

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560-AF01, AE43

1997-Crop Peanut National Poundage Quota, 1996 and 1997-Crop Additional Peanuts National Average Support Level and Minimum Commodity Credit Corporation (CCC) Export Edible Sales Price for the 1996 and 1997 Crops of Additional Peanuts

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.
ACTION: Proposed rule.

SUMMARY: The Agricultural Adjustment Act of 1938, (the Act) as amended, requires that the national peanut poundage quota for the 1997 crop be announced by December 15, 1996. The Agricultural Act of 1949, (the 1949 Act), as amended, requires that the additional support levels be announced not later than February 15, 1997. The minimum CCC export edible sales price for additional peanuts is usually announced at the same time as the price support levels. This proposed rule would set a national poundage quota figure in the range between 1,111,000 short tons (st) and 1,155,000 st, proposes that the national average additional price support level for the 1997 crop peanuts be set between \$125 per st and \$140 per st, and that the minimum CCC sales price for 1997 and subsequent crops of additional peanuts for export edible use be set between \$375 to \$425 per st. Also, the rule would recodify certain determinations

made for peanuts for the 1996 marketing year.

DATES: Comments must be received by December 3, 1996, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0514, Room 5750 South Building, P.O. Box 2415, Washington, DC 20013-2415. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 5750 South Building, 1400 Independence Avenue, SW, Washington, DC 20013-2415.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, Tobacco and Peanuts Division, USDA, STOP 0514, Room 5750 South Building, P.O. Box 2415, Washington, DC 20013-2415, telephone 202-720-9255. Copies of the cost-benefit assessment prepared for the rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:
Executive Order 12866

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

Federal Assistance Program

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

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither FSA nor CCC is required by 5 U.S.C. 553 or any other provision of law

to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

These proposed amendments do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Discussion

This proposed rule would amend 7 CFR part 729 to set forth the 1997-crop peanut national poundage quota, and 7 CFR part 1446 to set forth the 1996 and 1997-crop national average support level for additional peanuts and the minimum CCC sales price for 1996 and 1997 crop additional peanuts sold for export edible use.

A. National Poundage Quota

Section 358-1(a)(1) of the Act, as amended in 1996, requires that the Secretary set a basic national quota for peanuts for each of the 1996 through 2002 marketing years (MY) at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible use (excluding seed) and related uses. As to seed, section 358-1(b)(2)(B) of the Act provides that a temporary allocation of quota pounds for the MY only in which the crop is planted shall be made to producers for each of the 1996 through 2002 MYs and that the temporary seed quota allocation shall be equal to the pounds of seed peanuts planted on the farm as may be adjusted and determined under regulations prescribed by the Secretary. Regulations implementing the 1996 amendments to the peanut quota provisions of the Act were published in the Federal Register on July 16, 1996 (61 FR 36997). The MY for 1997-crop peanuts will be from August 1, 1997 through July 31, 1998.

The national poundage quota for MY 1996 was 1,100,000 st. This rule proposes that the national poundage quota for MY 1997 be set between 1,111,000 st and 1,155,000 st based on the following data:

ESTIMATED DOMESTIC EDIBLE, EXCLUDING SEED, AND RELATED USES FOR 1997-CROP PEANUTS

Domestic Edible Use:	Short Tons	
Domestic food	913,000	913,000

ESTIMATED DOMESTIC EDIBLE, EXCLUDING SEED, AND RELATED USES FOR 1997—CROP PEANUTS—Continued

On farm and local sales	8,500	8,500
Related Uses:		
Crushing residual	120,500	120,500
Shrinkage and other losses	36,500	36,500
Transfer to quota	5,000	5,000
Subtotal	1,083,500	1,083,500
Allowance for underproduction	27,500	71,500
Totals	1,111,000	1,155,000

The estimate of 1997 domestic food use was developed in two steps. First, total domestic edible utilization of 1,062,500 st was estimated by the USDA Interagency Commodity Estimates Committee (ICEC). Second, this estimate was reduced by 149,500 st to exclude peanut imports, peanut butter imports, and peanut butter exports. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358(e)(1) of the Act as being made from additional peanuts. MY 1997 farm use and local sales were estimated at 1 percent of ICEC's MY 1997 production estimate. This percentage reflects the average difference between USDA production data and Federal-State Inspection Service inspections data. About one-half of farm use and local sales is allocated to food use and the remainder to seed, which is excluded from quota determinations under amendments to the Act made by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given load of farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. The crushing residual identified above reflects the assumption that crushing grade peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1997 domestic edible use production.

The allowance for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic edible use. This factor is the minimum shrinkage generally allowed for calculating obligations of handlers under section 359a(d)(2)(B)(iv) of the Act and is believed to be a fair estimate of such shrinkage for purposes

of this determination, taking into account all factors.

Segregation 2 and 3 loan transfers to quota loan represent transfers of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas, yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for price support loans at a discounted quota loan rate.

In addition, an allowance has been made for underproduction. Historically, only 92 percent of the quota has been marketed. Since any quota pounds not marketed will be a loss of potential income for producers, it is expected that somewhat more than 92 percent of the quota will be marketed.

The lowest proposed 1997 quota level, as set forth above, reflects expected growth in domestic consumption of peanut products through new uses and a small increase in demand resulting from lower peanut support prices. This level essentially reflects the 1996 quota assumption that 97.5 percent of the quota will be produced and adds increased demand for edible peanuts. The higher range proposal takes into account the possibility that production of quota could fall below the 97.5 percent level.

A significantly larger quota option than those presented would lower the price received by first buyers and could reduce costs to consumers for peanut products slightly. However, it is assumed that a substantial increase in quota would be needed to lower the average grower price to a level near the average national support price. A quota in the neighborhood of 1,500,000 tons would likely result in sufficient qualities and quantities of peanuts delivered at the right time and place such that the average price would be only slightly higher than \$610 per ton.

This option only becomes viable if one assumes greater responsiveness in demand to additional supplies. One must assume a significant growth in

demand because of a lower price to justify this option.

The cost of overestimating demand would be high. Assuming the demand for greater supplies of peanuts is slight, this level of quota could result in a surplus and a loss on loan placements for more than 300,000 tons of peanuts. These peanut losses would be around \$400 a ton. Losses of up to \$120 million would occur and result in producer assessments of over \$100 per ton the following year. This level of assessment would lower the effective price received by producers for quota peanuts in MY 1998 to near \$500 per ton or less.

USDA will attempt to increase the accuracy and quantity of price data (quota and additional) over the next years to enhance analytical capacity and reduce the uncertainty associated with different options.

Buybacks have worked well in MY 1996. Buyback is a term used to describe a marketing transaction in which a producer places additional peanuts under loan at the additional loan rate and a handler simultaneously purchases such peanuts from the marketing associations for domestic edible use. To bolster stocks in MY 1996, the peanut industry has bought back over 100,000 tons of additional peanuts.

B. Additional Peanut Support Level

Section 155(b)(2) of the 1996 Act provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1996 price support level for additional peanuts was announced at \$132 per st on February 15, 1996. The national average price support rate for

quota peanuts, for each of the 1996 through 2002 crops, was set at \$610 per st by the 1996 Act and is codified at 7 CFR § 1446.103.

The regulation pertaining to price support loan levels for additional peanuts is being moved in 7 CFR from part 1421 to part 1446.

The range for the MY 1997 price support level for additional peanuts is recommended to be between \$125 per st and \$140 per st to ensure no losses to CCC from the sale or disposal of additional peanuts. Peanuts are pledged as collateral for price support loans. The peanuts are then sold out of inventory in order to recoup the loan principal, interest and related costs. The statutory factors have been analyzed as set out below. Based on those factors, it is anticipated that while the current oil market is strong, there is enough uncertainty in the market to suggest caution.

In making this determination, the following market information will be considered:

1. The domestic use of peanut oil during MY 1997 is forecast to be 92,500 st, unchanged from MY 1996 projected domestic use. MY 1997 peanut oil beginning stocks are expected to be 18,500 st, down 44 percent from MY 1996. The MY 1997 average peanut oil price is expected to be \$0.380 per pound, down \$0.015 per pound from MY 1996.

2. The domestic use of peanut meal during MY 1997 is forecast to be 140,000 st, up 5,000 st from MY 1996 projected domestic use. MY 1997 peanut meal beginning stocks are expected to be 4,000 st, unchanged from MY 1996. The MY 1997 average peanut meal price is expected to be \$227.50 per st, down \$2.50 per st from MY 1996.

3. The domestic disappearance of soybean oil during MY 1997 is forecast to be 6,850,000 st, up 1.1 percent from projected MY 1996 domestic disappearance. MY 1997 soybean oil beginning stocks are expected to be 1,117,500 st, up 11.2 percent from MY 1996. The MY 1997 average soybean oil price is expected to be \$0.230 per pound, down \$0.005 per pound from MY 1996.

4. The domestic disappearance of cottonseed oil during MY 1997 is forecast to be 517,500 st, up 2 percent from projected MY 1996 domestic disappearance. MY 1997 cottonseed oil beginning stocks are expected to be 55,000 st, up 10 percent from MY 1996. The MY 1997 average cottonseed oil price is expected to be \$0.260 per pound, down \$0.0025 per pound from MY 1996.

5. The domestic disappearance of soybean meal during MY 1997 is forecast to be 27,000,000 st, up 0.9 percent from projected MY 1996 domestic disappearance. MY 1997 soybean meal beginning stocks are expected to be 225,000 st, up 12.5 percent from MY 1996. The MY 1997 average soybean meal price is expected to be \$227.50 per st, down \$7.50 per st from MY 1996.

6. The domestic disappearance of cottonseed meal during MY 1997 is forecast to be 1,690,000 st, up 0.9 percent from projected MY 1996 domestic disappearance. MY 1997 cottonseed meal beginning stocks are expected to be 40,000 st, unchanged from MY 1996. The MY 1997 average cottonseed meal price is expected to be \$182.50 per st, down \$7.50 per st from MY 1996.

7. The world use of peanuts for MY 1996 is expected to be 26.36 million metric tons, up slightly from MY 1995. World peanut production for MY 1996 is forecast to be 26.36 million metric tons, up 1.7 percent from MY 1995. Ending stocks for MY 1996 are forecast at 0.46 million metric tons, unchanged from 1995.

C. Minimum CCC Sales Price for Additional Peanuts Sold for Export Edible Use

A minimum price at which 1997 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action that, by practice, is expected to be announced on or before February 15, 1997, the same time that the quota and additional peanut support levels for the 1997 crop are announced. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts for export.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the minimum price could have an unnecessary, adverse effect on prices paid to producers for additional peanuts.

It is proposed that the minimum price at which 1997 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets be established within the range of \$375 to \$425 per st. This range should encourage exports while providing price stability for additional peanuts sold under contract. It will also help assure handlers that CCC will not undercut their export contracting efforts with offerings of additional peanuts for

export edible sale below the minimum sales price.

D. Technical Amendments

Due to recent amendments to 7 CFR parts 729 and 1421, it has become necessary to recodify the 1996 quota determination and the 1996 additional peanut support determination. The latter has been moved to part 1446.

Accordingly, comments are requested with respect to the foregoing issues.

List of Subjects

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

7 CFR Part 1446

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

Accordingly, it is proposed that 7 CFR parts 729 and 1446 be amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 shall continue to read as follows:

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

2. Section 729.216 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 729.216 National poundage quota.

* * * * *

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

(d) The national poundage quota for quota peanuts for marketing year 1997 will be set between 1,111,000 and 1,155,000 short tons.

PART 1446—PEANUTS

3. The authority citation for 7 CFR part 1446 shall continue to read as follows:

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

§ 1446.103 [Amended]

4. Section 1446.103 is amended in paragraph (1) of the definition of "Support rate" by adding the words "as set out in section 1446.310" after "announced by the Secretary".

5. Two new §§ 1446.310 and 1446.311 are added to subpart C to read as follows:

§ 1446.310 Additional peanut support levels.

(a) The national support rate for additional peanuts for the 1996 crop is \$132 per short ton.

(b) The national support rate for additional peanuts for the 1997 crop will be between \$125 per short ton and \$140 per short ton.

§ 1446.311 Minimum CCC sales price for certain peanuts.

(a) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1996 crop is \$400 per short ton.

(b) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1997 and subsequent crops will be between \$375 and \$425 per short ton.

Signed at Washington, DC, on November 20, 1996.

Grant Buntrock,

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

[FR Doc. 96-30086 Filed 11-20-96; 4:47 pm]

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Agricultural Marketing Service**7 CFR Parts 1005, 1007, 1011 and 1046**

[Docket No. AO-388-A9, et al.; DA-96-08]

Milk in the Carolina and Certain Other Marketing Areas; Notice To Reopen Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1005	Carolina	AO-388-A9
1007	Southeast	AO-366-A38
1011	Tennessee Valley	AO-251-A40
1046	Louisville-Lexington-Evansville.	AO-123-A67

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice to reopen public hearing on proposed rulemaking.

SUMMARY: This notice announces a reopening of the hearing initially held on May 15-16, 1996, in Charlotte, North Carolina, to consider supplemental testimony and record evidence regarding the proposal to incorporate transportation credits for bulk milk that is imported for fluid use into 4 Southeastern milk orders. The reopened hearing, to be held on December 17, 1996, in Atlanta, Georgia, will receive supplementary data, testimony, and

arguments concerning the operation and impact of the interim amendments since their inception on August 10, 1996, in the 4 orders.

The Department has received many comments from dairy farmers who have expressed concerns about the impact of the currently implemented transportation credits. Any changes to the interim amendments resulting from the impact of the credits must be based upon evidence placed in the record of the hearing. Accordingly, the Department has decided to reopen the hearing to receive such evidence.

Testimony on a related proposal submitted by Carolina-Virginia Milk Producers' Association (CVMIPA) and Mid-America Dairymen, Inc., to incorporate a "dairy farmer for other markets" provision to help ensure an adequate milk supply for the seasonally-deficit markets of the southeastern United States will also be heard.

DATES: The hearing will convene at 9:00 a.m. on December 17, 1996.

ADDRESSES: The hearing will be held at the Hilton Airport Hotel, 1031 Virginia Avenue, Atlanta, Georgia 30354, telephone (404) 767-9000.

FOR FURTHER INFORMATION CONTACT:

Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a reopened public hearing to be held at the Hilton Airport Hotel, 1031 Virginia Avenue, Atlanta, Georgia, beginning at 9:00 a.m. on December 17, 1996, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the reopened hearing is to receive supplemental testimony and evidence with respect to the economic and marketing conditions which relate to the interim amendments, one new proposed amendment, hereinafter set forth, and

any appropriate modifications of these amendments to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

A public hearing was held to consider proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7