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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota Regulations for the 1986 Through 1990 Crops of Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations for the 1986-1990 crops of peanuts regarding the allocation of farm poundage peanut quotas and related matters. Among other provisions, the final regulations address: (1) Establishment of farm quotas; (2) prorating quota increases to quota farms and to farms that previously were "nonquota farms"; (3) reductions in quota for nonproduction; (4) reallocation of quotas reduced for nonproduction or which were permanently or temporarily released; (5) adjusting farm quotas for undermarketings; and (6) transferring peanut quotas between farms. Regulations for identification of marketings, assessment of marketing penalties, and processing of marketing violations will be issued in a later publication in the *Federal Register*. The promulgation of this rule is necessary in order that State and farm poundage quotas may be established for the 1986 crop of peanuts.

DATE: Effective June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Paul P. Kume (ASCS) 202-447-9003. The Impact Analysis describing the options considered in developing the final rule is available upon request.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1

and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this final rule applies are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service 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.

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

A notice of proposed rulemaking with respect to poundage quota regulations for the 1986-1990 crop of peanuts was published in the *Federal Register* on April 1, 1986 (51 FR 11274).

Statutory Requirements

The Food Security Act of 1985 (Pub. L. 99-198) (the "1985 Act") which was enacted on December 23, 1985, amended the Agricultural Adjustment Act of 1938 (the 1938 Act) and the Agricultural Act of 1949 (the 1949 Act) to make significant changes in the administration of the peanut production and price support program.

This final rule sets forth the procedures for the establishment of farm poundage quotas and other terms and conditions of the program affecting the production of peanuts, such as quota adjustments due to changes in the national quota, reductions in quota for nonproduction and reallocation of quotas reduced for nonproduction or permanently released. These regulations are based on previous regulations that

were applicable to the 1982-1985 crops, with modifications designed to reflect changes made by the 1985 Act. The primary impact of these regulations is to establish the manner in which quotas will be allocated to farms.

General Summary of Comments

There were several comments received relating to the shortness of the comment period and requesting that the implementation of the rules be delayed because farmers have made plans for the 1986 crop such as borrowed money to produce the 1986 crop, made soil preparation and in most instances, planted the 1986 peanut crop.

The Department conducted an extensive informational campaign consisting of national and local press releases, local radio and television spot announcements. A summary of the provisions of the proposed rule and questions and answers based upon the provisions of the proposed rule were mailed from each county Agricultural Stabilization and Conservation Service (ASCS) office to all farm operators on which peanuts were produced or had an established quota from the 1985 crop explaining the major changes in the proposed regulations. Copies of the proposed rule were available by April 8, 1986, in local county ASCS offices for review by any interested person. Also, copies of the proposed rule were either delivered to or mailed to persons requesting a copy from the National, State, or county ASCS office. In view of the efforts made by the Department to advise peanut producers of the contents of the proposed rule, the period for comments appears to have been adequate. The Department continued to consider and summarize comments received through close of business on April 28, 1986.

A total of 969 comments were received from various individuals. A total of 919 comments were received from farmers, 9 from farm organizations, 10 from grower groups, 8 from U.S. Senators, 10 from Members of the House of Representatives, 1 from a State Senator, 2 from State Commissioners of Agriculture, 6 from State and county ASC committees, 1 from a State extension service and 3 from bankers.

Discussion of Comments

1. Distribution of national quota increase and considered produced credit.

(a) *Quota increases.* Under the rule, in accordance with section 358 of the 1938 Act, if the national peanut quota is increased, each State will take a share of the increase based upon the State's previous percentage share of the national quota. Section 358 further provides that such increase shall be allocated equally among: (i) all farms in the State of each of which a farm poundage quota was established for the marketing year immediately preceding the marketing year for which the allocation is being made; and (ii) all other farms in the State on each of which peanuts were produced in at least two of the three immediately preceding crop years, as determined by the Secretary.

Under the rule, as proposed, two steps were taken in making this allocation for each State with farms eligible for a quota increase due to an increase in the national quota. First, the number of eligible farms in both categories were added and the total was divided into the amount by which the quota was increased. There were 226 comments expressing the view that the result so obtained should be the quota allocated to each of the quota and nonquota farms.

The proposed rule, however, provided a second step. The result so obtained was to be multiplied by the number of quota farms and by the number of nonquota farms to determine each category's share of the quota. The share for quota farms would then be divided among individual "quota farms" based upon the higher of: (1) The farm's quota for the preceding year or (2) the average production of peanuts on the farm for those two marketing years, out of the three preceding marketing years, in which the farm's production was highest. The share for nonquota farms would be divided among individual nonquota farms based on the same type of production history as provided for quota farms.

There were 226 comments supporting such an allocation. An additional 146 comments would also support this type of allocation if the allocation to quota farms was made only on the basis of the 1985 quotas.

Other comments supported varying alternative methods of allocation. There were also suggestions that the increase in quota be allocated to quota farms only and some suggestions that such increases be allocated to nonquota

farms only. Neither allocation would be permitted by the 1985 Act.

From the comments received, the consensus appeared to be that the allocation of a State's increase in quota should be done on some basis other than each quota and nonquota farm receiving the same amount of the increase, regardless of production history or other factors. Factors suggested, as in the proposed rule, included previous production and previous quota.

It has been determined that the rule, as proposed, should be adopted on this issue. Ignoring actual production would produce disparate and unfair results by ignoring the actual investment of producers in peanut production. Moreover, to ignore production would fail to account for the fact that a number of peanut farms are combinations of other farms. In addition, to ignore production would mean that to some degree the ability to satisfy demand for food uses of peanuts could be moved from farms in one locale to those in another. Such results, it is believed, were not intended by the amendments made by the 1985 Act to Section 358 of the 1938 Act.

The language of section 358 of the 1938 Act, with respect to the allocation of an increase in a State's quota due to increases in the national quota, is similar to that which was contained in Section 802 of H.R. 2100, 99th Cong., 1st Sess. House Report No. 99-271, accompanying H.R. 2100, contained at page 52 the following statement with respect to this provision:

These changes in current law will provide a balance in the distribution of new quota and address the issue of new growers' entrance into the current program in a fair and equitable fashion, [sic] By recognizing the need to permit entrances of the new growers into the current system, the bill addresses issues raised previously in a manner which is least economically disruptive to the areas currently producing peanuts.

The rule as proposed accomplished such an equitable balance and met the demand of the statute for equal treatment for quota and nonquota farms. It has been determined in that regard that it would not be appropriate to ignore actual production for either "quota farms" or "nonquota farms". As indicated, some suggested that even if the proposed rule were otherwise adopted, the increase for "quota farms" should be based solely on each farm's previous quota. It is argued by those suggesting such a limitation that those farms that produced both quota and "additional peanuts" contributed to the costs of the peanut program and should

not, by virtue of their production of additional peanuts, obtain a higher quota than they would have otherwise. However, there was nothing in the previous law which prohibited the growing of additional peanuts in an amount which the producer deemed appropriate and indeed it was anticipated by Congress when it reduced the national quota in previous years that a portion of the demand for domestic edible uses would be made up by sales of additional peanuts through special "buyback" procedures. Further, to ignore actual production for quota farms would not ignore the basic orientation of actual production of provisions with respect to allocation of the quota increase, but would also result in an unjustifiable treatment of farms which may have incidentally acquired a small peanut quota but produced a large quantity of additional peanuts. In such cases—were actual production to be ignored—the farm could receive a substantially lower quota than if the farm previously had no quota at all.

Commenters suggested other variations on quota increases; e.g., one commenter objected to the provision of the proposed rule that a farm with one acre or less of production would not be considered to have produced peanuts for quota increase purposes. The 1938 Act specifically exempts production on one acre or less from regulation under the Act. Such production is treated, effectively, as nonproduction. To do otherwise in the rule would be contrary to the Act and unworkable.

Some commenters also suggested that producers be granted quota increases directly rather than tying the quota to a farm. Adoption of that suggestion is prohibited by the Act, *ge a20jn0057*

(b) *Considered produced credit.* Under the 1938 Act, for the 1986-1990 crops, quotas can, "insofar as practicable and on such fair and equitable basis" as the Secretary may prescribe, be reduced to the extent to quota is not produced or "considered produced" on the quota farm for two out of three preceding years.

The 1983 Act specifies that a quota can be "considered produced" on the quota farm if production was not possible due to a natural disaster or other condition beyond the producer's control.

The proposed rule specified that: (1) Quotas would be considered produced for the 1983-85 crops if leased or transferred to a farm with the same owner or operator, or if transferred by a "fall" (post-planting) lease and (2) for the 1986 and subsequent crops, quotas would be considered produced if

production on the quota farm was not possible due to conditions beyond the producer's control.

The issue generated 292 comments. A number of suggestions were made. First, some suggested that in all cases leased quotas should be considered produced. Some argued that leasing is necessary to combine quotas into marketable quantities. Some of these commenters, however, would limit such protection to quotas transferred to farms with the same operator.

Some argued that reductions for non-production should not be made for the 1986 crop since planting may have already occurred.

Others suggested that it would be unfair to reduce quotas that were leased under circumstances which, for the 1983-85 crop years, did not produce a quota reduction. This suggestion was made in particular with respect to leases made because of soil diseases or conditions affecting the crop on the quota farm.

Other commenters argued that they had purchased quotas which, if the proposed rule were adopted, would be unfairly eliminated. In addition, other commenters argued that actual producers of peanuts would suffer unless they were given the opportunity to purchase quotas previously leased. This was suggested to be a particular problem in fringe areas where the small quantity of quota that would remain after reductions would not be large enough to leave enough quota available for purchase.

The proposed rule, as regards this issue, has been modified. First, to avoid problems arising from the difficulty of predicting their 1986 quotas prior to planting, all 1986 quotas up to the farm's 1986 basic poundage quota will be considered produced for the 1986 crop.

Second, in order to avoid due hardship to actual producers of peanuts, for the 1986 crop only, the farm poundage quota shall not be reduced on a farm if the quota would be subject to reduction solely because the quota was leased and produced on another farm by a different operator during the base period. In addition, a farm to which a 1986 quota has been transferred by sale will be given considered produced credit for 1985 to the extent of the amount of quota transferred. Also, provision is made in the rule to provide that if a farm which had a farm quota for 1985 is sold such that, beginning with the 1986 crop, there is a new quotaholder, the new quotaholder will be given considered produced credit in the same manner as if there had been a sale of the quota itself. This should provide an equitable

application of the quota reduction provisions of the 1986 amendments.

Comments suggesting that there should be a blanket exemption for transfers, past and future, were rejected. Such a blanket exemption would be contrary to the statute. While it may be that in some instances a quota on a farm does not amount to the marketable quantity, a farm with a small quota can be combined with other farms. In any event, the fact that a producer may not find it profitable to produce a particular quota on the quota farm is not a condition beyond the producer's control but a management decision.

Pursuant to the "fair and equitable" provisions of the peanut quota reduction section of the 1938 Act, the final rule will effectively eliminate quota reductions for nonproduction in many instances for the 1986 crop. While the modification of the rule regarding reductions will be adverse to some farmers—those who would have benefited from the reallocation, the adverse effect will be minimal given the size of the shares involved. By comparison, the effect on other producers, if no modification were made, would be profound.

In addition, pursuant to Section 1314 of the 1985 Act, a special provision for considered produced credit is included in the rule for farms to which the Farmers Home Administration has or had control or title for the 1983 and subsequent crop years.

2. Other issues.

Some commenters suggested that the "fall" transfer restrictions were too restrictive. The proposed rule requires that the full quota be planted before a fall lease will be allowed. That requirement is provided for by statute.

Two comments suggested that quotas temporarily released be reallocated to farms in the same county. The rule permits distributions on that basis. The actual method will be determined once the quantity to be allocated is known.

One comment opposed the provision in the proposed rule for reallocating to nonquota farms at least 25 percent of those quotas reallocated due to reductions for nonproduction or due to permanent releases. That minimum is set by statute.

Other commenters recommended that, due to the lateness of the final rule and the fact that producers have made land preparation involving other commodities, the proposed changes not be implemented for 1986. Legislative provisions prohibit this.

One commenter suggested that the treatment of "foundation seed" for quota purposes be addressed in the rule. The proposed rule did not cover this subject.

That issue is germane to matters which will be addressed in subsequent regulations.

Conclusion

Having given careful consideration and review to all comments, it has been determined that the provisions of the proposed rule should be adopted except for:

- (1) Minor clarifications;
- (2) The change in the quota reduction provisions of the regulations, as previously noted; and
- (3) The following changes:

(a) The list of States contained in § 729.346 has been deleted. That section provided that transfers by sale or lease could be made from one county in the State to another county if the poundage quota allocated to a State for the preceding year was less than 10,000 tons. The State poundage quota for a State for the preceding year could change from one year to another. The change in § 729.346 avoids unnecessary amendments to the regulations.

(b) Section 729.348 has been amended to provide, for the 1986 crop only, that the final date for "spring transfers" will be a date announced by the Deputy Administrator, rather than June 15. This change is needed to allow additional time for spring transfers for the 1986 crop.

List of Subjects in 7 CFR Part 729

Poundage quotas, Peanuts.

Final Rule

Accordingly, 7 CFR Part 729 is amended by adding a new subpart as follows:

PART 729—PEANUTS

Subpart—Poundage Quota and Marketing Regulations for the 1986 Through 1990 Crop of Peanuts

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State Poundage Quotas, Farm Poundage Quotas, Notice to Farm Operator and Appeals

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| 729.320 | Instructions and forms. |
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729.324 Determination of initial basic farm poundage quota.
729.325 Determination of basic farm poundage quota.
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729.327 Considered produced credit.
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729.355 County committee action.
729.356 Withdrawal or minor revision.
729.357-729.366 [Reserved].
- Temporary and Permanent Release and Temporary Reapportionment**
729.367 Temporary release and temporary reapportionment.
729.368 Temporary release of farm poundage quota.
729.369 Permanent release of farm poundage quota; effect on quota and/or production history and on future quota determinations.
729.370 Permanent release from farm containing separate ownership tracts.
729.371 Closing date for temporary or permanent releases of quotas and for requesting reapportionment of temporary released quotas.
729.372 Signature requirements for temporary releases.
729.373 Signature requirements for permanent releases.
729.374 Reapportionment of farm poundage quota temporarily released.

- Sec.
729.375 Closing date for reapportionment of temporarily released quota.
729.376 Credit for voluntary temporary release of quota or for reapportioned poundage quota.
729.377 Withdrawal or minor revision of released quota.
729.378 Notification of State committees of permanent or temporary release of quotas.
729.379-729.384 [Reserved].
- Authority:** Secs. 301, 357, 358, 358a, 359, 372, 373, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, as amended, 55 Stat. 90, as amended, 52 Stat. 65, as amended, 66, as amended (7 U.S.C. 1301, 1357, 1358, 1358a, 1359, 1372, 1373, 1375, as amended); Section 108B of the Agricultural Act of 1949 as added by Section 705 of the Food Security Act of 1985 (Pub. L. No. 99-198).

Subpart—Poundage Quota and Marketing Regulations for the 1986 Through 1990 Crops of Peanuts

General

§ 729.311 Basis and purpose.

The regulations contained in this subpart are issued in accordance with the Agriculture Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, and are applicable to the 1986 through 1990 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.

§ 729.312 Extent of calculations and rule of fractions.

Computations made pursuant to this subpart shall be rounded in accordance with the provisions of Part 793 of this chapter, provided further:

- (a) Acreages shall be rounded to the nearest tenth;
(b) Penalties and liquidated damages shall be rounded to the nearest cent;
(c) Per pound penalties and liquidated damages shall be rounded to the nearest tenth of a cent.
(d) The following calculations shall be rounded to the nearest whole pound:
(1) Peanuts produced, considered produced and marketed;
(2) Preliminary farm poundage quotas;
(3) Farm poundage quotas;
(4) Initial basic farm poundage quotas;
(5) Basic farm poundage quotas;
(6) Effective farm poundage quotas;
(7) Farm yields; and
(8) Actual yields per acre; and
(e) All mathematical factors arising under this subpart shall be calculated to four decimal places unless the Deputy Administrator shall determine otherwise.

§ 729.313 Definitions

The definitions in, and provisions of, Parts 718, 719, 720, and 1446 of this chapter are hereby made applicable to these regulations unless the context or subject matter or the provisions of these regulations require otherwise. References to other parts of this chapter or title or any other regulations, shall include any amendments to the referenced parts. Unless the context or subject matter require otherwise, the following words and phrases, as used in this subpart and in all related instructions and forms shall mean:

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

(b) *Areas.* The southwestern area consisting of Puerto Rico, the U.S. Virgin Islands, and the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Board Rivers.

(2) The southeastern area consisting of the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming and all territories and possessions of the United States not otherwise assigned.

(3) The Virginia-Carolina area consisting of the District of Columbia and the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Board Rivers.

(c) *Base period.* The 3 calendar years immediately preceding the year for which a farm poundage quota is being established.

(d) *Basic farm poundage quota.* (1) For the 1985 crop, the basic quota established pursuant to § 729.224 for a farm.

(2) For the 1986-90 crops, the quota determined for the 1986-1990 crops for a farm in accordance with § 729.325.

(e) *Buyer.* A person who:

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

(2) 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

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

(f) *Commingled peanuts.* Peanuts produced on different farms and placed into a single wagon, truck or any other vehicle so that the peanuts become, or can become, intermingled in whole or in part within the same vehicle, or such that it is not possible because of such placement of peanuts to identify the farm on which the individual peanuts were produced.

(g) *Considered produced credit.* To the extent permitted by this subpart, peanuts for which credit for production on the farm is given to a farm when the peanuts were not actually produced or grown on such farm in a current year or one of the base period years.

(h) *Deputy Administrator.* The Deputy Administrator, or acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(i) *Director.* The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(j) *Effective farm poundage quota.* For the 1986-90 crops, the quota determined in accordance with § 729.326.

(k) *Excess peanuts.* The quantity of peanuts marketed or considered marketed as quota peanuts from the farm in the current marketing year in excess of the farm's effective farm poundage quota.

(l) *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.

(m) *Farm yield.* The yield for a farm determined in accordance with § 729.334.

(n) *Farmers stock peanuts.* Dug peanuts produced in the United States which have not been shelled, crushed, cleaned, or otherwise 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.

(o) *Final acreage.* The acreage on the farm on which peanuts are produced as determined and adjusted in accordance with Part 718 of this chapter.

(p) *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.

(q) *Initial basic farm poundage quota.* The quota determined in accordance with § 729.324.

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

(s) *Loan additional peanuts.* Peanuts which are not eligible for marketing as quota peanuts, are not subject to delivery to fulfill a contract for additional peanuts, and which are pledged as collateral for a price support loan at the additional loan rate.

(t) *Marketed.* 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 "market", "marketing", and "for market" shall have corresponding meanings to the term "marketed" 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 delivered by the producer to the buyer. Peanuts which are delivered 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.

(u) *Marketing year.* For each crop of peanuts, the period beginning August 1 of the current year and ending July 31 of the following year.

(v) *National poundage quota.* The poundage quota announced by the Secretary for the relevant crop year.

(w) *Nonquota farm.* A farm that does not have an established farm poundage quota.

(x) *Peanuts.* All peanuts produced, excluding:

- (1) Any peanuts which were not dug or were not picked or threshed before or after marketing from the farm; and
- (2) Green peanuts.

If a lot of farmers stock peanuts has been inspected by the Federal-State Inspection Service at the time of marketing, the quantity in the lot shall be deemed to be the gross weight

thereof less foreign material and excess moisture. Excess moisture shall be moisture in excess of 7 percent of gross weight for the lot. For peanuts not inspected by the Federal-State Inspection Service, the quantity in the lot shall be deemed to be the gross weight. The quantity of the lot when shelled peanuts are marketed by a producer shall be deemed to be the poundage of the shelled peanuts multiplied by a factor of 1.5.

(y) *Planted acreage.* The final acreage of peanuts on a farm determined in accordance with the provisions of Part 718.

(z) *Preliminary farm poundage quota.* The quota quantity as determined for a farm in accordance with § 729.323.

(aa) *Produced peanuts.* Notwithstanding any other provision of this subpart, the total peanuts produced shall be the total pounds of peanuts dug.

(bb) *Quota farm.* A farm having a farm poundage quota.

(cc) *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:

- (1) Green peanuts;
- (2) Peanuts which are placed under loan at the additional support rate and not redeemed by the producer;
- (3) Peanuts which are marketed under a contract, which had prior approval of the county committee, between a handler and a producer for exportation and/or crushing;
- (4) Peanuts considered marketed but because of conditions beyond the control of the producer, as determined by the county committee in accordance with instructions issued by the Deputy Administrator, had no commercial value at the time the peanuts were marketed.

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

(ee) *Segregation 1 peanuts.* Peanuts of that segregation as identified and determined by the Federal-State Inspection Service.

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

(gg) *Undermarketings.* The number of pounds determined to be undermarketed in accordance with the provisions of § 729.333.

(hh) *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.

§ 729.314 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.

§ 729.315 Supervisory authority of State committee and Deputy Administrator.

(a) *State Committee.* The State committee shall take any action required to be taken by any county committee in the same State which the county committee fails to take. The State committee shall correct or require the county committee to correct any action taken by any such county committee which is not in accordance with this subpart. The State committee shall also require the county committee to withhold taking any action which is not in accordance with this subpart.

(b) *Deputy Administrator.* The Deputy Administrator shall take any action required to be taken by the State committee which the State committee fails to take. The Deputy Administrator shall correct or require the State committee to correct any action taken by the State committee which is not in accordance with this subpart. The Deputy Administrator shall also require the State committee to withhold taking any action which is not in accordance with this subpart.

§ 729.316-729.319 [Reserved]

State Poundage Quotas, Farm Poundage Quotas, Notice to Farm Operator and Appeals

§ 729.320 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.

§ 729.321 Determination of State poundage quota.

The State poundage quota for a State for any crop year shall be the amount in pounds equal to the State's share of the current year's national poundage quota. That share, as a percentage of the national poundage quota for such year, shall equal the percentage of the 1985 national poundage quota allocated to farms in the State for 1985.

§ 729.322 Reserves for corrections.

(a) For purposes of correcting quota allocation errors, for each State with a share of the national peanut quota, the State committee shall establish a reserve which shall be, subject to the review and approval of the Deputy Administrator, as follows:

(1) *Increases in State's quota.* If a State's quota is higher for a crop than for the previous crop, the reserve established by a State committee for the State under this section shall be the sum of: (i) The unused reserve from the previous crop, plus (ii) an amount not to exceed 1 percent of the increase in the State's quota for the crop as compared with the previous crop.

(2) *Decrease or no increase in State quota.* If a State's quota for any of the 1986-90 crop years is equal to or less than that for the preceding year, the reserve established under this section for a State shall be the sum of: (i) The unused reserve for the previous year, plus (ii) 10 percent of the sum of (A) the quota reduced under § 729.328 from farms for the State effective for the current crop year and (B) the quota permanently released pursuant to § 729.369 from farms in the State effective for the current crop year.

(b) Within the limits set by paragraph (a) of this section, in establishing the reserve, the State committee shall hold an amount that is estimated to be sufficient to satisfy the need to correct errors based on past history of appeals and other appropriate factors. If the amount of poundage quota necessary to correct errors is in excess of the reserve established by the State committee, such errors may nevertheless be corrected upon approval of the Deputy Administrator; however, the Deputy Administrator may require the State committee to recalculate the farm poundage quotas for all farms in the State if the Deputy Administrator determines that the amount of poundage quota necessary to correct errors is substantially in excess of the reserve. In such case, the State committee shall reissue corrected farm poundage quotas for all farms which shall constitute the actual quota for all farms for all purposes.

§ 729.323 Determination of preliminary farm poundage quota.

(a) *1986.* The preliminary farm poundage quota for a farm for the 1986 crop shall be the final quota established pursuant to § 729.224 for the farm for the 1985 crop year.

(b) *1987-1990.* The preliminary farm poundage quota for a crop year for a farm for the 1987-90 crops shall be the

basic farm poundage quota for the farm for the preceding year.

§ 729.324 Determination of initial basic farm poundage quota.

The initial basic farm poundage quota for a farm for any of the 1986-90 crop years shall equal the preliminary farm poundage quota for the farm for such crop year as adjusted for any increase or decrease in the State poundage quota.

§ 729.325 Determination of basic farm poundage quota.

The basic farm poundage quota for a farm for a crop year shall be the initial basic farm poundage quota for that year adjusted for:

(a) Adjustments pursuant to § 729.328 for that crop year for a failure to produce the quota;

(b) Reductions pursuant to § 729.369 for that year for permanent releases of quota from the farm;

(c) Permanent transfers of quota to or from the farm not already accounted for;

(d) Allocations to the farm for that year for error corrections from the State's reserve established under § 729.322; and

(e) Allocations to the farm pursuant to § 729.331 for the crop year from the State's distribution of quotas not produced or permanently released by other farms.

§ 729.326 Determination of effective farm poundage quota.

The effective farm poundage quota for a farm for a crop will be the basic farm poundage quota for the farm for that crop adjusted for:

(a) Temporary transfers of quota to or from the farm applicable to that crop year;

(b) Temporary releases of quota for the farm applicable to that crop year; and

(c) Undermarketings.

§ 729.327 Considered produced credit.

(a) *General.* Except as otherwise provided in this section, for purposes of this subpart, the considered produced credit which will be permitted for a farm for any crop year shall be the sum of the pounds (not to exceed the basic farm poundage quota for the farm for the crop year less the pounds of peanuts which were marketed from the farm from that crop) which with respect to the farm:

(1) Were not produced for the crop year because of drought, flood or any other natural disaster or any other condition beyond the control of the producer, as determined by the county committee in accordance with instructions issued by the Deputy Administrator;

(2) Were released temporarily by a voluntary release pursuant to § 729.368 for such year provided that there was no such release for either of the two years previous to the year of that release; or.

(3) Are considered produced under paragraph (b) of this section.

(b) *Additional allowance for 1983-1985 Crop years.* Subject to the provisions of paragraph (c) of this section, with respect to the 1983, 1984, and 1985 crop years only, considered produced credit will be allowed for purposes of this subpart for pounds temporarily transferred by lease or otherwise from the farm to another farm with the same owner or operator, and all fall transfers made pursuant to § 729.244(b).

(c) *Limitation.* Considered produced credit will be permitted under paragraph (b) of this section only to the extent that the transferred quota was produced or under the standard specified in paragraph (a) considered produced on the receiving farm.

(d) *Considered produced credit exemption for farms in 1986.* Notwithstanding any other provision of this section, with respect to the 1986 crop year only, considered produced credit will be allowed for purposes of this part for all 1986 quotas to the extent of each farm's 1986 basic quota.

(e) *Considered produced credit for permanent transfers.* Notwithstanding any other provisions of this section, considered produced credit for the 1985 crop will be allowed by the county committee, in accordance with instructions issued by the Deputy Administrator:

(1) To the receiving farm where a quota is transferred to that farm by sale which is first effective for the 1986 marketing year and

(2) To the farm on which a quota was established for the 1985 crop year if the farm was sold to a new owner in a sale which effectively transfers the quota to a new quotaholder different than the 1985 quotaholder.

The credit allowed shall not exceed the quantity of the quota transferred or effectively transferred to the receiving farm or new quotaholder.

(f) *Considered produced credit for farm obtained by FmHA.* For the 1983 and subsequent crops, considered produced credit shall be permitted for a farm to the extent of the farm's basic quota for such year for each year the Farmers Home Administration has control of or title to a farm to the extent it is determined that such allowance is consistent with the provisions of section 1314 of the Food Security Act of 1985, Pub. L. 99-198.

§ 729.328 Reductions for nonproduction of a quota.

(a) *Determination.* For purposes of establishing a basic farm poundage quota for a farm for the 1986-90 marketing years, the initial basic farm poundage quota for the farm shall be reduced to the extent the county committee determines, in accordance with § 729.327, that the basic farm poundage quota for such farm was not produced or considered produced on the farm during any two years of the base period, except that for the 1986 marketing year, the initial basic farm poundage quota shall not be reduced for the farm to the extent the quota would be subject to reduction because the quota was leased and produced or considered produced on another farm by a different operator during the base period.

(b) *Calculation.* For purposes of paragraph (a) of this section, the quantity not produced or considered produced shall be considered to be: (1) the initial basic quota for the farm for the year for which the determination of whether to reduce the quota is being made (the "current year") multiplied by (2), the average of the two highest percentages of the farm's quota which was not produced or considered produced in the three years preceding the current year.

(c) *Restitutions and permanent transfers to the farm.* (1) Determinations of whether a reduction shall be made in a farm's quota under this section shall be made separately for individual tracts within the farm if the farm's present constitution differs from the farm's constitution for any of the base period years.

(2) If a farm has been the beneficiary of a permanent transfer of a quota, the quota transferred to the farm shall be deemed produced or considered produced on the receiving farm only to the extent that it was produced or considered produced on the transferring farm.

§ 729.329 Allocation of increase in State poundage quota to farms.

(a) *Eligible farms.* After adjustments in a quota production history of farms resulting from permanent transfers of quota or permanent releases of a quota, if the poundage quota allocated to a State is greater than the poundage quota allocated to such State for the immediately preceding marketing year, the amount of the increase shall be allocated equally among:

(1) All farms in the State which had a final basic farm poundage quota greater than zero for the year immediately preceding the crop year for which the determination is being made, and

(2) All other farms in the State on which peanuts were produced in at least two of the three years preceding the year for which the determination is being made; Provided, that the total acres of peanuts dug each year exceeded 1.0 acre.

(b) *Method of allocation.* The amount of pounds so allocated to each group representing eligible quota and nonquota farms within a State shall be the result obtained by:

(1) Dividing the amount by which such State's quota was increased from the preceding year by the total number of eligible quota and nonquota farms;

(2) Multiplying the result of paragraph (b)(1) of this section by

(i) The number of eligible quota farms and

(ii) The number of eligible nonquota farms;

(3) Prorating the pounds obtained as the result of applying the provisions of:

(i) Paragraph (b)(2)(i) of this section among quota farms based upon the larger of the basic quota established for the farm for the year preceding the year for which the determination is being made, or the average of the two highest years' total production pounds for the three years preceding the year for which the determination is being made; and

(ii) Paragraph (b)(2)(ii) of this section among nonquota farms based upon the average of the two highest year's total production pounds for the three years preceding the year for which the determination is being made. If there are no quota or nonquota farms in the State eligible to receive a quota increase in the State poundage quota under this section, the pounds shall be placed in the State reserve.

(c) *Quota reductions.* To the extent that a farm quota increased under this section is subject to reduction for the same marketing year pursuant to § 729.328, the quota allocated to the farm for the crop year under this section shall be reallocated pursuant to § 729.331.

(d) *Farm reconstitution.* Notwithstanding any other provisions of this subpart, for purposes of applying the provisions of paragraph (a) of this section, quotas shall be allocated on the basis on which farms were constituted for the preceding crop year.

§ 729.330 Allocation of decrease in State poundage quota to farms.

If a State's poundage quota for any crop year is less than the State's poundage quota for the immediately preceding crop year, the decrease shall be prorated by factor among all farms which are entitled to a preliminary farm poundage quota for the current year so

as to reduce all such quotas by the same percentage.

§ 729.331 Allocation of permanently released quotas and nonproduced quotas.

(a) *Eligibility.* After adjustments in the quota or production history of farms to account for permanent releases or permanent transfers of quotas, quotas permanently released in accordance with § 729.369 or reduced for nonproduction pursuant to § 729.328 shall be allocated to farms that produced peanuts in at least two of the three crop years immediately preceding the year for which the allocation is being made.

(b) *Method of allocation.* Subject to the provisions of paragraph (c) of this section, the total amount of quota available for allocation under this section shall be allocated by prorating that amount among all eligible quota and nonquota farms based upon the average of the two highest years' total production pounds for each such farm for the three years preceding the year for which the determination is being made.

(c) *Exception to basic allocation method.* If the method of allocation provided for in paragraph (b) of this section would not allocate at least 25 percent of the quota to farms that were nonquota farms for the preceding crop year, the State committee shall prorate 25 percent of the quota to such farms and prorate the remainder to each other eligible farm on the same production history basis as is provided for in paragraph (a) of this section.

(d) *Farm reconstitution.* Notwithstanding any other provisions of this subpart, for purposes of applying the provisions of paragraph (a) of this section, quotas shall be allocated on the basis on which farms were constituted for the preceding year.

§ 729.332 Lack of adequate tillable cropland.

A farm may only receive an allocation pursuant to § 729.329 and § 729.331 to the extent that adequate tillable cropland is available for the production of the quota as so increased based upon the farm's yield. If adequate tillable cropland is not available, the excess quota may be allocated to other eligible quota and nonquota farms in such manner as the Deputy Administrator shall determine appropriate.

§ 729.333 Determination of undermarketings.

(a) *Actual undermarketings.* Actual undermarketings for a farm for a crop year shall be the number of pounds by which the total marketings of quota

peanuts from the farm during previous marketing years for previous crops (excluding any marketing year before the marketing year for the 1984 crop) were less than the total amount of the applicable effective farm poundage quotas (disregarding adjustments for undermarketings from prior marketing years) for such marketing years, except that no increase for undermarketings shall be allowed for undermarketings that preceded a year for which the farm's quota was, or is, subject to, reduction pursuant to § 729.328.

(b) *Total marketings of quota peanuts.* For purposes of paragraph (a) of this section, "total marketings of quota peanuts" for any marketing year shall:

(1) Not exceed the effective farm poundage quota for the marketing year disregarding adjustments for undermarketings from prior marketing years, and

(2) Shall, within the limitation specified in paragraph (b)(1) of this section, be the larger of:

(i) The total production of segregation 1 peanuts on the farm during such year, and

(ii) The total amount of quota peanuts which were marketed or considered marketed from the farm for the relevant marketing year.

(c) *Determining effective quota.* For purposes of determining a farm's effective farm poundage quota for a crop year under § 729.326, the farm's basic farm poundage quota shall be increased by the amount of the farm's effective undermarketings for the relevant crop year.

(d) *Effective undermarketings.* (1) If 10 percent of the national poundage quota for the crop year is equal to or greater than the actual undermarketings for all farms as determined under paragraph (a) of this section, the effective undermarketings for that crop year for all farms for that year shall be equal to the actual undermarketings for each such farm for that year.

(2) If the provisions of paragraph (d)(1) of this section are not applicable:

(i) The effective undermarketings for a farm shall not be less than the smaller, for that crop year, of the farm's actual undermarketings or 10 percent of the farm's basic farm poundage quota; and

(ii) The total effective undermarketings on all farms for the crop year shall, to the extent practicable, equal 10 percent of the national poundage quota for the relevant crop year.

§ 729.334 Determination of farm yield.

The farm yield established for a farm for which a farm poundage quota is established for the current year shall be

the farm yield established for the farm for the immediately preceding year. Except as provided in § 729.335, if a farm yield was not established for a farm for the previous year, the county committee shall establish a farm yield taking into account:

(a) Farm yields and actual yields on other farms in the locality on which the soil and other physical factors affecting production are similar, and

(b) The normal yield for the county.

§ 729.335 Determination of farm yield for reconstituted farms.

For reconstituted farms, the farm yield for such farm shall be established in accordance with the following rules to the extent applicable:

(a) *Combinations*—(1) *Combination of Quota farms.* The farm yield for combined quota tracts shall be the weighted average of the farm yields for the tracts being combined.

(2) *Combinations of Quota and Nonquota farms.* A combined farm shall be assigned the farm yield of the tract with an established quota if placed in combination with a nonquota tract even though a farm yield had been previously established for such nonquota tract.

(3) *Combination of Nonquota farms.* The farm yield for combined nonquota tracts shall be established by the county committee in accordance with § 729.334 even though a farm yield had been previously established for the individual tracts.

(b) *Divisions*—(1) *No identifiable tracts having tract yield established.* If a farm is divided and none of the tracts have an identifiable tract yield, the farm yield shall be the same for each tract as the farm yield for the parent farm.

(2) *Identifiable tracts with tract yield established.* If a farm is divided and the individual tracts have established yields, the farm yield for each tract will be that previously established for the tract.

(3) *Division of an identifiable tract having a tract yield established.* If a tract with an identifiable yield is divided, the farm yield, for the divided tracts shall be the same as the farm yield which has been previously established for the parent tract.

§ 729.336 Approval of farm poundage quota and notice to farm operator.

(a) *Approval.* Each farm yield, preliminary farm poundage quota, farm poundage quota, and effective farm poundage 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. The initial notice of farm poundage quota shall not be mailed to a farm operator until the farm poundage quota has been so approved. A revised notice may be mailed without the approval of the county committee in any case resulting from:

- (1) A farm reconstitution;
 - (2) A transfer of poundage quota by lease, sale, owner or operator; or
 - (3) Quotas apportioned pursuant to § 729.368 as a result of a temporary release of quota by other farms.
- (b) *Notice to farm operator.* (1) As soon as practicable after the farm poundage quota or the effective farm poundage quota is approved, an official notice of such quota shall be mailed to the farm operator.

(2) If a farm poundage 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 farm poundage quota or effective farm poundage 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.

§ 729.337 Erroneous notice of effective farm poundage quota.

(a) *Marketing penalty computations where an erroneous notice has been issued.* If the official notice of effective farm poundage quota issued for a farm erroneously stated a quota larger than the correct effective farm poundage 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 committee determines and the State Executive Director concurs that:

(1) The error was not so substantial as to place the operator on notice thereof; and

(2) The operator, relying upon such notice and acting in good faith—

(i) Materially changes the operator's position in order to produce the quota set forth on the erroneous notice (by, for example, obligating expenditures for land preparation, additional equipment and labor) and

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

(b) *Determination of undermarketings where an erroneous notice has been issued.* Notwithstanding the provisions of paragraph (a) of this section, undermarketings for farms which receive an erroneous notice of effective farm poundage quota shall be determined on the basis of the correct effective farm poundage quota for the farm.

§ 729.338 Request for reconsideration or appeal.

Any producer dissatisfied with the determination of a farm poundage quota or effective farm poundage quota may file a request for reconsideration with the county committee in accordance with Part 780 of this Chapter. Such request must be filed no later than 15 days after date of mailing the notice of the farm poundage quota or effective farm poundage quota. Following such reconsideration, the producer may appeal such determination to the State committee in accordance with Part 780 of this Chapter. Determinations rendered by the State committee with respect to individual farm poundage quotas and individual effective farm poundage quotas shall be final and there shall be no further administrative appeal, unless it is determined by the Deputy Administrator that such action is needed in the interests of the program.

(Approved by the Office of Management and Budget under control number 0560-0006)

§ 729.339 Farms with one acre or less of peanuts.

Peanuts produced on a farm on which the acreage of peanuts dug is one acre or less are eligible to be marketed for domestic edible use provided that no producer who shares in the peanuts produced on any such farm shares in the peanuts produced on any other farm. Notwithstanding any other provision of this subpart, farms to which this section applies shall not be considered eligible farms for the purpose of allocating farm poundage quota under this subpart.

§§ 729.340-729.342 [Reserved]

Transfers of Farm Poundage Quota

§ 729.343 Transfer by sale or lease.

Subject to the provisions of this subpart, the owner and operator of any farm having a farm poundage quota in the current year may have approved by the county committee a record of transfer for sale or lease of all or any part of the farm poundage quota to any other owner or operator of a farm in the same county. The receiving farm need not have a farm poundage quota. If the owner(s) and operator of the farm from which the transfer by sale or lease is to

be made are different persons, each shall execute the record of transfer. However, only the owner(s) or operator of the receiving farm is required to execute the record of transfer.

§ 729.344 Transfer by owner or operator.

The owner or operator of any farm having a farm poundage quota in the current year may have approved by the county committee a record of transfer to transfer the farm poundage quota from such farm to another farm owned or controlled by the same person: (a) In the same county, or (b) in a county that is contiguous to the transferring county in the same State if the receiving farm had a farm poundage quota established for the preceding year's crop.

§ 729.345 Transfer by sale or permanent transfer by owner from or to separately owned tracts within a farm combination.

The owner of a separately owned tract within a farm may, with the approval of the farm operator, permanently transfer by sale, or by owner, the farm poundage quota attributable to the tract to another tract within the same farm combination if the owner of the receiving tract agrees to the transfer. The quota for such tract may also be transferred by sale or owner to a different farm to the extent that such a transfer could be permitted if the tract were a separate farm.

§ 729.346 Transfers within certain States.

Notwithstanding any other provisions of this subpart, a transfer of a farm poundage quota by sale, lease or by the owner or operator, for farms for which the poundage quota allocated to the State was less than 10,000 tons for the preceding year's crop may be made to any other farm in the same State, pursuant to instructions issued by the Deputy Administrator.

§ 729.347 Witness of signatures.

A county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located, they may be witnessed in any county office.

§ 729.348 Filing record of transfer and time for filing.

No transfer of any quota under this section shall become effective until a record of transfer, determined by the county committee to be in compliance with the provisions of this subpart, has been executed on Form ASCS-375, or such other form approved for general

use for that purpose by the Deputy Administrator, and filed within the time periods set forth in this section with the county committee in the county where the farms are administratively located.

(a) *Record of transfer filed during the normal planting period ("spring transfers").* In order to be effective during the normal planting period, a record of transfer shall be filed by the date established for that purpose by the State committee for the relevant State, which date shall not be later than June 15, except that for the 1986 crop, the date shall be the date established by the Deputy Administrator. A record of transfer filed after the date established by the State committee for purposes of the preceding sentence but prior to July 1, or prior to the date established by the Deputy Administrator for the 1986 crop, may nonetheless be considered to be timely filed for a spring transfer, if the county committee finds that:

(1) The transfer was agreed upon no later than the date established by the State committee, and

(2) The record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

(b) *Record of transfer filed after the normal planting period ("fall transfers").* A record of transfer which is filed after the date established by the State committee for "spring transfers" pursuant to § 729.348(a) shall not become effective unless filed not later than December 31 of the current year. A record of transfer filed after December 31 but prior to the following January 31 may be considered timely filed by December 31 if the county committee with approval of the State committee finds that:

(1) The transfer was agreed upon no later than December 31, and

(2) The record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

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§ 729.349 Maximum period of transfer.

(a) *Owner transfer.* (1) An owner transfer may be approved to a farm owned by such person for a temporary period (but not to exceed two successive years during the 1986-1990 crop years) or permanently.

(2) An owner transfer to a farm controlled by such person may be approved for only one year.

(b) *All other transfers.* Transfers by lease and by operator may only be approved for one year. Multiyear leases and permanent operator transfers shall not be permitted.

§ 729.350 Transfers not to be approved.

The county committee shall not approve:

(a) A transfer of poundage quota by sale if poundage quota was transferred to the transferring farm by sale within the 3 preceding crop years.

(b) Temporary transfers by an operator for more than one year.

(c) Permanent transfers by an operator.

(d) Transfers for more than one marketing year filed after the date established by the State committee for "spring transfers" pursuant to § 729.348(a).

(e) Transfers of actual or effective undermarketings, or of quotas received as a result of a reapportionment of temporarily released quota or temporarily transferred quotas.

(f) Transfers of poundage quotas to farms with inadequate tillable cropland to produce the poundage quota.

§ 729.351 Consent of lienholders.

A transfer of poundage quota from a farm which the county committee has been informed is subject to mortgage or other lien shall not be approved unless the transfer is agreed to in writing by the lienholder. Any transfer approved by the county committee where there was a lien on the transferring farm shall be cancelled by the county committee effective as of the date of approval if it is determined that the lienholder(s) did not approve the transfer.

§ 729.352 Transfer to and from the same farm (subleasing).

(a) *Record of transfer filed during the normal planting period.* The county committee shall not approve a record of transfer which is filed (or considered filed) on or before the date established by the State committee for "spring transfers" pursuant to § 729.348(a) if the approval would result in a transfer both to and from either the transferring or receiving farm during the period ending on such date for the same crop year, except that in such instance a record of transfer may be approved if:

(1) A poundage quota has been transferred temporarily from a farm for one or more years;

(2) The transfer remains in effect; and,

(3) The farm is combined subsequent to such temporary transfer with another farm that is otherwise eligible to receive a poundage quota by transfer.

(b) *Record of transfer filed after the normal planting period.* The county committee shall not approve a temporary transfer of poundage quota which is filed (or considered filed) after the date established by the State committee for "spring transfers"

pursuant to § 729.348(a) if it would result in a temporary transfer both to and from either the receiving farm or transferring farm during the period beginning on the last date for "spring transfers", ending on December 31.

§ 729.353 Fall transfers.

In order for any transfer filed after the last date for "spring transfers" established by the State committee to be approved by the county committee, the following conditions must be met, as applicable:

(a) *Receiving farm.* The operator of the receiving farm must certify and the county committee must determine that the poundage quota being transferred is not more than will be required to market the entire production of peanuts from the receiving farm as quota peanuts in the current year. The amount so determined shall be limited to the quantity equal to the estimated upgraded pounds yet to be marketed less the quota pounds remaining on the marketing card for the receiving farm.

(b) *Transferring farm.* The operator of the transferring farm must certify and the county committee determine that:

(1) The acreage of peanuts planted on the transferring farm was equal to or in excess of the acreage determined by dividing the effective farm poundage quota by the larger of the current farm yield or the highest actual yield for the farm in any one of the preceding three years; and

(2) The production of peanuts on the transferring farm was limited to less than the effective farm poundage quota because of conditions beyond the control of the producer.

§ 729.354 Effect of permanent transfer on quota and/or production history and on determination of farm poundage quota.

In the event of a permanent transfer of a quota, the quota and/or production history of the transferring farm shall be transferred to the receiving farm in proportion to the quantity of quota which has been so transferred.

§ 729.355 County committee action.

(a) *Approval of transfer.* The county committee shall approve the transfer of poundage quota only if it determines that a timely filed record of transfer has been received and that the transfer complies with the requirements of this subpart. A transfer shall not be effective until approved by the county committee. The county committee may delegate authority to the county executive director and to other county office employees to approve transfers of poundage quotas.

(b) *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.

(c) *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. 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) Where 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.

§ 729.356 Withdrawal or minor revision.

Where the county committee determines that: (a) it is clearly in the best interest of all the producers, and (b) that effective operation of the peanut program will not be impaired, the county committee may permit withdrawal or minor revisions of a transfer upon written request by all parties to the transfer. A temporary transfer may be withdrawn or revised before peanuts are harvested during any year of the agreement.

§§ 729.357-729.366 [Reserved]

Temporary and Permanent Release and Temporary Reapportionment

§ 729.367 Temporary release and temporary reapportionment.

Temporary release and temporary reapportionment shall result from any voluntary temporary release and temporary reapportionment of farm poundage quotas as provided for in this subpart.

§ 729.368 Temporary release of farm poundage quota.

Except as provided in § 729.372, the farm operator may temporarily release part or all of the basic farm poundage quota to the State committee by filing a written release with the county committee.

§ 729.369 Permanent release of farm poundage quota; effect on quota and/or production history and on future quota determinations.

The farm poundage quota, except for undermarketings and quota temporarily transferred to the farm, may be permanently released by the owner and operator to the extent that the quota will not be produced on the farm. The farm poundage quota for the farm from which quota is permanently released shall be adjusted downward by the amount of the quota permanently released and the farm shall lose any production history which preceded any release to which this section applies.

§ 729.370 Permanent release from farm containing separate ownership tracts.

Where the farm consists of separately identifiable owned tracts, the owner of an individual tract may permanently release the quota contributed to the farm by the tract.

§ 729.371 Closing date for temporary or permanent releases of quotas and for requesting reapportionment of temporary released quotas.

The State committee shall establish and publicize the closing date(s) for temporary and permanent releases of farm poundage quota for the State or for areas consisting of one or more counties in the State taking into consideration the normal planting date(s) for the State. The closing date for such release and for requesting reapportionment of temporarily released poundage quota shall be the date established by the State committee in accordance with instructions issued by the Deputy Administrator.

§ 729.372 Signature requirements for temporary releases.

If a farm's quota was temporarily released in one or more of the crop years preceding the current year, the document setting forth the release of the farm poundage quota for the current year shall be signed by both the owner and the operator of the farm. The farm poundage quota may not be temporarily released for the current year if the owner of the farm files an objection with the county committee in writing before the released quota is transmitted to the State committee for reapportionment.

§ 729.373 Signature requirements for permanent releases.

The signature of both the owner and

operator are required for a permanent release of quota.

§ 729.374 Reapportionment of farm poundage quota temporarily released.

Poundage quotas which have been temporarily released may be reapportioned by the State committee to other farms in the State, upon application by the operator of such other farms in such manner as determined by the State committee in accordance with instructions issued by the Deputy Administrator.

§ 729.375 Closing date for reapportionment of temporarily released quota.

The final date for requesting a reapportionment pursuant to § 729.374 shall be the date established by the State committee in accordance with instructions issued by the Deputy Administrator. Such date shall be in advance of the final date for spring transfers for the relevant State.

§ 729.376 Credit for a voluntary temporary release of quota or for reapportioned poundage quota.

If a farm's quota has been temporarily released, the farm poundage quota shall be considered produced only to the extent permitted by this subpart. Any increase in a farm poundage quota resulting from reapportionment of quotas which have been temporarily released shall not be a basis for a grant of a quota for the receiving farm for any subsequent year.

§ 729.377 Withdrawal or minor revision of released quota.

A withdrawal or downward revision in the pounds temporarily or permanently released may be made upon a written request filed with the county committee, and such withdrawal or minor revision may be approved by the county committee provided that the notification of the release of quota has not at the time of the filing been transmitted to the State committee for reallocation.

§ 729.378 Notification of State committees of permanent or temporary release of quotas.

Notification of the permanent or temporary release of quotas shall be transmitted to the State committee by the relevant county committee. The final date for such transmission shall be established by the State committee, subject to review by the Deputy Administrator.

§§ 729.379-729.384 [Reserved]

Signed at Washington, D.C. on June 18, 1985.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86-14122 Filed 6-19-86; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service**7 CFR Part 908**

[Valencia Orange Reg. 367, Amdt. 1]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This Amendment of Regulation 367 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 13-19, 1986. The amendment is needed to balance the supply of fresh Valencia oranges with market demand for the period specified, due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 367, Amendment 1 (§ 908.667) is effective for the period June 13-19, 1986.

FOR FURTHER INFORMATION CONTACT:

James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447-5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 123 handlers of Valencia oranges are subject

to regulation under the marketing order and that the great majority of these handlers may be classified as small entities. While regulations issued may impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

This amendment is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This amendment is consistent with the marketing policy for 1985-86. The committee members were contacted by telephone on June 13, 1986, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the demand for Valencia oranges is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendment and the effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges, Valencias.

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read:

Authority: (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 908.667 is revised to read as follows:

§ 908.667 Valencia Orange Regulation 367.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period June 13, 1986, through June 19, 1986, are established as follows:

- (a) District 1: 408,000 cartons;
- (b) District 2: 442,000 cartons;
- (c) District 3: Unlimited cartons.

Dated: June 16, 1986.

Joseph A. Gribbin,

Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-13951 Filed 6-19-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE**National Bureau of Standards****15 CFR Part 10**

[Docket No. 50952-6088]

Amendment to Procedures for the Development of Voluntary Product Standards

AGENCY: National Bureau of Standards, Commerce.

ACTION: Final rule.

SUMMARY: This amendment of the Department's Procedures for the Development of Voluntary Product Standards modifies the provisions relating to the withdrawal of published standards, establishes an expanded appeals mechanism, provides for the issuance of interpretations of standards, provides for the submission of rational statements, and allows some representatives of Federal agencies to be voting members of Standard Review Committees and Standing Committees.

EFFECTIVE DATE: July 21, 1986.

FOR FURTHER INFORMATION CONTACT: Donald R. Mackay, Standards Management Program, Room A 625, Administration Building, National Bureau of Standards, Gaithersburg, MD 20899 (301-921-3287).

SUPPLEMENTARY INFORMATION: The National Bureau of Standards (NBS) published in the *Federal Register* on October 28, 1985, (50 FR 43573-43575), a proposed amendment to the "Procedures for the Development of Voluntary Product Standards." This proposed amendment would have modified the section of the procedures concerning the withdrawal of published standards, established a new appeals mechanism, and provided for the issuance of interpretations of standards.

The proposed amendment would also have provided for the submission of

rational statements, if deemed necessary, under § 10.3(a), and would have eliminated a mechanism of validating consensus through a concept of "acceptance by volume of production" and "acceptance by volume of distribution." Finally, the proposal would have allowed representatives of Federal agencies to vote on committees. Several other minor changes to the procedures were proposed of an editorial nature, as well as some additions and deletions.

The October 28, 1985 Federal Register Notice provided a 45 day period for the submission of comments. The American Lumber Standards Committee, the Standing Committee for PS 20-70, "American Softwood Lumber Standard," requested a 90 day extension of the comment period to allow sufficient time to develop a committee response to the proposal. This request was granted in a Federal Register Notice published on December 9, 1985, (50 FR 50177), extending the comment period to March 12, 1986.

Comments on the proposed amendment were received from the American Lumber Standards Committee ("ALSC") and the Glass Packaging Institute ("GPI"), the proponent for Voluntary Product Standard PS 73-77, "Carbonated Soft Drink Bottles."

The GPI basically disagreed with the entire proposal to amend the procedures stating that the existing procedures had worked well and there was no reason to change them.

The ALSC suggested certain changes to the proposed amendment to avoid what the Committee believed were potential problems. After carefully reviewing the proposed amendment and considering the comments received, the National Bureau of Standards has decided to accept the changes suggested by the ALSC, with some modifications. These recommendations pertain to §§ 10.4, 10.8, 10.14, and 10.15.

In considering the ALSC position regarding § 10.8, NBS has provided for the appointment by the Department of Commerce of two Federal representatives as voting members on the Standing Committee for PS 20-70, if requested to do so by that committee. Similarly, NBS has provided for the appointment of one Federal agency representative as a voting member of the other Standing Committees and of Standard Review Committees, if requested to do so by those committees. The appointment of two Federal voting members on the ALSC is justified on the basis of the large size of the Committee (presently 22 voting members) and the 6 advisory (non-voting) Federal agency

members representing lumber producers and lumber specifiers.

The National Bureau of Standards has adopted a suggestion of the GPI with regard to the submission of rationale statements. The GPI suggested that such statements, if deemed necessary, should be included in the written report of the Chairman of the Standard Review Committee, in § 10.5(d). The final amendment, however, also includes a provision for the submission of a rationale statement by the proponent under § 10.3(a) as well as a provision for the submission of a rationale statement by the Chairman of the Standard Review Committee under § 10.5(d). In both cases, the submission of such rationale statements is only required if such are "deemed necessary by the Department."

The proposed deletion of the mechanism for validating consensus through a concept of "acceptance by volume of production" and "acceptance by volume of distribution" was based on the preception that this complicated mechanism was no longer necessary since it has been used only once during the last 20 years. Both the ALSC and the GPI urged the retention of this mechanism. Therefore, the Department has decided to retain this mechanism in § 10.6(f) of the procedures.

The proposed new § 10.14 on "appeals" has been modified to reflect the changes suggested by the ALSC. The most significant change pertains to the filing of an appeal of a procedural action with the body taking that action (i.e., the Standard Review Committee, the Standing Committee, or the NBS). NBS agrees that the appeal should properly be heard by the body taking the action, and should be limited to procedural actions.

The proposed new § 10.15 on the issuance of interpretations was opposed by both the ALSC and GPI. The ALSC pointed out that there was a mechanism established within PS 20-70 for providing interpretations of the American Softwood Lumber Standard. The ALSC suggested that it develop formal procedures for issuing interpretations and submit the proposed procedures to NBS for approval and that other Standing Committees do likewise, if they have a need for issuing interpretations. NBS has accepted the ALSC suggestions.

As there were no comments submitted regarding the proposed editorial or other changes in the following sections, the changes have been included in the final rule: 10.0(b)(3), 10.0(c)(9), 10.1(b), 10.3(a)(4), 10.3(a)(5), 10.3(a)(6), 10.9(a), 10.9(b), 10.13(a), 10.13(b), 10.13(c) and 10.13(d).

This amendment is not considered to be a "major rule" under Executive Order 12291 because it will not (1) have an annual effect of \$100 million or more on the economy, (2) provide a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) have significant adverse economic effects on competition, employment, investments, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export matters. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because it does not affect small companies and only affects trade associations that desire to develop voluntary standards through these procedures. This rule does not have a collection of information for the purposes of the Paperwork Reduction Act. Preparation of a Regulatory Impact Analysis is not required and no preliminary or final Regulatory Impact Analysis has been or will be prepared.

List of Subjects in 15 CFR Part 10

Administrative practice and procedure; Voluntary standards.

Dated: June 16, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

Part 10 of Title 15 CFR is revised as set forth below:

PART 10—PROCEDURES FOR THE DEVELOPMENT OF VOLUNTARY PRODUCT STANDARDS

- | | |
|-------|--|
| Sec. | |
| 10.0 | General. |
| 10.1 | Initiating development of a new standard. |
| 10.2 | Funding. |
| 10.3 | Development of a proposed standard. |
| 10.4 | Establishment of the Standard Review Committee. |
| 10.5 | Development of a recommended standard. |
| 10.6 | Procedures for acceptance of a recommended standard. |
| 10.7 | Procedure when a recommended standard is not supported by a consensus. |
| 10.8 | Standing Committee. |
| 10.9 | Publication of a standard. |
| 10.10 | Review of published standards. |
| 10.11 | Revision or amendment of a standard. |
| 10.12 | Editorial changes. |
| 10.13 | Withdrawal of a published standard. |
| 10.14 | Appeals. |
| 10.15 | Interpretations. |
| 10.16 | Effect of procedures. |

Authority: Sec. 2, 31 Stat. 1449, as amended, sec. 1, 64 Stat. 371; 15 U.S.C. 272, Reorganization Plan No. 3 of 1946, Part VI (3 CFR 1943-1948 Comp., p1065).

§ 10.0 General.

(a) *Introduction.* The Department of Commerce (hereinafter referred to as the "Department") recognizes the importance, the advantages, and the benefits of voluntary standards and standardization activities. Such standards may cover, but are not limited to, terms, classes, sizes (including quantities of packaged consumer commodities), dimensions, capacities, quality levels, performance criteria, inspection requirements, marking requirements, testing equipment, test procedures and installation procedures. Economic growth is promoted through:

- (1) Reduction of manufacturing costs, inventory costs, and distribution costs;
- (2) Better understanding among manufacturers, producers, or packagers (hereinafter referred to as producers), distributors, users, and consumers; and
- (3) Simplification of the purchase, installation, and use of the product being standardized.

(b) *Requirements for Department of Commerce sponsorship.* The Department may sponsor the development of a voluntary Product Standard if, upon receipt of a request, the Department determines that:

- (1) The proposed standard is likely to have substantial public impact;
- (2) The proposed standard reflects the broad interest of an industry group or an organization concerned with the manufacture, production, packaging, distribution, testing, consumption, or use of the product, or the interest of a Federal or State agency;
- (3) The proposed standard would not duplicate a standard published by, or actively being developed or revised by, a private standards-writing organization to such an extent that it would contain similar requirements and test methods for identical types of products, unless such duplication was deemed by the Department to be in the public interest;
- (4) Lack of government sponsorship would result in significant public disadvantage for legal reasons or reasons of domestic and international trade;
- (5) The proposed standard is not appropriate for development and maintenance by a private standards-writing organization; and
- (6) The proposed standard will be funded by a proponent organization or government agency to cover costs for administrative and technical support services provided by the Department.

(c) *Role of the Department.* The Department assists in the establishment of a Voluntary Product Standard as follows:

- (1) Acts as an unbiased coordinator in the development of the standard;
- (2) Provides editorial assistance in the preparation of the standard;
- (3) Supplies such assistance and review as is required to assure the technical soundness of the standard;
- (4) Seeks satisfactory adjustment of valid points of disagreement;
- (5) Determines the compliance with the criteria established in these procedures for such voluntary standards;
- (6) Provides secretarial functions for each committee appointed by the Department under these procedures;
- (7) Publishes the standard as a public document;
- (8) Administers the funds for administrative and technical support services; and
- (9) Seeks listing for standards developed under these procedures as American National Standards through the American National Standards Institute, when deemed appropriate by the Department.

(d) *Role of producers, distributors, users, and consumers.* Producers, distributors, users, consumers, and other interested groups may contribute to the development of a Voluntary Product Standard as follows:

- (1) Initiate and participate in the development of the standard;
- (2) Provide technical or other relevant counsel, as appropriate, relating to the standard;
- (3) Promote the use of, and support for, the standard; and
- (4) Assist in keeping the standard current with respect to advancing technology and marketing practices.

(e) *Role of the National Bureau of Standards.* The National Bureau of Standards (NBS) administers these procedures for the Department. Any communications concerning these procedures (e.g., questions, clarifications, appeals) should be addressed to the Office of Product Standards Policy, National Bureau of Standards, Gaithersburg, Maryland 20899.

§ 10.1 Initiating development of a new standard.

(a) Any group or association of producers, distributors, users, or consumers, or a testing laboratory, or a State or Federal agency, may request the Department to initiate the development and publication of a Voluntary Product Standard under these procedures. Requests shall be in writing, signed by a

representative of the group or agency, and forwarded to the Department. The initial request may be accompanied by a copy of a draft of the suggested standard.

(b) The request shall include a commitment to provide sufficient funding to cover all costs associated with the development and maintenance of the proposed Voluntary Product Standard.

(c) The Department may require additional information such as technical, marketing, or other appropriate data essential to discussion and development of the proposed standard, including, but not limited to, physical, mechanical, chemical, or performance characteristics, and production figures.

(d) Upon receipt of an appropriate request and after a determination by the Department that the development of a Voluntary Product Standard is justified, the Department may initiate the development by requesting that a draft of the suggested standard be prepared by an appropriate committee, provided such a draft has not previously been submitted under paragraph (a) of this section.

(e) The Department may initiate the development of a Voluntary Product Standard, if such action is deemed by the Department to be in the public interest, notwithstanding the absence of a request from an outside source. A voluntary standard initiated by the Department shall be processed in accordance with all requirements of these procedures and shall be developed in the same manner as a voluntary standard initiated by any group referred to in paragraph (a) of this section.

(f) An agreement regarding funding procedures and receipt of a deposit estimated by the Department to be sufficient to cover the first year's costs shall occur prior to the initiation of any project.

§ 10.2 Funding.

Groups who represent producers, distributors, consumers or users, or others that wish to act or continue to act as proponent organizations for the development or maintenance of a Voluntary Product Standard will be required to pay for administrative and technical support services provided by the National Bureau of Standards and such other direct or indirect costs associated with the development or maintenance of that standard as may be deemed appropriate by the Department, including costs to the Department in connection with the operation of the Standard Review Committee and the

Standing Committee. Funds may also be provided by a government agency at the request of a proponent organization or when acting on its own behalf for the development or maintenance of a Voluntary Product Standard. Proponents of standards that meet sponsorship criteria established in these procedures shall furnish an initial deposit of funds sufficient to cover the first year's services and other costs. Estimated annual costs will be based on an hourly rate for salary and overhead established by the Department for the National Bureau of Standards' administrative and technical support services plus estimates of direct costs to provide funds for such items as the travel of consumer representatives unable to otherwise attend committee meetings, travel for Department staff, and printing costs. Project funds will be reviewed annually. Excess funds may be refunded or applied to the next accounting period. Should funds from deposits be inadequate during an accounting period, work on the project will continue only if funds are restored to a level estimated adequate to complete the 12-month period.

§ 10.3 Development of a proposed standard.

(a) A proposed standard as submitted to the Department:

(1) Shall be based on adequate technical information, or, in the case of size standards (including standards covering the quantities for packaged consumer commodities), on adequate marketing information, or both, as determined to be appropriate by the Department;

(2) Shall not be contrary to the public interest;

(3) Shall be technically appropriate and such that conformance or nonconformance with the standard can be determined either during or after the manufacturing process by inspection or other procedures which may be utilized by either an individual or a testing facility competent in the particular field;

(4) Shall follow the format prescribed by the National Bureau of Standards. (Copies of the recommended format may be obtained from the Office of Product Standards Policy, National Bureau of Standards, Gaithersburg, Maryland 20899.);

(5) Shall include performance requirements if such are deemed by the Department to be technically sound, feasible, and practical, and the inclusion of such is deemed to be appropriate;

(6) May include dimensions, sizes, material specifications, product requirements, design stipulations, component requirements, test methods,

testing equipment descriptions, and installation procedures. The appropriateness of the inclusion in a standard of any particular item listed in this subparagraph shall be determined by the Department; and

(7) Shall be accompanied by rational statements pertaining to the requirements and test methods contained in the standard, if deemed necessary by the Department.

(b) A proposed standard that is determined by the Department to meet the criteria set forth in paragraph (a) of this section may be subjected to further review by an appropriate individual, committee, organization, or agency (either government or nongovernment, but not associated with the proponent group).

(c) A proposed standard may be circulated by the Department to appropriate producers, distributors, users, consumers, and other interested groups for consideration and comment as well as to others requesting the opportunity to comment.

(d) The proponent group or appropriate committee which drafted the initial proposal under § 10.1(d) shall consider all comments and suggestions submitted by the reviewer designated under paragraph (b) of this section, and those received by the Department as a result of any circulation under paragraph (c) of this section, and may make such adjustments in the proposal as are technically sound and as are believed to cause the standard to be generally acceptable to producers, distributors, users, consumers, and other interested parties. The proposal will then be submitted to the Department for further processing.

§ 10.4 Establishment of the Standard Review Committee.

(a) The Department shall establish and appoint the members of a Standard Review Committee within a reasonable time after receiving a proposed standard. The committee shall consist of qualified representatives of producers, distributors, and users or consumers of product for which a standard is sought or any other appropriate general interest groups such as State and Federal agencies. When requested by the Standard Review Committee, the Department shall appoint one voting member from among the representatives of the Federal agencies, other than the Department of Commerce. All other representatives of Federal agencies on the Standard Review Committees shall be advisory nonvoting members. (Alternates to committee members may be designated by the Department.) When deemed appropriate by the

Department, project funds under § 10.2 may be made available to assure participation by consumer interests on the committee at required meetings.

(b) A Standard Review Committee may remain in existence for a period necessary for the final development of the standard, or for 2 years, whichever is less.

(c) The Department shall be responsible for the organization of the committee. Any formal operating procedures developed by the committee shall be subject to approval by the Department. The committee may conduct business either in a meeting or through correspondence, but only if a quorum participates. A quorum shall consist of two-thirds of all voting members of the committee. A majority of the voting members of the committee participating shall be required to approve any actions taken by the committee except for the action of recommending a standard to the Department, the requirements for which are contained in § 10.5(b).

§ 10.5 Development of a recommended standard.

(a) The Standard Review Committee, with the guidance and assistance of the Department and, if appropriate, the reviewer designated under § 10.3(b), shall review a proposed standard promptly. If the committee finds that the proposal meets the requirements set forth in § 10.3(a), it may recommend to the Department that the proposal be circulated for acceptance under § 10.6. If, however, the committee finds that the proposal being reviewed does not meet the requirements set forth in § 10.3(a), the committee shall change the proposal, after consulting with the proponent group, so that these requirements are met, before recommending such proposal to the Department.

(b) The recommendation of a standard by the Standard Review Committee shall be approved by at least three-quarters, or rejected by more than one-quarter, of all of the members of the committee eligible to vote. The voting on the recommendation of a standard shall be conducted by the Department if conducted by letter ballot. If such voting is accomplished at a meeting of the committee, the balloting shall be either by roll call or by signed written ballot conducted by the Department or the chairman of this committee. If conducted by the chairman, a report of the vote shall be made to the Department within 15 days. If the balloting at the meeting does not result in either approval by at least three-quarters of all members (or alternates)

eligible to vote (whether present or not), or rejection by more than one-quarter of the members (or alternates) or the committee eligible to vote, the balloting shall be disregarded and the Department shall subsequently conduct a letter ballot of all members of the committee.

(c) Any member of the committee casting a negative ballot shall have the right to support an objection by furnishing the chairman of the committee and the Department with a written statement setting forth the basis for the objection. The written statement of objection shall be filed within 15 days after the date of the meeting during which the voting on the standard was accomplished, or, in the case of a letter ballot, within the time limit established for the return of the ballot.

(d) At the time a recommended standard is submitted to the Department, the Chairman of the Standard Review Committee shall furnish a written report in support of the committee's recommendation. Such report shall include a statement with respect to compliance with the requirements as established by these procedures, a discussion of the manner in which any objections were resolved, and a discussion of any unresolved objections together with the committee's reasons for rejecting such unresolved objections.

§ 10.6 Procedures for acceptance of a recommended standard.

(a) Upon receipt from the Standard Review Committee of a recommended standard and report, the Department shall give appropriate public notice and distribute the recommended standard for acceptance unless:

(1) Upon a showing by any member of the committee who has voted to oppose the recommended standard on the basis of an unresolved objection, the Department determines that if such objection were not resolved, the recommended standard:

(i) Would be contrary to the public interest, if published;

(ii) Would be technically inadequate;

or
(iii) Would be inconsistent with law or established public policy; or

(2) The Department determines that all criteria and procedures set forth herein have not been met satisfactorily or that there is a legal impediment to the recommended standard.

(b) Distribution for acceptance or rejection for the purpose of determining general concurrence will be made to a list compiled by the Department, which, in the judgment of the Department, shall be representative of producers, distributors, and users and consumers.

(c) Distribution for comment will be made to any party filing a written request with the Department, and to such other parties as the Department may deem appropriate, including testing laboratories and interested State and Federal agencies.

(d) The Department shall analyze the recommended standard and the responses received under paragraphs (b) and (c) of this section. If such analysis indicates that the recommended standard is supported by a consensus, it shall be published as a Voluntary Product Standard by the Department: Provided, That all other requirements listed in these procedures have been satisfied.

(e) The following definitions shall apply to the term used in this section:

(1) "Consensus" means general concurrence and, in addition, no substantive objection deemed valid by the Department.

(2) "General concurrence" means acceptance among those responding to the distribution made under paragraph (b) of this section in accordance with the conditions set forth in paragraph (f) of this section.

(3) "Substantive objection" means a documented objection based on grounds that one or more of the criteria set forth in these procedures has not been satisfied.

(4) "Average industry acceptance" means a percentage equal to the sum of the percentages of acceptance obtained from responses to distribution of the recommended standard in the producer segment, the distributor segment, and the user and consumer segment, divided by three. No consideration will be given to volume of production or volume of distribution in determining average industry acceptance.

(5) "Producer segment" means those persons who manufacture or produce the product covered by the standard.

(6) "Distributor segment" means those persons who distribute at wholesale or retail the product covered by the standard.

(7) "User and consumer segment" means those persons who use or consume the product covered by the standard.

(8) "Acceptance by volume of production" means the weighted percentage of acceptance of those responding to the distribution in the producer segment. The weighting of each response will be made in accordance with the volume of production represented by each respondent.

(9) "Acceptance by volume of distribution" means the weighted percentage of acceptance of those

responding to the distribution in the distributor segment. The weighting of each response will be made in accordance with the volume of distribution represented by each respondent.

(f) A recommended standard shall be deemed to be supported by general concurrence whenever:

(1) An analysis of the responses to the distribution under paragraph (b) of this section indicates:

(i) An average industry acceptance of not less than 75 percent;

(ii) Acceptance of not less than 70 percent by the producer segment, the distributor segment, and the user and consumer segment, each segment being considered separately; and

(iii) Acceptance by volume of production and acceptance by volume of distribution of not less than 70 percent in each case: *Provided*, That the Department shall disregard acceptance by volume of production or acceptance by volume of distribution or both unless, in the judgment of the Department, accurate figures for the volume of production or distribution are reasonably available and an evaluation of either or both of such acceptances is deemed necessary by the Department; or

(2) The Department determines that publication of the standard is appropriate under the procedures set forth in paragraph (g) of this section and, in addition, an analysis of the responses to the distribution under paragraph (b) of this section indicates:

(i) An average industry acceptance of not less than 66 $\frac{2}{3}$ percent;

(ii) Acceptance of not less than 60 percent by the producer segment, the distributor segment, and the user and consumer segment, each segment being considered separately; and

(iii) Acceptance by volume of production and acceptance by volume of distribution of not less than 60 percent in each case: *Provided*, That the Department shall disregard acceptance by volume of production or acceptance by volume of distribution or both unless, in the judgment of the Department, accurate figures for the volume of production or distribution are reasonably available and an evaluation of either or both of such acceptances is deemed necessary by the Department.

(g) A recommended standard which fails to achieve the acceptance requirements of paragraph (f)(1) of this section, but which satisfies the acceptance criteria of paragraph (f)(2) of this section, shall be returned to the Standard Review Committee for reconsideration. The committee, by the

affirmative vote of not less than three-quarters of all members eligible to vote, may resubmit the recommended standard without change to the Department with a recommendation that the standard be published as a Voluntary Product Standard. The Department shall then conduct a public rulemaking hearing in accordance with the requirements of law as set forth in section 553 of Title 5, United States Code, to assist it in determining whether publication of the standard is in the public interest. If the Department determines that publication of the standard is in the public interest, the standard shall be published as a Voluntary Product Standard.

§ 10.7. Procedure when a recommended standard is not supported by a consensus.

If the Department determines that a recommended standard is not supported by a consensus, the Department may:

(a) Return the recommended standard to the Standard Review Committee for further action, with or without suggestions;

(b) Terminate the development of the recommended standard under these procedures; or

(c) Take such other action as it may deem necessary or appropriate under the circumstances.

§ 10.8. Standing Committee.

(a) The Department shall establish and appoint the members of a Standing Committee prior to the publication of a standard. The committee may include members from the Standard Review Committee, and shall consist of qualified representatives of producers, distributors, and users or consumers of the product covered by the standard, and representatives of appropriate general interest groups such as municipal, State, and Federal agencies. When requested by the Standing Committee, the Department shall appoint one voting member from among the representatives of the Federal agencies, other than the Department of Commerce. When requested by the Standing Committee for PS 20-70, "American Softwood Lumber Standard," the Department shall appoint two voting members from among the representatives of the Federal agencies, other than the Department of Commerce. All other representatives of Federal agencies shall be advisory nonvoting members of Standing Committees. (Alternates to committee members may be designated by the Department.) When deemed appropriate by the Department, project funds under § 10.2, may be made available to assure

participation by consumer interests on the committee at required meetings.

(b) Appointments to a Standing Committee may not exceed a term of 5 years. However, the committee may be reconstituted by the Department whenever appropriate, and members may be reappointed by the Department to succeeding terms. Appointments to the committee will be terminated upon the withdrawal of the standard.

(c) The Department shall be responsible for the organization of the committee. Any formal operating procedures developed by the committee shall be subject to approval by the Department. The committee may conduct business either in a meeting or through correspondence, but only if a quorum participates. A quorum shall consist of two-thirds of all voting members of the committee. A majority of the voting members of the committee participating shall be required to approve any actions taken by the committee except for the approval of revisions of the standard which shall be governed by the provisions of § 10.5 (b), (c), and (d).

(d) The members of a Standing Committee should be knowledgeable about:

(1) The product or products covered by the standard;

(2) The standard itself; and

(3) Industry and trade practices relating to the standard.

(e) The committee shall:

(1) Keep itself informed of any advancing technology that might affect the standard;

(2) Provide the Department with interpretations of provisions of the standard upon request;

(3) Make recommendations to the Department concerning the desirability or necessity of revising or amending the standard;

(4) Receive and consider proposals to revise or amend the standard; and

(5) Recommend to the Department the revision or amendment of a standard.

§ 10.9. Publication of a standard.

A Voluntary Product Standard published by the department under these procedures shall be assigned an appropriate number for purposes of identification and reference. Public notice shall be given regarding the publication and identification of the standard. A voluntary standard by itself has no mandatory or legally binding effect. Any person may choose to use or not to use such a standard. Appropriate reference in contracts, codes, advertising, invoices, announcements, product labels, and the like may be made to a Voluntary Product Standard

published under these procedures. Such reference shall be in accordance with such policies as the Department may establish, but no product may be advertised or represented in any manner which would imply or tend to imply approval or endorsement of that product by the Department or by the Federal Government.

§ 10.10. Review of published standards.

(a) Each standard published under these or previous procedures shall be reviewed regularly to determine the feasibility of transferring sponsorship to a private standards-writing organization. While the Department encourages the development of standards to replace Voluntary Product Standards by private standards-writing organizations, withdrawal of a Voluntary Product Standard, which meets the requirements of § 10.0(b), shall not be considered until a replacement standard is published.

(b) Each standard published under these or previous procedures shall be reviewed by the Department, with such assistance of the Standing Committee or others as may be deemed appropriate by the Department, within 5 years after initial issuance or last revision and at least every 5 years thereafter. The purpose of this review shall be to determine whether the standard has become obsolete, technically inadequate, no longer acceptable to or used by the industry, or inconsistent with law or established public policy.

(c) If any of the above conditions is found to exist, the Department shall initiate action to amend, revise, or withdraw the standard in accordance with § 10.11 or § 10.13. If none is found to exist, the standard shall be kept in effect provided adequate funding is maintained.

§ 10.11. Revision or amendment of a standard.

(a) A published standard shall be subject to revision or amendment when it is determined to be inadequate by its Standing Committee or by the Department of one or more of the following reasons or for any other appropriate reasons:

(1) Any portion of the standard is obsolete, technically inadequate, or no longer generally acceptable to or used by the industry;

(2) The standard or any part of it is inconsistent with law or established public policy; or

(3) The standard or any part of it is being used to mislead users or consumers or is determined to be

against the interest of users, consumers, or the public in general.

(b) A revision of a standard shall be considered by the Department to include changes which are comprehensive in nature, which have a substantive effect on the standards, which change the level of performance or safety or the design characteristics of the product being standardized, or which cannot reasonably be injected into a standard without disturbing the general applicability of the standard. Each suggestion for revision shall be submitted by the Department to the Standing Committee for appropriate consideration. The Standing Committee shall serve the same functions in the revision of a standard as the Standard Review Committee serves in the development of a new standard. The processing of a revision of a standard shall be dependent upon the age of the standard as computed from its effective date and shall be accomplished as follows:

(1) A proposed revision of a standard older than 5 years at the time such proposed revision is submitted to the Standing Committee by the Department shall be processed as a new standard under these procedures and, when approved for publication, the standard shall be republished and reidentified to indicate the year in which the revision became effective. The revised standard shall supersede the previously published standard.

(2) A proposed revision of a standard less than 5 years at the time such proposed revision is submitted to the Standing Committee by the Department shall be processed as a new standard except that:

(i) Distribution for acceptance or rejection shall be made to an appropriate list of producers, distributors, and users and consumers compiled by the Department;

(ii) If the revision affects only one subsection of the requirement section and/or only one subsection of the test methods section, it may be circulated separately for determining consensus and subsequently published as an addendum to the standard with appropriate dissemination and public notice of the addendum; and

(iii) If the revision does not change the level of performance or safety or the design characteristics of the product being standardized, the standard need not be reidentified.

(c) An amendment to a standard shall be considered by the Department to be any non-editorial change which is not comprehensive in nature, which has no substantive effect on the standard, which does not change the level of

performance or safety or the design characteristics of the product being standardized, and which reasonably can be injected into a standard without disturbing the general applicability of the standard. Each suggestion for amendment shall be submitted by the Department to the Standing Committee for appropriate consideration. An amendment to a standard recommended by not less than 90 percent of the members of the committee eligible to vote and found acceptable by the Department, shall be published as an addendum (until the standard is republished) and distributed to acceptors of record. Public notice of the amendment shall be given and copies of the amendment shall be distributed to those filing written requests.

§ 10.12 Editorial changes.

The Department may, without prior notice, make such editorial or other minor changes as it deems necessary to reduce ambiguity or to improve clarity in any proposed, recommended, or published standard, or revision or amendment thereof.

§ 10.13 Withdrawal of a published standard.

(a) Standards published under these and previous procedures may be withdrawn by the Director of the National Bureau of Standards at any time. Such action will be taken if, after consultation with the Standing Committee as provided in paragraph (a)(1) of this section and after public notice, the Director determines that the standard is: Obsolete; technically inadequate; no longer generally acceptable to and used by the industry; inconsistent with law or established public policy; not in the public interest; or otherwise inappropriate; and revision or amendment is not feasible or would serve no useful purpose. Additionally, a standard may be withdrawn if it cannot be demonstrated that a particular standard has substantial public impact, that it does not duplicate a standard published by a private standards-writing organization, or that lack of government sponsorship would result in significant public disadvantage for legal reasons or for reasons of domestic and international trade. The Director may withdraw a standard if costs to maintain such a standard are not reimbursed by the proponent or other government agencies.

(1) Before withdrawing a standard published under these procedures, the Director will review the relative advantages and disadvantages of amendment, revision, development of a new standard, or withdrawal with the

members of the Standing Committee, if such committee was appointed or reappointed within the previous five years.

(2) Public notice of intent to withdraw an existing standard published under these procedures shall be given and a 30-day period will be provided for the filing with the Director or written objections to the withdrawal. Such objections will be considered and analyzed by the Director before a determination is made to withdraw the standard. If the Director determines that a particular standard does not meet the criteria set out in § 10.0(b), the standard will be withdrawn.

(b) The filing under paragraph (a) of this section of a request to retain a standard or standards shall operate to stay the withdrawal of such standard or standards until the Director's determination has been made. If the Director determines that the requested standard or standards shall be withdrawn, the stay will remain in effect, if an appeal is filed in accordance with the requirements of § 10.14, until the decision of the Director is announced in the *Federal Register*. If, however, no appeal is received, the Director shall announce withdrawal of the particular standard or standards.

(c) Notice of the withdrawal action will be published in the *Federal Register* and such withdrawal will take effect 60 days from the date the withdrawal notice is published.

§ 10.14 Appeals.

(a) Any person directly affected by a procedural action taken by NBS or the Standard Review Committee under §§ 10.5, 10.6 or 10.7 regarding the development of a standard, by NBS or the Standing Committee under § 10.10 regarding the review of a published standard, or under § 10.11 regarding the revision of a standard, or under § 10.13 regarding the withdrawal of a standard, may appeal such action.

(b) Such appeal shall be filed in written form with the body taking the action complained of (NBS, the Standard Review Committee, or the Standing Committee) within 30 days after the date of announcement of the action.

(c) If appeal is filed with the Standard Review Committee or the Standing Committee, the Committee shall attempt to resolve the appeal informally. If the appeal is filed with NBS, NBS with the consultation and advice of the Standard Review Committee or the Standing Committee, whichever is appropriate, shall attempt to resolve the appeal informally.

(d) If the appeal is to the Standard Review Committee or the Standing Committee and the Committee is unable to resolve such an appeal informally, the Committee shall hold a hearing regarding the appeal. Announcement of the hearing shall be made to members of the Standard Review Committee or the Standing Committee and all the acceptors of record, when appropriate, as well as other known interests. Notice of the hearing shall be published in the *Federal Register*. The hearing will be an informal, nonadversary proceeding at which there will be no formal pleadings or adverse parties. Written statements will be furnished by witnesses prior to the hearing. A record of the hearing will be made. Copies of the written statements and the record of the hearing will be available at cost.

(e) Those members of the Committee hearing the appeal will develop a recommendation to the Committee concerning the resolution of the appeal. NBS will review the recommendation and if found acceptable will subject it to a letter ballot of the Committee. Approval by three-fourths of the members of the Committee eligible to vote will constitute acceptance by the Committee and by NBS. Notice of the Committee decision will be published in the *Federal Register*.

(f) If the appeal is to NBS and the attempt to resolve the appeal informally under paragraph (c) of this section is not successful, the Deputy Director of NBS will schedule a hearing with an appeals panel at an appropriate location. Announcement of the hearing shall be made to members of the Standard Review Committee or Standing Committee and all acceptors of record, when appropriate, as well as to other known interests. Notice of the hearing shall be published in the *Federal Register*.

(g) The Deputy Director of NBS will name two other persons, who have not been directly involved in the matter in dispute and who will not be directly or materially affected by any decision made or to be made in the dispute, to sit on the panel with the Deputy Director, who will act as presiding officer. The presiding officer will have the right to exercise such authority as necessary to ensure the equitable and efficient conduct of the hearing and to maintain an orderly proceeding.

(h) The hearing will be an informal, nonadversary proceeding at which there will be no formal pleadings or adverse parties. The hearing will be open to the public. Witnesses shall submit a written presentation for the record seven days prior to the hearing. A record will be made of the hearing. Copies of the

written statements and the record of the hearing will be available at cost.

(i) The appeals panel will make a recommendation to the Director of NBS. The Director's decision on the appeal will be announced within 60 days following the hearing and will be communicated to the complainant and other interested parties by letter. Notice of the Director's decision shall be published in the *Federal Register*.

§ 10.15 Interpretations.

(a) An interpretation of a Voluntary Product Standard may be obtained through the submission of a written request. The request shall identify the specific section of the standard involved.

(b) In the case of PS 20-70, the "American Softwood Lumber Standard," interpretations shall be made by the American Lumber Standards Committee (ALSC) under the procedures developed by the ALSC and found acceptable to NBS.

(c) In the case of the other Voluntary Product Standards, interpretations shall be made by the appropriate Standing Committees under procedures developed by those committees and found acceptable to NBS.

§ 10.16 Effect of procedures.

Nothing contained in these procedures shall be deemed to apply to the development, publication, revision, amendment, or withdrawal of any standard which is not identified as a "Voluntary Product Standard" by the Department. The authority of the Department with respect to engineering standards activities generally, including the authority to publish appropriate recommendations not identified as "Voluntary Product Standards," is not limited in any way by these procedures.

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International Trade Administration

15 CFR Parts 373 and 399

[Docket No. 60233-6033]

Exports to Countries Listed in Supplement No. 8 to Part 373

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations provide rules for licensing of exports and reexports of U.S. origin commodities and technical data. These rules include, in certain cases, special

provisions for exports to countries that have established the ability to safeguard reexports of these U.S. origin goods. Most of these countries are listed in Supplement No. 2 to Part 373 and participate in strategic alliances with the United States. This rule establishes a Supplement No. 8 to Part 373 to list other countries eligible for these special provisions. This supplement will be revised from time to time as circumstances warrant.

EFFECTIVE DATE: This rule is effective June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Wally Workman, Export Administration, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-3160.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, Export Administration has determined that:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291 and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules comments from the public are always welcome. Comments should be submitted to Betty Ferrell, Export Administration, Room 1622, Department of Commerce, Washington, DC 20230, Telephone (202) 377-3856.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections