

§ 723.505 Reduction of domestic content nonassessment percentage.

(a) *General.* The Director, in consultation with the appropriate producer owned cooperative marketing associations, may reduce the domestic content nonassessment percentage for a calendar year to a percentage below 75 percent for any calendar year with respect to which the Director determines that the production of burley or flue-cured tobacco for the preceding year was substantially reduced because of natural disaster or other conditions beyond the control of producers and the loan stock inventory for the kind of tobacco is effectively depleted.

(b) *Expected production.* For purposes of this section, the Director may determine, but shall not be required to determine, the expected amount of production of tobacco based on the planted acreage as reported by NASS for the respective kind of tobacco multiplied by the simple average of the five most recent years' average yields per acre for the respective kind of tobacco. The Director may take into account such other factors as the Director may deem to be relevant and appropriate, including changes in the national quota set by the USDA for the kind of tobacco involved.

(c) *Deadline for determination.* The Director shall announce the reduced percentage by November 30 of the year preceding the calendar year to which the reduced percentage will apply.

§ 723.506 Required records and reports; burden of proof.

(a) *Required records.* Each domestic manufacturer, for all manufacturing plants producing cigarettes covered under this subpart, shall maintain records on a calendar year basis for each lot of unmanufactured tobacco taken into inventory that shows for each lot the:

- (1) Kind or type of tobacco,
- (2) Form of tobacco, such as leaf, strips, scrap, stems, reconstituted, reclaimed, etc.,
- (3) Origin category of the tobacco (domestic or imported); and
- (4) Weight of the tobacco.

(b) *Record retention period.* Records shall be retained for at least 3 calendar years after the calendar year to which

the records apply. The minimum period of record retention may be extended upon written notification by the USDA Office of Inspector General or the Director. Nothing in this paragraph shall relieve the domestic manufacturer of the burden of establishing compliance with the provisions of this subpart.

(c) *Required reports.* (1) In addition to any other report or recordkeeping that may be required under this subpart or otherwise, each domestic manufacturer shall for each calendar year file a report with the Director showing, with the same particularity and categories of data required under paragraph (a) of this section, the quantity of unmanufactured tobacco that the manufacturer:

- (i) Acquired during the calendar year,
- (ii) Used to manufacture covered cigarettes during the calendar year,
- (iii) Used, or otherwise disposed of, other than to manufacture covered cigarettes during the calendar year, and
- (iv) Has in inventory at end of the calendar year.

(2) In addition, a one-time report containing the same particularity and categories of data required under paragraph (a) of this section shall be made by each domestic manufacturer setting out the total amount of unmanufactured tobacco in the manufacturer's inventory as of January 1, 1994. Such report shall be submitted within 15 calendar days after publication of this rule in the FEDERAL REGISTER.

(3) The information provided in the reports required in paragraph (c) of this section may be obtained from reports prepared and submitted to USDA for other purposes. The resubmission of such information shall constitute a current affirmation of the accuracy of such data or information.

(4) Reports required by this section shall be mailed or otherwise delivered in hard copy to the Director, Tobacco and Peanuts Division, Farm Service Agency, USDA, P. O. Box 2415, Washington, DC 20013-2415 by February 15 of the year after the calendar year for which the report applies except with respect to the one-time report required by paragraph (c)(2) of this section, which shall be submitted by the date

specified in paragraph (c)(2) of this section.

(d) *Variances in reports and record-keeping and deadlines.* The Director may grant variances from the report, recordkeeping, and deadlines required by this section or subpart but only in writing and only to the extent that it is determined that such variances are justified, taking into account the overall purposes of this subpart and the desire to avoid undue interference with commerce.

(e) *Burden of proof.* The burden of proof on all issues arising under this subpart regarding compliance with the provisions of this subpart shall be on the domestic manufacturer of cigarettes.

§ 723.507 False reports; failure to file reports; examination of records; and records for events occurring prior to the publication of the final rule.

(a) *False reports, failure to file report.* In addition to any other sanction or remedy or presumption that may apply, a person shall be subject to all other remedies provided for by law including, but not limited to, those that apply under section 320C of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1314i), and 18 U.S.C. 1001 for any:

(1) False or inaccurate report, certification, or statement, or

(2) Failure to provide required information.

(b) *Examination of records.* The Director, the Office of Inspector General, or any authorized representative of the United States may examine such records, books, computer files, or any other material to determine the correctness of any report or information provided to the Director or to obtain relevant information. Reasonable costs incurred with respect to any such audit may be charged to the domestic manufacturer which is the subject of the audit or examination.

(c) *Records for events occurring prior to the publication of the final rule.* No person shall be penalized or otherwise adversely affected for a failure to comply with any recordkeeping requirements in this rule as concerns records that would have been required to be generated prior to the publication of the

final rule implementing the program provided for in this subpart. However, all persons shall be required to maintain and submit on request, all records generated prior to the publication of the final rule which are relevant to the provisions of this subpart and shall be required, to the full extent possible, for all uses of tobacco relevant to this subpart. Nothing in this paragraph shall be justification for the destruction of records or information, or for refusing a request for relevant information.

§ 723.508 Reconsideration and appeal.

A domestic manufacturer of cigarettes may request that the Director reconsider any adverse determination with respect to such manufacturer under this subpart. A request for reconsideration shall be made within 15 calendar days after the date of the notification of failure to comply except that the manufacturer for cause may request that the time for such filing be extended. The Director may grant such requests and may set conditions for such extensions. Unless otherwise specified by the Director, an extension of the time for reconsideration, or the pendency of reconsideration or appeal, shall not toll the time for payment of any amount due, nor toll the accrual of interest. If the domestic manufacturer is dissatisfied with the reconsideration determination rendered, such manufacturer may appeal the determination to the Director, National Appeals Division in accordance with part 780 of this title.

§ 723.509 Limitation of subpart to 1994 production.

Notwithstanding any other provision of this subpart, the requirements and provisions of this subpart shall not apply to cigarettes produced after December 31, 1994.

[60 FR 61194, Nov. 29, 1995]

PART 729—PEANUTS

Subpart A—General Provisions

Sec.

729.101 Paperwork Reduction Act assigned number.

729.102 Applicability.

729.103 Definitions.