

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 1001

#### 5 CFR Chapter XXXV

RIN 3206-AG87, 3209-AA15

### Supplemental Standards of Ethical Conduct for Employees of the Office of Personnel Management

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule for employees of OPM that supplements the executive branch-wide Standards of Ethical Conduct (Standards) issued by OGE. The interim rule contains a notice requirement designed to ensure that OPM employees do not use their official positions or nonpublic information to obtain an advantage for themselves or for certain other persons on competitive and other examinations relating to Federal service, and a requirement for OPM employees to obtain prior approval before engaging in certain types of outside activities. The Office of Personnel Management is also repealing that portion of its internal standards of conduct regulations that was retained on an interim basis pending issuance of its supplemental regulations, and those portions of its internal standards of conduct regulations that were superseded by the new Standards or by the executive branch financial disclosure regulations issued by OGE. The Office of Personnel Management is retaining in its internal standards of conduct regulation a separate Privacy Act conduct code and adding a cross-reference to ethics and other conduct-related statutes and regulations.

**DATES:** Interim rule effective July 16, 1996. Comments must be received on or before August 15, 1996.

**ADDRESSES:** Send comments to: Lorraine Lewis, General Counsel, Office of Personnel Management, Room 7353, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Nancy Lee Gregg, Alternate Designated Agency Ethics Official, Office of the General Counsel, Office of Personnel Management, (202) 606-1701.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch. See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions for certain existing provisions at 59 FR 4779-4780, 60 FR 6390-6391, and 60 FR 66857-66858. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel. With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Office of Personnel Management, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new 5 CFR chapter XXXV, consisting of part 4501, are necessary in light of OPM's unique programs and operations for the successful implementation of OPM's ethics program.

The Office of Personnel Management is simultaneously repealing the provisions of its internal employee responsibilities and conduct regulations in 5 CFR part 1001 which have already been superseded or which will be superseded upon issuance of these supplemental regulations, and is replacing those provisions with a new section that provides cross-references to 5 CFR part 2635 and other precepts that pertain to employee conduct. A Privacy Act conduct code is also being retained.

## II. Analysis of the Regulations

### Section 4501.101 General

Section 4501.101 explains that the regulations apply to all OPM employees and supplement the executive branch-wide Standards in 5 CFR part 2635. Section 4501.101 also provides a cross-reference to the executive branch employee responsibilities and conduct regulations contained in 5 CFR part 735, the OPM employee responsibilities and conduct regulations in 5 CFR part 1001, the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634, and the executive branch-wide regulation regarding outside employment at 5 CFR part 2636.

### Section 4501.102 Examination Information

Section 4501.102 supplements the prohibitions on use of public office for private gain at 5 CFR 2635.702 and the prohibitions on use of nonpublic information at 5 CFR 2635.703.

Under § 4501.102(a), an OPM employee who takes part in the construction of written tests or other assessment devices, has access to such material, or is involved in the examination rating process must notify his or her supervisor before filing to take a competitive examination, an internal competitive examination or an Armed Services entrance examination. Supervisory notification is also required when an employee knows that the employee's spouse, minor child, or business general partner intends to take such an examination.

As indicated by the supervisory responsibilities set forth in paragraph (b) of § 4501.102, the purpose of the notification requirement is to ensure, either by the assignment of official duties that will not place the employee in contact with information relating to the examination to be taken or by substituting an examination about which the employee does not have information, that the employee does not have knowledge of questions on, answers to, or methods of scoring the test or other assessment device in issue. Proper exercise of these supervisory responsibilities will foreclose the possibility of any suggestion that an OPM employee who has a role in devising tests or other assessment devices has profited unfairly, or that the employee's spouse, minor child, or general partner has profited unfairly,

from possible use of nonpublic information or other knowledge gained in the course of the employee's official duties. It also protects the integrity of the examination process and ensures that the prospects of others subject to that process are not diminished by any OPM employee's use of nonpublic information or use of public office for private gain.

The examination information provisions of § 4501.102 are similar to, but more specific than, those which had been in effect under OPM's employee responsibilities and conduct regulations at 5 CFR 1001.735-206, which is now being repealed (see below). Whereas § 1001.735-206 had imposed the notice requirement on all OPM employees, § 4501.102 applies only to those OPM employees who have some direct connection with the examination process.

#### *Section 4501.103 Prior Approval for Certain Outside Activities*

Under 5 CFR 2635.803, agencies may, by supplemental regulations, require employees to obtain approval before engaging in outside employment and activities. Under 5 CFR 1001-735.203, which is now being revoked, OPM employees have long been required to provide notice of, or obtain approval for, proposed outside employment and activity under a variety of circumstances. OPM has found this requirement useful in ensuring that the outside employment activities of employees conform with all applicable laws and regulations. In accordance with 5 CFR 2635.803, OPM has determined that it is necessary to the administration of its ethics program to continue to require prior approval for certain types of outside employment and activities that pose a potential for employees to engage in conduct that might violate applicable laws and regulations.

As compared to the requirement that has been imposed by 5 CFR 1001-735.203, § 4501.103(a) has been changed to clarify the requirement, and to narrow its scope, consistent with the Standards. Section 1001-735.203 has required OPM employees, other than special Government employees, who engage in any kind of outside paid employment on a substantially regular basis to provide notice of such employment to their supervisors. In addition, § 1001-735.203 has required OPM employees to obtain approval before serving as members of committees or boards which plan or advise on training courses or programs offered by non-Government organizations; before accepting

appointments as faculty members for after-hours teaching; and in order to hold elective office in the employee's local community government. In contrast to § 1001.735.203, § 4501.-103(a) requires prior approval for four types of outside activities on the part of OPM employees (again excluding special Government employees).

Under § 4501.103(a)(1), the first type of outside activity for which OPM employees must obtain prior approval is the provision of professional services that involve the application of the same specialized skills or the same educational background as performance of the employee's official duties. Such outside activities may raise a strong possibility of a violation of the Standards. For purposes of this section, "professional services" is defined in § 4501.103(d)(3) on the basis of the definition of "profession" established by OGE in its executive branch-wide regulations at 5 CFR 2636.305(b)(1), and means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession. Secretarial and clerical positions are not, for purposes of this requirement, considered to provide "professional services."

Under § 4501.103(a)(2), the second type of outside activity for which OPM employees must obtain prior approval is teaching, speaking, or writing that relates to the employee's official duties. Unlike the requirement in 5 CFR 1001.735-203 for prior approval of after hours teaching, this section requires prior approval of outside speaking and writing, as well as outside teaching, but only if it "relates to the employee's official duties." Consistent with the Standards, the term "relates to the employee's official duties" is defined in § 4501.103(d)(5) as having the meaning given in 5 CFR 2635.-807(a)(2)(i)(B) through (a)(2)(i)(E). Under that definition, teaching, speaking, or writing relates to the employee's official duties if the invitation to teach, speak, or write is extended primarily because of the employee's official position; if the invitation or the offer of compensation (when the employee is to be compensated for the activity) is extended by a person whose interests may be affected substantially by the employee's performance or nonperformance of his or her official duties; if the activity draws substantially on "nonpublic information," a term which § 4501.103(d)(2) defines as having the meaning set forth in § 2635.703(b) of the Standards and which therefore includes information that the employee gains by

reason of Federal employment and that the employee knows or reasonably should know has not been made available to the general public; if the subject of the activity deals in significant part with OPM programs, operations or policies or with the employee's current or recent assignments; or, in the case of a noncareer employee as defined in 5 CFR 2636.303(a), if the subject of the activity deals in significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of OPM.

Under § 4501.103(a)(3), the third type of outside activity for which OPM employees must obtain prior approval is certain service for a "prohibited source." The term "prohibited source" is defined in § 4501.103(d)(4) as having the meaning set forth in § 2635.203(d) of the Standards, and therefore means any person who is (and also any organization more than half of whose members are) seeking official action by OPM, doing or seeking to do business with OPM, regulated by OPM, or substantially affected by the performance or nonperformance of the employee's duties. The kind of services for a prohibited source for which § 4501.103(a)(3) requires prior approval are those which could raise a question of conflicting financial interests under subpart D of the Standards or a question of loss of impartiality in performing official duties under subpart E of the Standards. Those services include service as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or "active participant." The term "active participant" is defined in § 4501.103(d)(1) as having the meaning set forth in subpart E of the Standards, at 5 CFR 2635.502(b)(1)(v). In accordance with that definition, payment of dues to an organization, or the donation or solicitation of financial support, alone does not constitute active participation.

An exception to the prior approval requirement in § 4501.-103(a)(3) excludes from the prior approval requirement therein a number of uncompensated and volunteer activities that are unlikely to raise issues under the Standards. Specifically, employees do not have to obtain approval before providing the services listed in § 4501.103(a)(3), if the service is without compensation (other than reimbursement of expenses) and the prohibited source for which the service is to be provided is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic

organization. However, prior approval for such an activity is required if the activity is covered by another of the prior approval requirements in this section. In addition, because OPM exercises general supervision over all operations of the Combined Federal Campaign (CFC), through which nonprofit organizations receive or seek to receive charitable fundraising support in the Federal workplace, prior approval is required by § 4501.103(a)(3) if the organization that is a prohibited source receives or seeks to receive fundraising support through the CFC, and the employee's official duties would involve him in administration of the CFC program.

Under § 4501.103(a)(4), the fourth type of outside activity for which OPM employees must obtain prior approval is the provision of services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter in which the United States is a party, or in which the United States has a direct and substantial interest, or if the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency. Under 5 CFR 2635.805, employees are required to obtain authorization before acting as expert witnesses, other than on behalf of the United States, in any proceeding before a Federal court or agency in a matter in which the United States is a party or has a direct and substantial interest. Paragraph (a)(4) of § 4501.103 is intended to cover such testimony as an outside activity, thus eliminating the need to create a separate procedure for the required authorization. In addition, requiring prior approval under these circumstances will help employees to avoid violating the representational bars in 18 U.S.C. 203 and 205. Consistent with the Federal Service Labor Management Relations Statute (5 U.S.C. chapter 71) and the "personnel administration proceedings" exception at 18 U.S.C. 205(d), an exception in § 4501.103(a)(4) provides that prior approval is not required for OPM employees acting on behalf of the labor organization that is the exclusive representative of the OPM employees in the unit it represents to represent an employee who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Section 4501.103(b) sets forth the procedures for submitting a request for approval of an outside activity, specifying the information to be included in the employee's request, and the contents of a certification the

employee is to submit with the request for approval.

Section 4501.103(c) specifies the standard for granting approval. Approval shall be granted only upon a determination by the agency official designated authority to make such a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation.

Section 4501.103(d) defines the terms "active participant," "nonpublic information," "professional services," "prohibited source," and "relates to the employee's official duties," for purposes of the section, as explained above, consistent with the Standards and other regulations issued by OGE.

Requiring prior approval will give OPM managers the opportunity to review the proposed employment or activity in light of the employee's official duties and to consult with an agency ethics official concerning the applicability of Federal conflict of interest statutes and ethics regulations to the proposed activity. The executive branch-wide Standards, at 5 CFR 2635.802, explain that an activity conflicts with an employee's official duties if it is prohibited by statute or by an agency supplemental regulation, or if, under the standards set forth in §§ 2635.402 and 2635.502 of the Standards, it would require the employee's disqualification from matters so central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of his or her position would be materially impaired. Even where prior approval is not required, conflict of interest statutes and the Standards may restrict the actions of employees in connection with participation in such activities or organizations.

### III. Repeal of Portions of OPM's Internal Regulations Regarding Employee Conduct and Related Modifications

The interim rule repeals those portions of the regulations at 5 CFR part 1001 governing OPM employees' responsibilities and conduct that were superseded by the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, or by the financial disclosure regulations at 5 CFR part 2634, the requirement for prior approval of outside employment at 5 CFR 1001.735-203 (which now appears, in revised form, at 5 CFR 4501.103), and 5 CFR 1001.735-208, which was in the nature of a directive to OPM procurement personnel. It also repeals portions of part 1001 that duplicate the

employee responsibilities and conduct regulations contained in 5 CFR part 735.

These actions leave in 5 CFR part 1001 only the code of conduct required by the Privacy Act of 1974, at 5 U.S.C. 552a(e)(9). The Privacy Act code of conduct for OPM employees, previously contained at 5 CFR 1001.735-206a, is redesignated as § 1001.102 and follows a new § 1001.101 which provides a cross-reference to ethics and other conduct-related statutes and regulations.

## IV. Matters of Regulatory Procedure

### *Administrative Procedure Act*

Under 5 U.S.C. 1103(b)(1) and 1105, these regulations are not subject to the rulemaking requirements of the Administrative Procedure Act, at 5 U.S.C. 553 (b), (c), and (d), because they apply solely to OPM or its employees. Furthermore, OPM finds good cause that it is in the public interest that these internal regulations take effect as an interim rule upon the date of publication of this Federal Register rulemaking document.

### *Executive Order 12866*

In promulgating these interim regulations, OPM has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These regulations have not been reviewed by the Office of Management and Budget under that Executive order, as they deal with agency management and personnel matters and are not, in any event, "significant" thereunder.

### *Regulatory Flexibility Act*

As Director of OPM, I certify that this regulation will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

### *Paperwork Reduction Act*

As Director of OPM, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

### List of Subjects

#### *5 CFR Part 1001*

Conflict of interests, Government employees.

#### *5 CFR Part 4501*

Conflict of interests, Government employees.

Dated: July 2, 1996.

James B. King,

Director, Office of Personnel Management.

Approved: July 5, 1996.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Personnel Management, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations as follows:

## CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

### PART 1001—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 1001 is revised to read as follows:

Authority: 5 U.S.C. 552a, 7301.

#### Subparts A, B, C and D [Amended]

2. Subpart A, consisting of §§ 1001.735–101 through 1001.735–103; §§ 1001.735–201 through 1001.735–206 and 1001.735–207 through 1001.735–214 of subpart B; and subparts C and D, consisting of §§ 1001.735–301 through 1001.735–304 and 1001.735–401 through 1001.735–412, respectively, of part 1001 are removed.

3. A new § 1001.101 is added to read as follows:

#### § 1001.101 Cross-reference to financial disclosure requirements and other conduct rules.

In addition to the regulations contained in this part, employees of the Office of Personnel Management (OPM) should refer to:

(a) The Standards for Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635;

(b) The OPM regulations at 5 CFR part 4501, which supplement the executive branch-wide standards;

(c) The Employee Responsibilities and Conduct regulations at 5 CFR part 735;

(d) The executive branch financial disclosure regulations at 5 CFR part 2634;

(e) The executive branch outside employment regulations at 5 CFR part 2636; and

(f) The restrictions upon use of political referrals in employment matters at 5 U.S.C. 3303.

4. Section 1001.735–206a is redesignated as § 1001.102, and the heading is revised to read “Privacy Act rules of conduct.”

5. A new chapter XXXV, consisting of part 4501, is added to read as follows:

## CHAPTER XXXV—OFFICE OF PERSONNEL MANAGEMENT

### PART 4501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OFFICE OF PERSONNEL MANAGEMENT

Sec.

4501.101 General.

4501.102 Examination information.

4501.103 Prior approval for certain outside activities.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.702, 2635.703, 2635.–802, 2635.803, 2635.805.

#### § 4501.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Office of Personnel Management (OPM) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, OPM employees are subject to the responsibilities and conduct regulations contained in 5 CFR parts 735 and 1001, the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634, and the executive branch regulations regarding outside employment at 5 CFR part 2636.

#### § 4501.102 Examination information.

(a) An employee of OPM who takes part in the construction of written tests or any other assessment device, has access to such material, or is involved in the examination rating process, shall notify his supervisor, in writing, when he intends to file for a competitive examination, an internal competitive examination, or an Armed Services entrance examination. The employee also must give such notice if he knows that his spouse, minor child, or business general partner intends to take any of these examinations.

(b) The employee's supervisor or other appropriate authority will arrange the employee's duty assignments to prevent his contact with materials related to the examination or examinations that will be taken. If the test material involved in the forthcoming examination has already been exposed to the employee, arrangements will be made for the employee or other person concerned to be given an alternate test.

(c) The employee's supervisor is responsible for seeing that notifications given by employees under this section are transmitted promptly to the Test

Security Officer in OPM's Employment Service.

#### § 4501.103 Prior approval for certain outside activities.

(a) *Prior approval requirement.* An employee, other than a special Government employee, shall obtain written approval before engaging—with or without compensation—in the following outside activities:

(1) Providing professional services involving the application of the same specialized skills or the same educational background as performance of the employee's official duties;

(2) Teaching, speaking, or writing that relates to the employee's official duties;

(3) Serving as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or active participant for a prohibited source, except that prior approval is not required by this paragraph (a)(3) to provide such service without compensation (other than reimbursement of expenses) for a prohibited source that is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless prior approval for the activity is required by paragraph (a)(1), (a)(2), or (a)(4) of this section, or unless the organization receives or seeks to receive fundraising support through the Combined Federal Campaign (CFC) under 5 CFR part 950 and the employee's official duties involve the administration of the CFC program; or

(4)(i) Except as provided in paragraph (a)(4)(ii) of this section, providing services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter:

(A) In which the United States is a party;

(B) In which the United States has a direct and substantial interest; or

(C) If the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency.

(ii) Prior approval is not required by paragraph (a)(4)(i) of this section for OPM employees acting on behalf of the labor organization that is the exclusive representative of the OPM employees in the unit it represents to provide services as an agent or attorney for, or otherwise to represent, such an OPM employee who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

(b) *Submission of requests for approval.* (1) Requests for approval shall

be submitted in writing to the agency designee, through normal supervisory channels. Such requests shall include, at a minimum, the following:

(i) The employee's name and position title;

(ii) The name and address of the person or organization for whom the outside activity is to be performed;

(iii) A description of the proposed outside activity, including the duties and services to be performed while engaged in the activity; and

(iv) The proposed hours that the employee will engage in the outside activity, and the approximate dates of the activity.

(2) Together with his request for approval, the employee shall provide a certification that:

(i) The outside activity will not depend in any way on nonpublic information;

(ii) No official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside activity; and

(iii) The employee has read subpart H ("Outside Activities") of 5 CFR part 2635.

(3) Upon a significant change in the nature or scope of the outside activity or in the employee's official position, the employee shall submit a revised request for approval.

(c) *Approval of requests.* Approval shall be granted only upon a determination by the agency designee, in consultation with an agency ethics official when such consultation is deemed necessary by the agency designee, that the outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Definitions.* For purposes of this section:

(1) *Active participant* has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) *Nonpublic information* has the meaning set forth in 5 CFR 2635.703(b).

(3) *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1).

(4) *Prohibited source* has the meaning set forth in 5 CFR 2635.203(d).

(5) *Relates to the employee's official duties* has the meaning set forth in 5 CFR 2635.807(a)(2)(i)(B) through (a)(2)(i)(E).

[FR Doc. 96-18020 Filed 7-15-96; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 729

RIN 0560-AE82

#### Amendments to the Peanut Poundage Quota Regulations

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule sets forth regulations for Federal farm peanut poundage quotas in order to implement provisions of the Agricultural Market Transition Act of 1996 (the 1996 Act) for the 1996 through 2002 crops of peanuts. The amendments to the regulations adopted in this interim rule involve: eliminating the national poundage quota floor; eliminating the undermarketing carryover provisions; establishing temporary seed quota allocations; establishing the ineligibility of certain farms for quota allocation; authorizing the inter-county transfer of farm poundage quota in all States, subject to certain percentage limitations on certain transfers in certain States; eliminating the special allocations of increased quotas for certain Texas counties; and establishing new provisions for "considered-produced" credit with respect to a farm whose quota has been transferred.

**DATES:** Effective April 4, 1996.

Comments must be received on or before August 15, 1996, to be assured consideration.

**ADDRESSES:** Submit comments on the interim rule to: Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture, Room 5750-S, Ag Code 0514, P.O. Box 2415, Washington, DC 20013-2415. All written submissions made pursuant to this rule will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., during regular Federal workdays.

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

#### SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because the Farm Service Agency (FSA) is not

required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.  
Environmental Evaluation

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

#### Unfunded Federal Mandates

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

#### Federal Assistance Program

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

#### Executive Order 12372

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

#### Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule do not preempt State laws to the extent that such laws are inconsistent with the provisions of this interim rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 729, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted. This rule has been made retroactive to April 4, 1996, in order to affirm determinations for the current crop year that had to be made in advance of this notice because of the time of the passage of the 1996 Act and the onset of the planting season for peanuts.

#### National Appeals Division Rules of Procedure

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