

the Director shall calculate the aggregate relevant purchaser intentions as declared or set under this section.

(2) *Exports.* Next, the Director shall add to the total determined under paragraph (a)(1) of this section the amount which is equal to the Director's determination of the average quantity of exported domestic leaf tobacco of the applicable kind for the past 3 marketing years. For this purpose, exports include unmanufactured tobacco only, including, but not limited to, stemmed and unstemmed leaf tobacco, stems, trimmings, and scrap tobacco, and excludes tobacco contained in manufactured products including, but not limited to, cigarettes, cigars, smoking tobacco, chewing tobacco, snuff and semi-processed bulk smoking tobacco. The quantity of exports for the most recent year, as needed, may be estimated.

(3) *Reserve stock level adjustment.* The total calculated by adding the sums of paragraphs (a)(1) and (a)(2) of this section may be adjusted by the Director as necessary to maintain inventories of producer loan associations for burley and flue-cured tobacco at the reserve stock level. For burley, the reserve stock level is the larger of 50 million pounds farm sales weight or 15 percent of the previous year's national market quota. For flue-cured, the reserve stock level is the larger of 60 million pounds or 10 percent of the previous year's quota. The Director shall consider supply conditions when making any adjustment and a downward adjustment for burley tobacco may not exceed either 35 million pounds farm sales weight or 50 percent of the amount by which loan inventories exceed the reserve stock level, whichever is larger. If the uncommitted pool stocks of burley tobacco for 2001 and subsequent crops equal or are less than the reserve stock level, then the downward adjustment in quota for that year may be made based on the reserve stock level for that kind of tobacco, with no downward limitation.

(b) *Additional 3-percent adjustment.* The amount otherwise calculated under paragraph (a) of this section may be adjusted by the Director by 3 percent of the total. This adjustment is discretionary and may be made irre-

spective of whether any adjustment has been made under paragraph (a)(3) of this section and may be made to the extent the Director deems such an adjustment is in the best interest of the program.

(c) *Dates of announcement.* For flue-cured tobacco, the quota determination should be announced by December 15 preceding the marketing year. For burley, the announcement should be made by February 1 preceding the marketing year.

[63 FR 11583, Mar. 10, 1998, as amended at 66 FR 53509, Oct. 23, 2001; 67 FR 62871, Oct. 9, 2002]

§ 723.504 Manufacturers' intentions; penalties.

(a) *Generally.* Each domestic manufacturer shall, for each marketing year, for burley and flue-cured tobacco separately, submit a statement of its intended purchases of eligible tobacco by the date prescribed in paragraph (d) of this section; further, at the end of the marketing year, each such manufacturer shall submit a statement of its actual countable purchases of eligible tobacco for that marketing year, by kind, for burley and flue-cured tobacco. For these purposes, countable purchases of eligible tobacco shall be as defined in, and determined under, paragraph (b) of this section. If a domestic manufacturer fails to file a statement of intentions, the Director shall declare the amount which will be considered that manufacturer's intentions for the marketing year. That declaration by the Director shall be based on the domestic manufacturer's previous reports, or such other information as is deemed appropriate by the Director in the Director's discretion. Notice of the amount so declared shall be forwarded to the domestic manufacturer. If the domestic manufacturer fails to file a year-end report or files an inaccurate or incomplete report, then the Director may deem that the manufacturer has no purchases to report or take such other action as the Director believes is appropriate to fulfill the goals of this section. Intentions and purchases of countable tobacco will be compared for purposes of determining whether a penalty is due from the domestic manufacturer.

(b) *Eligible tobacco for statements of intentions and countable purchases toward those intentions.* For reports and determinations under this section, eligible tobacco for purposes of determining the countable purchases under paragraph (a) of this section will be unmanufactured domestic tobacco of the relevant kind for use to manufacture, for domestic or foreign consumption, cigarettes, semi-processed bulk smoking tobacco and other tobacco products. Eligible tobacco for these purposes does not include tobacco purchased for export as leaf tobacco, stems, trimmings, or scrap. Countable purchases of eligible tobacco shall include purchases of eligible tobacco made by domestic manufacturers directly from the producers, from a regular auction market, or from the price support loan inventory, and shall also include purchases by the manufacturer where the manufacturer purchases or acquires the tobacco from dealers or buyers who purchased the tobacco for the domestic manufacturer during the relevant marketing year directly from a producer, at a regular auction market, or from the price support loan inventory.

(c) *Weight basis and nature of reports.* The weight basis used for all reports and comparisons shall be a farm sales weight basis unless the Director permits otherwise and all reports will be considered to have been made on that basis unless the report clearly states otherwise. Submitted reports shall be assumed to cover countable purchases of eligible tobacco only, absent indications to the contrary.

(d) *Due dates and addresses for reports.* For flue-cured tobacco, the domestic manufacturer's statement of intentions shall be submitted by December 1 before the marketing year and the year-end report shall be submitted by August 20 following the end of the marketing year. Those respective dates for burley tobacco shall be January 15 before the burley tobacco marketing year and November 20 after the burley tobacco marketing year. Reports shall be mailed or delivered to the Director, Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250-0514.

(e) *Penalties.* A domestic manufacturer shall be liable for a penalty equal to twice the purchaser's no-net-cost assessment rate per pound for the applicable kind of tobacco for the relevant marketing year, if the manufacturer's purchases of either burley or flue-cured tobacco for the marketing year do not equal or exceed, as determined by the Director, 90 percent of their stated purchase intentions for that kind of tobacco for the relevant marketing year. The Director shall adjust the domestic manufacturer's intentions, however, to the extent, that producers have not produced the full amount of the national quota for the relevant marketing year for the particular kind of tobacco. The burden of establishing all purchases shall be with the domestic manufacturer and the Director may, in the case of indirect purchases for the manufacturer, require that the manufacturer obtain verification of the purchases by the dealer who made the purchase from the producer, at a regular auction market, or from the price support loan inventory, in order to assure that the tobacco is, to the manufacturer, a countable purchase. The Director may require such additional information as determined needed to enforce this subpart.

(f) *Penalty notice and penalty remittance.* Penalties will be assessed after notice and an opportunity for hearing before the Director. Remittances are to be made to the CCC and will be credited to the applicable producer loan association's no-net-cost fund or account as provided for in part 1464 of this title.

(g) *Maintenance and examination of records.* Each domestic manufacturer shall keep all relevant records of purchases, by kind, of burley and flue-cured tobacco for a period of at least 3 years. The Director, Office of Inspector General, or other duly authorized representative of the United States may examine such records, receipts, computer files, or other information held by a domestic manufacturer that may be used to verify or audit such manufacturer's reports. The reasonable cost of such examination or audit may be charged to the domestic manufacturer who is the subject of the examination or audit. All records examined or received under this part by officials of

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

**PART 729—PEANUT MARKETING
QUOTAS**

AUTHORITY: 7 U.S.C. 7271; 15 U.S.C. 714b-c; 7 U.S.C. 7959.

SOURCE: 62872, Oct. 9, 2002, unless otherwise noted.

§ 729.1 Applicability to 1996 through 2001 crops of peanuts.

Sections 1309 and 1310 of the Farm Security Rural Investment Act of 2002 terminated, beginning with the 2002 crop, the marketing quota and price support program for peanuts. However, 7 CFR part 729, revised as of January 1, 2002 continues to apply to the 1996 through 2001 crops of peanuts.