part or all of the basic quota contributed to the farm by such tract.

(b) *Request for released quota.* Permanently released quota shall be reallocated without a request from the farm's owner or operator to eligible farms as determined in accordance with § 729.204 of this part. Temporarily released quota, may be reapportioned to farms for which a request for released quota has been filed, on Form FSA-278, in the county FSA office that serves the county in which the farm is located for administrative purposes. Temporarily released quota shall be reapportioned in accordance with the provisions of this section.

(c) *Time for filing.* The final date for filing a release of quota or for requesting reapportionment of temporary released quota shall be:

(1) *Permanent release.* For quota to be permanently released, thirty days after

the date of mailing of the notice of the farm's quota.

(2) *Temporary release or request for released quota.* For a temporary release or a request for released quota, the date established by the State committee for the county in which the farm is located for administrative purposes.

(d) *Signature requirement.* The FSA-278 shall be signed by:

(1) *Temporary releases.* In the case of a temporary release, the farm operator. In addition, if quota was either leased and transferred from the farm, or released from the farm, in more than one year of the base period, the FSA-278 shall be signed by the farm's owner(s).

(2) *Permanent releases.* In the case of a permanent release, both the owner(s) and operator of the farm.

(e) *Reapportionment of temporarily released quota—(1) Time to reapportion.* The county committee shall reapportion, within 10 days after the final date for temporary release of quota in the county, any quota that will be reapportioned to farms in the county. In addition, if the county committee receives released quota from the State committee, such quota shall be reapportioned within 10 days after receipt of the notice of the availability of the quota.

(2) *Basis of reapportionment.* The county committee:

(i) When reapportioning temporarily released quota, shall give priority to producers on nonquota farms and to producers on farms having basic quotas that are significantly below the average basic quota in the county. Otherwise, the county committee shall reapportion the released quota in amounts determined by the county committee to be fair and reasonable on the basis of:

(A) Experience by the applicant in producing peanuts;

(B) Soil and other physical factors affecting the production of peanuts on the applicant's farm; and

(C) Tillable cropland available for the production of peanuts on the applicant's farm.

(ii) Shall not reapportion released quota to a farm that has transferred quota from the farm in the current year.

(iii) Shall not reapportion quota to a farm to the extent that the farm's effective quota after the reapportionment will exceed an amount determined by multiplying the farm's tillable cropland by the larger of the farm yield or the highest actual yield for peanuts during the base period.

(f) *Release to State committee.* (1) Temporarily released quota that is not reapportioned by the county committee to farms in the county shall be released to the State committee for reallocating to other county committees that have requested additional quota for reapportionment to eligible producers.

(2) Permanently released quota shall be released to the State committee for reallocation to eligible farms in accordance with § 729.206 of this part.

(g) *Considered produced credit.* Quota that is temporarily released shall be considered produced on the releasing farm if neither of the following are applicable:

(1) Part, or all, of the farm's quota was released during any 2 or more years of the base period, or

(2) Part, or all, of the farm's quota was leased and transferred to another farm in the same county during any 2 or more years of the base period.

(h) *Withdrawal or minor revision of released quota.* A withdrawal or minor revision in the pounds temporarily or permanently released may be approved upon a written request filed with the county committee if, at the time the request is filed, the county committee has not transmitted permanently released quota to the State committee or, with respect to temporarily released quota, has not reapportioned such released quota to farms in the county or released such quota to the State committee for reallocation to requesting county committees.

[56 FR 16211, Apr. 19, 1991. Redesignated and amended at 61 FR 36999, 37001, July 16, 1996]

§ 729.216 National poundage quota.

(a) *National poundage quota for 1996 and subsequent crop years.* The national poundage quota for the 1996 and subsequent crop years shall be established by the Secretary at a level that is equal to the quantity of peanuts that

the Secretary estimates will be devoted in each marketing year to domestic edible use (except seed), and related uses as may be set out in paragraph (c) of this section.

(b) *Disapproval of quotas.* No loan for quota peanuts may be made available for any crop of peanuts with respect to which it is determined by the Deputy Administrator that poundage quotas have been disapproved by producers pursuant to a referendum conducted in accordance with section 358-1(d) of the Agricultural Adjustment Act of 1938, as amended.

(c) Quota determination for individual marketing years (excluding seed):

(1) The national poundage quota for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(2) The national poundage quota for quota peanuts for marketing year 1997 is 1,133,000 short tons.

(3) The national poundage quota for quota peanuts for marketing year 1998 is 1,167,000 short tons.

[61 FR 37001, July 16, 1996, as amended at 61 FR 60510, Nov. 29, 1996; 62 FR 62692, Nov. 25, 1997; 64 FR 48942, Sept. 9, 1999]

Subpart C—Marketing Cards, Marketings, Penalties, and Assessments

§ 729.301 Issuance of cards.

(a) *General.* As used in this part, peanut marketing card, Form FSA-1002, means a paper marketing card on which data is manually recorded or a plastic marketing card in which data is recorded electronically into a micro computer chip by a computer.

(b) *Issuance of marketing cards.* A marketing card shall be issued in the name of the farm operator for each farm on which peanuts are produced in the United States in the current year for use by each producer on the farm for marketing such producer's share of the peanuts produced except that:

(1) A marketing card issued for experimental peanuts shall be issued in the name of the experiment station, and

(2) A marketing card issued to a successor-in-interest shall be issued in the name of the successor-in-interest.

(c) *Issuance of producer identification cards.* A producer identification card shall be issued in the same name that is entered on the marketing card(s) for each eligible farm. The producer identification card will be used to identify the farm on which the peanuts were produced and the card must accompany each lot of peanuts when offered for sale. Producer identification cards shall be issued at the time the marketing cards are issued.

(d) *Person authorized to issue cards.* The county executive director shall be responsible for the issuance of marketing cards and producer identification cards.

(e) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the peanuts available for marketing from a farm shall be entitled to the use of the marketing and identification cards for marketing such producer's proportionate share of the peanuts produced on the farm, as determined by the county committee.

(2) Any person who the county committee determines has succeeded, in whole or in part, to the share of a producer in the peanuts available for marketing from a farm shall, to the extent of such succession, have the same rights to the use of the marketing and identification cards and bear the same liability for penalties as the original producer would with respect to the disposition of the peanuts.

(f) *Data on marketing card and supplemental card—*(1) Before issuance, the following data and information must be recorded on the marketing card:

(i) The name of each producer and the producer's share of the crop of peanuts;

(ii) The effective farm poundage quota;

(iii) The pounds of any additional peanuts contracted and the handler number of the contracting handler;

(iv) The converted penalty rate, if applicable;

(v) The name of any producer on the farm against whom a peanut poundage quota lien has been established and the unpaid balance of such lien;

(vi) The name of any producer on the farm against whom a U.S. claim has been established and the unpaid amount of such claim;

§ 729.302

7 CFR Ch. VII (1-1-00 Edition)

(vii) With respect to any farm with a producer that is ineligible for price support, an indication of such ineligibility; and

(viii) An indication that the peanuts marketed from the farm are "Eligible for Buyback" if the farm operator authorizes the handler to purchase peanuts under the "Immediate Buyback" purchase in accordance with part 1446 of this title.

(2) A supplemental marketing card bearing the same name identification as shown on the original marketing card may be issued for a farm if an original or supplemental marketing card is returned to the county office. The balance of the poundage quota for the farm from the returned marketing card shall be recorded as the effective farm poundage quota on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator specifies in writing the amount of the effective quota (not to exceed the balance of effective quota available) which is to be assigned to each card.

(g) *Issuance of producer identification cards*—(1) Before issuance, the following information shall be recorded on the producer identification card:

(i) Name and address of the farm operator, and

(ii) State, county code, and farm serial number.

(2) A farm operator may receive as many identification cards as may be needed at any one time to accompany each lot of peanuts until such lot of peanuts has been marketed.

(h) *Replacing a lost, stolen, or destroyed marketing card.* A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen, if the farm operator gives immediate written notice of such fact to the appropriate county FSA office and furnishes a satisfactory report of the quantity of peanuts which was marketed by use of such marketing card before such card was lost, stolen, or destroyed.

(i) *Invalid cards.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, or stolen.

(4) An alteration has been made without the approval of the county executive director.

(5) For a paper card, the card becomes illegible.

(j) *Validating invalid cards.* If a marketing card is known to be invalid, the farm operator or other producer shall return the marketing card to the county office. The county executive director shall issue a replacement marketing card or the marketing card may be made valid by entering data previously omitted or by correcting any incorrect data previously entered.

§ 729.302 Identification of producer marketings.

The producer must identify each lot of peanuts offered for marketing through a handler by furnishing to the handler the farm operator identification card FSA-1003, and the peanut marketing card FSA-1002, which was issued for the farm on which the peanuts were produced. The producer may at the producer's risk leave the peanut marketing card in the custody of the handler during the period between marketing lots of peanuts to the same handler; however, the marketing card shall not be left in the possession of the handler after the producer has completed marketings for the season.

§ 729.303 Designation of category for marketing peanuts.

Any marketings of peanuts which are not inspected by the Federal-State Inspection Service prior to marketing shall be deemed to be a marketing of quota peanuts. If a lot of peanuts is inspected by the Federal-State Inspection Service, the producer shall designate to the handler whether the lot of peanuts is to be marketed as quota loan, quota commercial, loan additional, or contract additional peanuts as defined in part 1446 of this title. The designation must be made within the time allowed by the handler but not later than the close of inspection of the third workday (excluding Saturday,

Sunday, or legal holiday) after the peanuts are inspected and graded. In the absence of a designation, any Segregation 1 peanuts shall be marketed and deemed to be marketed in the following order of priority:

(a) As quota loan or quota commercial peanuts, at the option of the buying point operator, to the extent of the unused poundage quota on the peanut marketing card which is used to identify the peanuts for marketing;

(b) As contract additional peanuts to the extent of the unused contract poundage balance on the peanut marketing card which is used to identify the peanuts for marketing if the peanuts are being marketed through the contracting handler; or

(c) As loan additional peanuts.

§ 729.304 Marketing card entries.

(a) Immediately after each lot of peanuts is marketed the buyer, or the buyer's representative, shall make the following entries on the marketing card from the FSA-1007:

(1) The FSA-1007 serial number which identifies the lot of peanuts;

(2) The net pounds marketed;

(3) The unused poundage quota balance remaining after the marketing;

(4) The unused contract additional poundage balance remaining after the marketing;

(5) The handler's number, or for loan peanuts, the association number;

(6) The buying point number;

(7) The type of peanuts marketed; and

(8) Any penalties or claims collected.

(b) If noninspected peanuts are purchased at a buying point, the buyer, or the buyer's representative, shall make the following entries on the paper marketing card from the FSA-1030, Report of Purchase of Noninspected Peanuts;

(1) The date of marketing;

(2) The pounds purchased;

(3) The unused poundage quota balance remaining after the marketing;

(4) The unused contract additional poundage balance remaining after the marketing;

(5) The handler's number;

(6) The type of peanuts marketed; and

(7) Any penalties or claims collected.

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

(a) In addition to other remedies as may apply, a penalty is due from the person involved in a violation of this part and shall be assessed against such person at the basic penalty rate on:

(1) The quantity of peanuts which is marketed or considered to be marketed from a farm for domestic edible use in excess of the effective farm poundage quota for the farm.

(2) All peanuts produced on a farm for which the producer:

(i) Failed to report the peanut acreage as provided in accordance with part 718 of this chapter; or

(ii) Is responsible, if entry on the farm to authorized representatives of the Secretary for the purpose of determining the acreage of peanuts on the farm is refused or denied.

(3) The quantity of peanuts falsely identified, as determined by the county committee with the concurrence of the State committee. The quantity of peanuts subject to penalty under this provision shall be the quantity of peanuts determined by the county committee to have been falsely identified. Acts considered to be false identification shall include the following:

(i) Identifying or permitting the identification of peanuts at time of marketing as having been produced on a farm other than the farm of actual production;

(ii) Marketing or permitting the marketing of peanuts to a registered handler without identifying the peanuts with a peanut marketing card issued for the farm on which such peanuts were produced;

(iii) Permitting the use of the peanut marketing card for the farm to record a marketing of peanuts when, in fact, peanuts were not marketed from the farm; or

(iv) Marketing peanuts that have been commingled with those of another farm.

(4) All peanuts, the disposition of which the producer has failed to account for to the satisfaction of the county committee. The quantity of peanuts subject to penalty under this

§ 729.306

provision shall be the amount of peanuts determined by the county committee to have been marketed or considered marketed from the farm in excess of the quantity for which the producer has satisfactorily accounted.

(5) All additional peanuts marketed as contract additional peanuts in excess of the pounds contracted between the producer and handler as provided in part 1446 of this title.

(6) The quantity of farmers stock peanuts the county committee determines was necessary to plant the reported acreage for the crop year if the producer fails or refuses to file an accurate seed peanut report of seed purchases; and

(7) All peanuts marketed in violation of this subpart for reasons not otherwise enumerated in paragraph (a) of this section.

(b) If the reported acreage of peanuts on a farm differs from the determined acreage by more than the tolerance provided in part 718 of this chapter, a penalty at the converted rate shall be due from all producers on the farm on all peanuts marketed from the farm.

(c) Any penalty collected in excess of the correct amount as determined pursuant to this section may be refunded upon a finding by the county committee that an excess amount was collected.

§ 729.306 Farms with one acre or less of peanuts.

All peanuts produced on a farm on which the acreage of peanuts is one acre or less may be marketed for domestic edible use without incurring a marketing penalty if the producer who shares in the peanuts produced on any such farm does not share in the peanuts produced on any other farm.

§ 729.307 Assessment of penalties; joint and several liability.

Any person against whom a penalty is assessed in accordance with this subpart, shall be notified of the penalty assessment in writing by the appropriate county committee. Such notice shall state the amount of the penalty and the basis upon which the penalty is being assessed. The notice shall also state that the person against whom the penalty is being assessed may request

7 CFR Ch. VII (1-1-00 Edition)

reconsideration of the assessment of the penalty in accordance with part 780 of this chapter. If more than one person is liable for a penalty, the liability of all persons involved shall be joint and several liability.

§ 729.308 Lien for penalty.

(a) *Lien on peanuts.* Until the amount of any penalty provided by this part is paid, a lien on the crop of peanuts with respect to which such penalty is incurred, and on any subsequent crops of peanuts subject to poundage quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States.

(b) *Lien precedence.* The lien on the peanuts takes precedence over all claims and attaches at the time the debt is entered on a county claim record in the county FSA office for the county in which the subsequent crop is grown.

(c) *List of peanut marketing penalty debts.* Each county FSA office shall maintain a list of peanut marketing penalties for which a claim has been established and recorded in such office. The list shall be made available for examination upon written request by any interested person.

§ 729.309 Persons to pay penalty or collect debts.

(a) *Marketings to handlers.* The buyer shall be liable for the full penalty due on marketings of excess quota peanuts that such handler buys or otherwise acquires from a producer. Also, the buyer shall be liable with the producer for the full penalty due on peanuts purchased from a producer as additional peanuts in excess of the amount contracted with the producer as contract additional peanuts in accordance with part 1446 of this title. The buyer may deduct the penalty from the price paid to the producer for the peanuts. If the net value of a lot of peanuts is less than the penalty due on such lot, or if the handler fails to collect the penalty due on any marketing of a lot of peanuts from a farm, the buyer and each of the producers on the farm shall be held jointly and severally liable for the amount of any unpaid penalty due on such lot of peanuts.

(b) *Other marketings.* The producer is liable for the penalty due on any marketings of excess quota peanuts to persons who are not established peanut buyers.

(c) *Penalty for error on marketing card.* The producer and the buyer are jointly and severally liable for any penalties which may be due if the buyer made an error or failed to properly record the pounds of peanuts marketed on the producer's marketing card and such error resulted in marketings in excess of the effective poundage quota or the pounds contracted as additional peanuts in accordance with part 1446 of this title.

(d) *Notice to affected parties.* All affected parties shall be deemed to be on notice that penalties are due when the marketings of peanuts for domestic edible use exceed the effective poundage quota indicated on the marketing card or the marketing of peanuts as contract additional peanuts exceeds the amount contracted by the producer as additional peanuts in accordance with part 1446 of this title. In addition:

(1) *PPQ lien.* If a peanut poundage quota (PPQ) lien is recorded on a claim record maintained in a county FSA office in accordance with § 729.308 of this part or recorded on the peanut marketing card such recordation shall constitute notice to any peanut buyer that until the amount of the penalty involved plus accrued interest is paid, the United States has a lien on any peanuts, from any crop year that are subject to farm poundage quotas in which the person liable for payment of the penalty has an interest. Peanut poundage quota (PPQ) lien amounts shall be collected by the buyer and paid to the Farm Service Agency prior to making collection for any other liens or claims, except for a lien that was perfected before the PPQ lien became attached, as provided in § 729.308 of this part. Such buyer shall be liable for payment of such amount that was, or should have been, collected by the buyer.

(2) *U.S. claim.* If a U.S. claim, other than for a PPQ lien, is recorded on a marketing card, such recordation shall constitute notice to any peanut buyer that, to the extent of the indebtedness shown, and subject to prior liens, the

net proceeds from any price support loan due the debtor must be withheld from the producer and paid to the Farm Service Agency. Such buyer shall be liable for payment of such amount that was, or should have been, withheld.

(3) *Converted penalty rate.* If a converted penalty rate is entered on the marketing card by the county FSA office, the buyer shall collect penalty at such converted penalty rate on each pound of peanuts acquired from the producers of the peanuts. Any penalty that is collected must be paid to the Farm Service Agency. Such buyer shall be liable for payment of such amount that was, or should have been, collected by the buyer.

§ 729.310 Payment of penalty or other debt.

(a) *Method of payment.* A draft, money order, or check made payable to the Farm Service Agency may be used to pay any penalty, other indebtedness collected in accordance with this subpart, or interest thereon. All methods of payment shall be received subject to collection and payment at face value.

(b) *Due date.* The penalty becomes due on the date of marketing, or in the case of false identification or failure to account for the disposition of peanuts, the date the producer is notified of the false identification or the failure to account, as applicable.

(c) *Interest.* The person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of interest charged CCC for its borrowings by the United States Treasury on the date such penalty became due. If the rate charged CCC by the Treasury is increased, the interest due on the penalty may be, to the extent permitted by law, increased commensurately for the period of such increase. Interest shall accrue from the date the penalty was due if the penalty is not remitted within 30 days after the date the penalty was assessed. Nothing in paragraph (c) of this section, shall limit the liability of a person for pre-penalty interest where otherwise provided for in this part or otherwise provided for by law.

§ 729.311

7 CFR Ch. VII (1-1-00 Edition)

§ 729.311 Peanuts on which penalties are not to be assessed.

Notwithstanding other provisions in this subpart:

(a) *Error in weight.* A penalty shall not be collected if such penalty results from an error in net weight of a lot of peanuts marketed, as reported on Form FSA-1007, Inspection Certificate and Sales Memorandum, and the error does not exceed one-tenth of one percent of the correct net weight of such lot of peanuts. However, notwithstanding the preceding sentence, in the case of fraud or conspiracy, a penalty shall be due for any error in the net weight, regardless of the size or amount of the error.

(b) *Peanuts grown on State prison farms.* A penalty shall not be collected on peanuts grown on State prison farms for consumption within such State prison system, and so consumed.

(c) *Peanuts grown for experimental or research purposes.* (1) A penalty shall not be collected on the marketing of any peanuts that are:

(i) Grown only for experimental or research purposes, which shall include seed determined by the Deputy Administrator to be breeder or foundation seed;

(ii) Grown on land owned or leased by a publicly-owned agricultural experiment station, which shall include a State-operated seed organization;

(iii) Produced at public expense by employees of entities described in paragraph (c)(1)(ii) of this section, or are produced by farmers for seed determined by the Deputy Administrator to be breeder or foundation seed peanuts for experimental or research purposes pursuant to an agreement with a publicly-owned agricultural experiment station, which shall include such State-operated seed organizations.

(2) The exemption from penalty, as provided in paragraph (c)(1) of this section shall not apply unless:

(i) Such peanuts are used for purposes other than for:

(A) Food or feed, or

(B) Seed to produce peanuts for food.

(ii) The director of the applicable publicly-owned agricultural experiment station, including State-operated seed organizations, furnishes to the State FSA Executive Director:

(A) A list, by county, showing for each farm on which such peanuts are grown for experimental or research purposes, the name and address of the entity that supplies information; the name of the owner, and operator, if different from the owner, of the farm on which such peanuts are grown; and the acreage of peanuts grown for such experimental or research purposes;

(B) A signed statement that such acreage of peanuts will be grown for experimental and research purposes including breeder and foundation seed; such production of peanuts is necessary for the State-operated program conducted for such purposes by the entity; and such peanuts will be produced under the direction of representatives of such entity; and

(C) Such additional reports, if any, as the Deputy Administrator may require.

(d) *Unique strains used to plant green peanut acreage.* Seed peanuts used to plant peanuts for use as green peanuts shall not be subject to penalty if the county committee determines that such seed peanuts:

(1) Are unique strains of peanuts used for green peanuts.

(2) Are not commercially available, and,

(3) Are used exclusively to plant peanuts for harvest as green peanuts.

§ 729.312 Reduction or waiver of penalty.

(a) *Reduction or waiver of penalty.* The county committee may reduce or waive any penalty required to be assessed by this subpart in cases in which the county committee, with concurrence of the State committee, determines that the violations upon which the penalties were based were unintentional or without knowledge on the part of the parties concerned.

(b) *Time of reduction or waiver.* A penalty may be reduced or waived by an authorized official or committee either before or after it has been formally assessed. If the reduction or waiver is made before formal assessment, the notice of assessment shall state the amount of reduction or waiver and the basis upon which the reduction or waiver was made.

(c) *Reconsideration or appeal.* Any person against whom a penalty is assessed

under this subpart may, through a request for reconsideration or through an appeal, as applicable, request that the penalty be reduced or waived.

§ 729.313 Failure to comply with program.

Any person who has failed to comply with the provisions in this part because such person was misinformed or relied on the advice of an authorized representative of the Secretary in rendering performance under this part, and such person believed in good faith that such misinformation or advice met the requirements of the program as set forth in these regulations, may file a request with the State committee for review of an adverse county committee ruling with respect to such failure to comply. After review of the case, the State committee shall submit the case to the Deputy Administrator with its recommendation. The Deputy Administrator may grant relief as deemed appropriate in such case. This authority, however, does not extend to cases where such person knew or had sufficient reason to know that the action or advice of the representative of the Secretary upon which the person relied was improper or erroneous, or where the adverse action is based on changes made in the statutory authority of the program or changes in regulations issued for the program.

§ 729.314 Schemes and devices.

(a) Penalties shall be assessed in such manner as will correct for and nullify any action in which a person has knowingly, whether passively or actively:

(1) Engaged in, acquiesced in, or adopted any scheme or device which tends to defeat the purpose of the regulations in this part,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination.

(b) Such penalties as are provided for in this part shall be in addition to all other remedies and sanctions provided for, or permitted, by law.

§ 729.315 Handling Segregation 3 peanuts.

(a) *Disposition of Segregation 3 peanuts.* Any producer who has a lot of

farmers stock peanuts classified by the inspector as Segregation 3 peanuts shall retain such lot of peanuts for seed in accordance with paragraph (c) of this section or shall deliver such lot of peanuts:

(1) To the area association for a price support loan subject to such conditions as apply to eligibility for such loans including those in part 1446 of this title.

(2) As contract additional peanuts subject to provisions of part 1446 of this title;

(3) As quota peanuts, subject to the conditions set forth in this part to a handler who has signed the peanut marketing agreement provided the peanuts were produced for seed under an agreement with a State agency; or

(4) To a handler as quota peanuts if:

(i) The peanuts were produced for seed under an agreement with a State agency.

(ii) The handler to whom the peanuts are sold has, for that purpose, signed a supervision supplement to a warehousing contract with the area marketing association.

(b) *Failure to properly dispose of Segregation 3 peanuts—(1) Loss of price support.* If the producer does not, within the time allowed in this part for designation of the category for marketing such peanuts, dispose of Segregation 3 peanuts in the manner specified in this section, such producer shall be ineligible for continued quota price support for the remainder of the marketing year.

(2) *Liquidated damages.* Any peanut producer participating in the price support loan program shall be deemed to have agreed that:

(i) CCC will incur serious and substantial damage to its program to support the price of peanuts if Segregation 3 peanuts are disposed of other than in the manner prescribed by this subpart or by the CCC;

(ii) The amount of such damages will be difficult, it not impossible, to ascertain;

(iii) With respect to any lot of peanuts which is pledged as collateral for a quota price support loan but which is ineligible for such loan, or any lot of peanuts which is pledged as collateral for a quota price support loan by a producer after the producer has disposed

§ 729.316

7 CFR Ch. VII (1-1-00 Edition)

of any lot of Segregation 3 peanuts in any manner other than in the manner prescribed in this section, liquidated damages shall be due to CCC, not as a penalty, based on the difference between the quota loan rate and the additional loan rate (on a per pound basis) per net pound of such peanuts,

(iv) Such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer; and,

(v) This remedy shall be in addition to any other remedy or sanction available against the producer, including penalties under this part.

(c) *Retention of Segregation 3 peanuts for seed.* If the producer elects to retain a lot of Segregation 3 peanuts for seed, the buying point operator shall give a copy of the FSA-1007 to the producer as a record showing the quantity and quality factors of the peanuts. The producer:

(1) Shall designate such peanuts as quota peanuts.

(2) Shall have the net weight of such peanuts determined and deducted from the farm marketing card.

(3) Shall advise the inspector that the peanuts are being retained for seed.

(4) Must store such peanuts separate from other peanuts on the farm.

(5) Shall notify the county executive director when such peanuts are used and otherwise account for the disposition of such peanuts.

(6) Shall not sell such peanuts to a handler for seed; however, the peanuts may be sold to another producer for seed.

(7) May, if it is later determined that such peanuts are unfit for seed use and after receiving prior approval from the county office, sell such peanuts as quota peanuts for crushing without benefit of price support.

§ 729.316 **Marketing assessments.**

(a) Subject to adjustments in accordance with § 729.317, a nonrefundable marketing assessment shall, in the amount provided for in this section, be due on each pound of farmers stock peanuts marketed or considered marketed by a producer, including marketings by pledging peanuts as collateral for a price support loan. The per

pound assessment as a percentage of the applicable national average quota or additional peanut loan rate, shall be an amount equal to:

(1) 1.15 percent for the 1996 crop; and

(2) 1.2 percent for the 1997 through 2002 crops.

(b) *Collections and payment of marketing assessments.* The first purchaser of peanuts shall:

(1) Collect from the producer a marketing assessment equal to the quantity of peanuts acquired multiplied by:

(i) In the case of the 1996 crop, a per pound amount equal to .6 percent of the national average loan rate; and

(ii) In the case of each of the 1997 through 2002 crops, a per pound amount equal to .65 percent of the applicable national average loan rate.

(2) In addition to the amount collected under paragraph (1) of this section, pay a marketing assessment in an amount equal to the quantity of peanuts acquired multiplied by .55 percent of the applicable national average loan rate.

(c) *Private marketings.* For all peanuts retained on the farm for seed or other uses or marketed by such producer to any person outside the United States or marketed in private marketings through a retail or wholesale outlet to any person who is not required to register as a handler in accordance with part 1446 of this title, the producer shall pay a marketing assessment equal to the full amount determined by multiplying the per pound amount provided in paragraph (a) of this section by the gross weight of the peanuts if they are uninspected farmers stock peanuts or, if inspected, the net weight of such peanuts. If such peanuts are shelled before they are marketed, the quantity marketed shall be converted to a farmers stock equivalent as consistent with this part, for purposes of determining the amount of assessment that is due.

(d) *Loan collateral peanuts.* With respect to peanuts that are pledged as collateral for a price support loan through an approved warehouse, an assessment shall be:

(1) Determined and paid by multiplying the net weight of such peanuts by the applicable per pound amount

provided in paragraph (b)(1) of this section for private sales and deducting the total from the loan value of such peanuts before other deductions may be made for any other reason; and

(2) Further determined and paid by multiplying the net weight of such peanuts, when sold from the price support inventory, by the applicable per pound amount provided in paragraph (b)(2) of this section for private sales and collecting that amount from the person who acquires such peanuts from the applicable association or from the CCC.

(e) *Remittance of marketing assessments.* With respect to marketing assessments as provided in:

(1) Paragraph (b) of this section, such assessments shall be remitted in a manner prescribed by the Deputy Administrator. To avoid a penalty, as prescribed in this section, the marketing assessments due with respect to any lot of peanuts acquired directly from a producer must be remitted during the 15 days that follow the week in which the data from the applicable Form FSA-1007 is due to be transmitted to FSA in accordance with the provisions in part 1446 of this title. For purposes of this section a week shall be the 168 hour period that begins at 12:01 a.m. local time on any Sunday and the postmark on the envelope in which such marketing assessment is remitted may be the basis for determining whether the marketing assessment was remitted timely;

(2) Paragraph (c) of this section, such assessments shall be remitted, within 10 days after the date such peanuts are marketed, and shall be remitted to the county FSA office that serves the county in which the farm is administratively located. Peanuts that are retained on the farm for seed or other use, shall be considered marketed at the time the certification of marketings is filed or due to be filed at the county FSA office, whichever is earlier;

(3) Paragraph (d)(1) of this section, such assessments shall be credited by the association to the appropriate account of the CCC and in accordance with instructions issued by the Executive Vice President, CCC; and

(4) Paragraph (d)(2) of this section, such assessment shall be paid at the

time and in the manner prescribed in the applicable:

(i) Sales announcements for sales of farmers stock peanuts by CCC;

(ii) Sales announcement or other similar document issued by the association for association sales of loan stocks of farmers stock peanuts; and

(iii) Storage contract for farmers stock peanuts purchased by a handler when peanuts are purchased by such handler in accordance with the "immediate buyback" provisions set forth in § 1446.309.

(f) *Penalties.* If any person fails to collect, pay or timely remit the assessment required by this section, the person shall be liable in addition to principal and interest, for a penalty determined by multiplying the quantity of peanuts involved by 10 percent of the per pound national average quota support rate for the applicable crop year.

[61 FR 37565, July 18, 1996]

§ 729.317 Increased marketing assessments.

(a) *Applicability.* If area quota pool losses are not otherwise covered by the offsets prescribed by part 1446 of this title, and the transfer of marketing assessments collected in accordance with provisions of this part, the marketing assessment for quota peanut producers shall be:

(1) Increased by an amount needed by CCC to cover such losses; and

(2) Collected as determined by CCC on all quota peanuts marketed in the next marketing year in the area covered by the quota pool which had the loss.

(b) *Insufficient collections.* If the amount of such increased assessments collected on the marketing of quota peanuts in any year is less than the amount needed to cover the accumulated net pool losses for any crop, there shall be an increased assessment in subsequent years until the amount needed is collected.

(c) *Excess collections.* If the increased amount of assessments, as provided in this section, collected on the marketing of quota peanuts for any year is greater than the amount needed for the purpose for which the collection is made, the excess amount shall be retained to offset any losses which may

§ 729.401

occur in quota pools within that marketing area in subsequent years.

(d) *Collection procedures.* Unless otherwise specified by CCC, the collection procedures for the increased assessments shall be as provided for in § 729.316 and the assessment rates of § 729.316 shall be increased accordingly.

[61 FR 37566, July 18, 1996]

Subpart D—Recordkeeping and Reporting Requirements

§ 729.401 Peanuts marketed to persons who are not registered handlers.

(a) If peanuts are marketed to persons other than registered peanut handlers, the operator of the farm on which the peanuts were produced shall file a report of the marketings by executing Form FSA-1011, Report of Acreage and Marketing of Peanuts to Non-established Buyers. The FSA-1011 must be mailed or delivered to the county executive director of the county in which the farm is administratively located within 15 days after the marketing of peanuts from the farm has been completed. If peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, a daily or weekly summary of the quantity marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file an FSA-1011 as required or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts on the farm and may result in the assessment of marketing penalties, as provided in this part.

(c) All peanuts marketed to persons other than registered handlers shall be considered as marketings of quota peanuts.

§ 729.402 Report on marketing card.

The farm operator shall return each peanut marketing card to the issuing county FSA office as soon as marketings from the farm are completed or at such earlier time as the county executive director may request. At the time the last marketing card for a farm is returned, the farm operator

7 CFR Ch. VII (1-1-00 Edition)

shall execute a certification of the pounds of peanuts retained for seed or other use. Failure to return a marketing card or failure to execute the certification of the quantity of peanuts retained for seed or other uses shall constitute failure to account for the disposition of peanuts marketed from the farm. Marketing penalties may be assessed for such failure as provided in this part, unless a satisfactory report of disposition is furnished to the county committee.

§ 729.403 Report of marketing green peanuts.

(a) *Farm operator report.* The operator of each farm from which green peanuts are marketed shall report the marketing of green peanuts. The operator shall make the report by filing Form FSA-1011 at the FSA office of the county in which the farm is administratively located. The report shall show for the farm:

(1) The acreage on the farm from which peanuts were marketed solely as green peanuts; and

(2) The name and address of the buyer to, or through whom, each lot of green peanuts was marketed and the quantity in each lot marketed and the date marketed. However, if green peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, the report may be made as either a daily or weekly summary of the quantity so marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) *Buyer report.* Each buyer of green peanuts shall report purchases of green peanuts from producers on FSA-1011 to the county FSA office in the county in which the farm is administratively located. Small lot purchases not in commercial quantities including, but not limited to, street sales, local market sales, and grocery store sales shall not be subject to this reporting requirement. This report shall subject the buyer to a review of those purchase and sales records as required in this part. Each buyer shall keep records of green peanuts purchased including the following information:

(1) Date of purchase;

(2) Name and address of producer selling green peanuts;

(3) Name and address of farm operator and farm number (including State and county codes) of the farm on which the green peanuts were produced; and

(4) Pounds of green peanuts purchased.

(c) *Failure to file green peanut report.* Failure to file any report of the marketing of green peanuts as required by this section or the filing of a report which the county committee finds to be incomplete or inaccurate shall, subject the farm operator or buyer, as applicable, to marketing penalties as set forth in this part.

§ 729.404 Report of acquisition of seed peanuts.

(a) If peanuts are planted on a farm in the current year and the seed peanuts were acquired by purchase or gift, the farm operator shall file a report with the county FSA office of the acquisition of the seed peanuts. The report must be filed by the farm operator at the time a report of planted acreage of peanuts is made in accordance with provisions of part 718 of this chapter. The report shall include:

(1) The name and address of the handler or person from whom peanuts were purchased or obtained as a gift for the purpose of planting the peanut acreage on the farm in the current year;

(2) The pounds of peanuts acquired for seed;

(3) The basis (farmers stock or shelled) of determining the quantity acquired;

(4) The type of peanuts acquired; and

(5) The date of acquisition.

(b) Unique strains of peanuts that are not commercially available and are retained on a farm to plant green peanuts shall also be reported to the county FSA office.

§ 729.405 Report of production and disposition.

(a) In addition to any other reports which may be required under this subpart, the farm operator or any producer on the farm shall furnish, upon written request by certified mail from the State Executive Director, a report to the State committee of production and disposition of the peanuts grown

on the farm. The report must be filed on FSA-1010, Report of Production and Disposition, within 15 days after the request is mailed. The report shall show the:

(1) Final acreage of peanuts on the farm;

(2) Total production of peanuts on the farm;

(3) Name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds in each lot, and the date marketed;

(4) Quantity and disposition of peanuts not marketed; and

(5) Type of peanuts.

(b) Notwithstanding paragraph (a) of this section, if peanuts are marketed in small lots to persons who are not established buyers, the report otherwise required in paragraph (a) of this section, may be made as either a daily or weekly summary of the number of pounds marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(c) Failure to file the FSA-1010 as requested or the filing of an FSA-1010 which is found by the State committee to be incomplete, incorrect, or in violation of the requirements of paragraphs (a) or (b) of this section, shall constitute failure of the producer to account for the production and disposition of peanuts produced on the farm and will subject the producer to marketing penalties as set forth in this part.

§ 729.406 Persons engaged in more than one business.

Any person who is required under this subpart to keep any record or make any report as a buyer, processor, or other person engaged in the business of shelling or crushing peanuts, and who is engaged in more than one such business, shall keep such records for each such business.

§ 729.407 Penalty for failure to keep records and make reports.

Any person, who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, common carrier of peanuts, any broker or dealer in peanuts, any agency marketing peanuts for a buyer or

§ 729.408

dealer, any peanut growers' cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut combine, or any farmer engaged in the production of peanuts, who fails to make any report or keep any record, including electronic records, as required under this part or who makes any false report or record shall be deemed to have improperly handled peanuts for the quantity of peanuts to which such failure applies for which a penalty may be assessed under the provisions of this part or part 1446 of this title, as applicable. Such liability is in addition to criminal penalties or other remedies permitted by law.

§ 729.408 Examination of records and reports.

The Deputy Administrator, the Director of the Tobacco and Peanuts Division, the FSA State Executive Director, or their designees, and all auditors and agents of the Office of Inspector General, United States Department of Agriculture (USDA) or the General Accounting Office are authorized to examine any records of any producer, or handler, or person buying or processing peanuts as deemed necessary to enforce the peanut poundage quota program and shall be allowed access to such records. Upon a request for such examination, any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of pea-

7 CFR Ch. VII (1-1-00 Edition)

nuts, any broker or dealer in peanuts, any farmer engaged in the production of peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut combine, shall make available for examination such books, papers, automated records, electronic records, accounts, correspondence, contracts, documents, and memoranda as are under the control of the person receiving the request which any person hereby authorized to examine records has reason to believe are relevant to any matter which relates to the provisions of this part. Any person who fails to provide such access shall be subject to a penalty payable to CCC in amount up to, as determined by the Deputy Administrator, the amount calculated by multiplying the amount of peanuts involved by the quota support rate for the applicable crop year.

§ 729.409 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for a period of 3 years after the end of the marketing year. Records shall be kept for such longer periods of time as may be required in writing by the State Executive Director, or the Director of the Tobacco and Peanuts Division.