choose to do so. Finally both commenters took issue with the statement that healthier food could be obtained for less money. The commenters appear to have misinterpreted a statement in the analysis which said that with decreased tier II meal reimbursements, providers may choose to buy lower quality food whereby the nutritional quality of the provider's meals would suffer, but that it is also possible for a provider to change the types of foods purchased and buy foods that are less expensive and of a higher nutritional quality than the more expensive foods purchased previously. The comments interpreted the statement as saying meals of higher nutritional quality can be obtained by purchasing cheaper, lower-quality foods. Rather, FCS believes that higher meal cost does not always result in more nutritious meals.

Two commenters expressed their belief that the interim rule is incorrect in assuming that only small sponsors will choose actual meal count systems because some States require sponsors to collect actual meal counts from DCHs. Under the interim and final rules, States may require that DCHs keep actual counts and may require that DCHs provide these counts to their sponsors, but States are prohibited from directing their sponsors to use an actual counts system, which means States cannot direct their sponsors to calculate reimbursement amounts according to DCHs' actual meal count records and the documented income-eligibility status of each enrolled child. If a sponsor chooses a simplified count system and is in a State that requires DCHs to submit actual counts to their sponsors, the sponsor would calculate mixed tier II DCH reimbursements by applying either claiming percentages or blended rates to meal count totals by meal type. FCS has no evidence that an appreciable number of medium and large sponsors would choose to self-impose the additional burden associated with actual counts when, compared with simplified count systems, actual counts do not reduce the probability of sponsors making reimbursement calculation errors; do not produce, over time, higher payments to DCHs; and do not allow providers to calculate the reimbursement they are due with any greater accuracy. Therefore, this analysis retains the interim analysis's assumption that an insignificant number of medium and large sponsors will opt for an actual meal count system.

In response to the six comments received on the initial regulatory flexibility analysis, FCS has made no changes to the final rule. However, FCS has made changes to the analysis in response to public comment, including changing the labor wage rate assumptions used to calculate the costs associated with the new sponsor burdens. Furthermore, FCS recognizes the need to obtain empirical data on the number of mixed tier II DCHs in operation and on the characteristics of sponsors using actual counts systems.

The Pub. L. 96–354 also requires that the final analysis estimate the types of professional skills necessary to meet the final and interim rules' reporting and record keeping requirements. The new reporting and record keeping required by this rule require no skills beyond those necessary for current program reporting and record keeping requirements.

Pub. L. 96–354 further requires that analyses describe the steps taken by the promulgating agency to minimize the economic impact on small entities. Specifically, the ''analysis shall also contain a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.'' There are no significant alternatives available to FCS that both (1) accomplish the stated objectives of Pub. L. 104–193 and (2) minimize any significant economic impact on small entities. FCS has attempted to adapt the rules based on comments received in response to the interim rule. Changes made by the final rule to the interim, in response to comments, were described in the section title *Summary of Changes to Interim Analysis.* All three reduce burdens; two reduce burdens on DCH sponsors, and the third reduces burdens for State CACFP agencies. All three changes should make the two tier system easier to implement and administer. In addition, the preamble to the final rule provides an in-depth discussion of how the final rule reflects the comments received on the interim rule.

### *8. References*


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9. Selected sponsor data from FCS's Virginia CACFP Regional Office Administered Program (ROAP).
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Approved:
Dated: July 31, 1997.

**William E. Ludwig,**

*Administrator, Food and Consumer Service.*

Dated: October 7, 1997.

**Stephen B. Dewhurst,**

*Director, Office of Budget and Program Analysis.*

Dated: October 10, 1997.

**Keith Collins,**

*Chief Economist.*

Dated: October 31, 1997.

**Shirley R. Watkins,**

*Under Secretary for Food, Nutrition and Consumer Services.*

[FR Doc. 98–4407 Filed 2–23–98; 8:45 am]

BILLING CODE 3410–30–U

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## DEPARTMENT OF AGRICULTURE

## Farm Service Agency

## 7 CFR Part 723

**RIN 0560–AE13**

## Special Combinations for Tobacco Allotments and Quotas

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

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts with a modification the interim rule published in the **Federal Register** (62 FR 15599) on April 2, 1997. The interim rule provided for special combinations of flue-cured tobacco allotments and quotas on participating and nonparticipating farms with ''production flexibility contracts'' (PFC) under the Agricultural Market Transition Act of 1996 (AMTA) and for, burley tobacco, an exemption to dropping the quota on divided farms with less than 1,000 pounds if the farm meets the requirements for a farm combination. After further review of the rule and the comments, the regulations adopted in the interim rule have been modified to allow for other transfers of tobacco quota, for all tobacco types, between farms with the same owner in cases where a farm combination could otherwise be used to produce the desired result but is not available, as a practical matter, because of restrictions under the PFC program administered by the Department. The amended provisions permit such transfers to be approved without regard to restrictions for purchased quota that apply to transfers by lease or sale. Also, the interim rule has been modified to permit the agency to modify non-statutory deadlines for transfers and other requirements when special circumstances warrant such action.

**EFFECTIVE DATE:** February 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Joe Lewis Jr., Tobacco Branch, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514, telephone 202–720–0795.

**SUPPLEMENTARY INFORMATION:**

## Executive Order 12866

This rule has been determined to be not significant and therefore was not reviewed by OMB under Executive Order 12866.

## Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule since the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

## 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.

## Environmental Evaluation

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

## Executive Order 12372

This 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).

## Executive Order 12988

The final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this final rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR part 780 and 7 CFR part 711, as applicable, must be exhausted.

## Paperwork Reduction Act

This final rule does not contain new or revised information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.). The information collections required in 7 CFR part 723 have previously been cleared under OMB control number 0560–0058.

## Effective Date of Rule

It has been determined for purposes of all limitations that might apply, including any provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, that this rule should be effective immediately. The interim rule (at 62 FR 15599, April 2, 1997) set forth the reasons that the rule should be effective immediately. The nature of the interim rule was to provide relief to flue-cured tobacco producers who were adversely affected by restriction on the combination of farms. Additional relief is provided in this final rule by allowing for other transfers of tobacco quota, for all tobacco types, between farms with the same owner in cases where a farm combination could otherwise be used to produce the desired result but is not available, as a practical matter, because of restrictions under the PFC program of the Department. As the rule simply provides additional flexibility to producers and should not have any material adverse effect on anyone, it has been determined that the full rule, including the modification, should be made effective immediately.

## Discussion of Comments

The interim rule (at 62 FR 15599, April 2, 1997) requested comments from interested parties. A total of three comments were received from the public; two from State level farm organizations, and one from a county level farm organization. All comments were supportive of the provisions relating to the special combinations of flue-cured tobacco allotments and quotas. These special combinations would avoid undue hardships on many flue-cured tobacco producers. It should be noted that the adopted rule allows for effective combinations of farms in cases where the combination could otherwise occur but for restrictions that may arise under the PFC program of the Department, as was indicated in the preamble of the interim rule. The adopted regulations do not override basic limitations on transfers. Thus, for example, the rule does not provide new authority for the transfer or effective movement of quota across county lines that otherwise would not be possible through a farm combination as the existing restrictions on such movements of quota are statutory. However, on further review it has been determined to otherwise expand the rule to provide authority to allow for effective combinations in all instances for tobaccos, as the need may arise, where the result sought would be obtained, otherwise, by a farm combination were it not for restrictions arising under the PFC program. This would, for example, allow for effective transfers of quota to be made between two burley farms with the same owner in instances in which the transfer would otherwise be prohibited under the rules because of there being a transfer to and from the transferring farm within the same three year period. Essentially, the modified rule would simply allow the farms to be considered to be the same farm for tobacco purposes just as they could have been in the past through a farm combination without having to treat those farms as being combined for PFC purposes as well. Protection for the PFC program will be provided in the manner specified in the interim rule through restrictions on using the land freed up by the transfer of quota. Specifically, that land will not be usable for the production of ''PFC commodities''—that is, commodities for which there is a potential eligibility for loans under the PFC program. To make this and other

clarifying changes, 7 CFR 723.209(c) as published in the interim rule is amended. In addition, with respect to restrictions relating to transfers in general, 7 CFR 723.103 is amended so that non-statutory deadlines and other requirements may be modified where circumstances warrant, such as in the case this year with the final deadline for marketing burley tobacco where that deadline has proven inopportune given weather and crop conditions this year. This additional flexibility should not have an adverse effect on anyone and should provide a greater opportunity to allow for relief in meritorious cases. Consequently, delaying implementation of that provision appears to be contrary to the public interest.

**List of Subjects in 7 CFR Part 723**

Acreage allotments, Auction warehouses, Dealers, Domestic manufacturers, Marketing quotas, Penalties, Reconstitutions, Tobacco.

For the reasons set forth in the preamble, the interim rule for 7 CFR part 723 published on April 2, 1997 (62 FR 15599) is hereby adopted as a final rule with the following changes:

## PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

**Authority:** 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 11377–1379, 1421, 1445–1 and 1445–2.

2. The heading for § 723.209 is revised as set forth below.

3. Paragraph (c) of 723.209 is amended as follows:

(i) In the first sentence, ''quotas for flue-cured tobacco,'' is revised to read ''quotas'';

(ii) In the third sentence, ''PFC flue-cured quota farm'' is revised to read ''PFC farm'';

(iii) The fifth sentence is revised to read as follows:

**§ 723.209 Determination of acreage allotments, marketing quotas, and yields for combined farms; special combinations for farms with production flexibility contracts.**

* * * * *

(c) * * * Such action could result in a farm being found to have had excess acreage devoted to tobacco or excess marketings of tobacco, in which case certain penalties, along with other sanctions as may be applicable, would apply. * * *

4. Section 723.103(d) is amended by adding at the end a new sentence to read as follows:

**§ 723.103 Administration**

* * * * *

(d) * * * Further, the Administrator or the Administrator's designee may modify any deadline or other provisions of this part to the extent that doing so is determined by such person to be appropriate and not inconsistent with the purposes of the program administered under this part.

Signed at Washington, DC, on February 18, 1998.

**Keith Kelly,**

*Administrator, Farm Service Agency.*

[FR Doc. 98–4560 Filed 2–23–98; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 959

**[Docket No. FV98–959–2 IFR]**

## Onions Grown in South Texas; Removal of Sunday Packing and Loading Prohibitions

**AGENCY:** Agricultural Marketing Service, USDA.

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

**SUMMARY:** This rule changes the handling regulation under the South Texas onion marketing order by removing the Sunday packing and loading prohibitions. The marketing order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). This rule will allow the South Texas onion industry to compete more effectively with other growing areas, better meet buyer needs, and increase supplies of South Texas onions in the marketplace.

**DATES:** Effective February 25, 1998; comments received by April 27, 1998, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file 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 law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the 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 his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule changes the handling regulation under the South Texas onion marketing order by removing the