

paragraph (b) of this section shall be multiplied by a factor of 1.5.

(d) *Time of notification.* The notice of determination for temporary seed quota allocations shall be made by the Deputy Administrator as soon as practicable following the deadline for filing certifications of planted acres.

(e) *Penalty for erroneous certification.* If the certified acreage on which the temporary seed quota allocation is made is greater than the determined acreage, by more than the larger of 1 acre or 5 percent of the certified acreage not to exceed 10 acres, and the producer marketed the production for the acreage based upon an allocation of temporary seed quota on certified acres not determined, a penalty will be determined by multiplying the difference between the certified and determined acreage times the applicable per acre seeding rate times 140 percent of the per pound quota support rate for the applicable crop year. The penalty amount shall be calculated by multiplying the difference between the certified and determined peanut acreage by the applicable per acre seeding rate used in the calculation of the temporary seed quota by 140 percent of the applicable per pound quota support rate for the crop year involved. In addition, a commensurate penalty at the same rate may be assessed in cases within the tolerance allowed by the previous sentence in any instance in which the variance is determined to be due to a scheme or device to defeat the purposes of the program, or is repeated. Further, all errors may in all cases result in a commensurate diminution of the quota allowed the farm for the following year.

[61 FR 36999, July 16, 1996, as amended at 62 FR 25438, May 9, 1997; 65 FR 8247, Feb. 18, 2000]

§ 729.205 Farms ineligible for farm poundage quota.

(a) *Ineligible farms.* Except for quota allocated under the provisions of § 729.208 for experimental and research programs, effective beginning with the 1998 crop year, farm poundage quotas shall not be established for farms which are determined by FSA to be owned or controlled by:

(1) Municipalities, airport authorities, schools, colleges, refuges, and other public entities (other than a university used for research purposes).

(2) A person:

(i) Who is not a peanut producer; and
 (ii) Whose primary domicile, as determined by FSA, in the case of any individual is in a State outside the State in which the quota is allocated or, in the case of an entity, does not qualify under this section to be considered to be a resident of the State in which the quota is allocated.

(b) *Determination of residency and related rules.* (1) For purposes of administering paragraph (a) of this section, an entity may be considered a resident of the State in which the quota is located if:

(i) It is determined that a person or persons with at least a cumulative 20-percent interest in any such entity are individuals whose primary residence is in the State in which the quota is allocated; or

(ii) As determined appropriate by the Deputy Administrator, the corporation or other entity, but not a general partnership or an entity not recognized as a separate and distinct legal entity from its members, has been created under the laws of the State in which the quota is allocated.

(2) For purposes of the provisions of (a)(2)(i) of this section, a person shall not be considered to be a producer of a crop of peanuts unless such person is at risk for at least 15 percent of the proceeds from the marketing of the production of the quota at issue.

(c) *Exemption for involuntary acquisition.* Paragraph (a)(2) of this section shall not apply to any involuntary acquisition of a farm by foreclosure, or otherwise, resulting directly from the conduct of a public business in the State in which the quota is allocated, or an acquisition resulting directly by reason of a death. The exemption for involuntary farm acquisitions allowed under the preceding sentence shall only apply to the establishment of quota in the three crop years immediately following the date of the involuntary acquisition of the quota farm.

(d) *Applicable crop year.* For purposes of applying the rules in paragraph (a)

§ 729.206

7 CFR Ch. VII (1-1-01 Edition)

of this section as they regard production, the determination of whether paragraph (a)(2) of this section applies shall be made based on the crop last planted before the date on which the determination is to be made.

(e) *Allocating forfeited quota and sales of quotas subject to paragraph (a).* Except for the exemption for involuntary acquisition in § 729.205(c), beginning in 1997 any farm poundage quota held on or after August 1 of 1997 by an ineligible person as determined under paragraph (a) of this section shall be allocated from the quota farm to other farms in the same State in accordance with § 729.206 of this part; provided, however, that if the ineligibility arises solely because of a purchase of a farm after August 1, 1997, or involves a quota which is acquired because of the expiration of a CRP contract after August 1, 1997, the quota shall not be forfeited but may not be used to market peanuts until the ineligibility is determined by the county committee to have been removed or the quota is sold to an eligible farm. Such reallocations shall be made to the extent practicable but shall take into account those instances in which the regulations call for an ineligibility for quota allocation rather than forfeiture of the quota.

[61 FR 37000, July 16, 1996, as amended at 62 FR 25438, May 9, 1997]

§ 729.206 Determining a farm's basic quota.

(a) *No change in State poundage quota.* If the poundage quotas allocated to the State for the current year is the same as the State's poundage quota for the preceding year, the current year's basic quota for each quota farm in the State shall be the same as such farm's preliminary quota for the current year.

(b) *Increase in State poundage quota—*
(1) *Eligible farms.* If the poundage quota allocated to a State for the current year is greater than the poundage quota allocated to such State for the preceding year, the amount of increase in the poundage quota shall be allocated proportionately, on the basis of each farm's production history as determined under this part, among:

- (i) All quota farms in the State.
- (ii) All other farms in the State that were nonquota farms in the preceding

year and on which peanuts were produced and marketed in at least 2 years of the base period.

(2) *Factor.* A factor shall be determined to apportion, to eligible farms, the increase in the State's poundage quota. The factor shall be determined by dividing the amount of increase in the State poundage quota by the total of the farm production history for all eligible farms determined in accordance with paragraph (b)(1) of this section.

(3) *Basic quota.* The current year basic quota for each:

(i) Quota farm in the State shall be the preliminary quota plus an amount determined by multiplying the farm's production history by the factor determined in accordance with paragraph (b)(2) of this section.

(ii) Eligible farm that was a nonquota farm in the preceding year shall be the result obtained by multiplying such farm's production history by the factor determined in accordance with paragraph (b)(2) of this section.

(c) *Decrease in State poundage quota.* If the poundage quota allocated to a State for the current year is less than the poundage quota allocated to such State for the preceding year, the current year's basic quota for each quota farm in the State shall be determined by multiplying the current year's preliminary quota by a factor determined by dividing the State quota by the total of the current year's preliminary quotas on all farms in the State.

(d) *Reduction for nonproduction of quota—*(1) *Reconstitutions.* If the farm resulted from a farm reconstitution during the base period, any reduction determined according to this paragraph for nonproduction of the basic quota shall be made separately for the individual tracts in the farm in such manner as the Deputy Administrator determines to be appropriate.

(2) *Reduction amount.* The current year's basic quota otherwise determined for a farm in accordance with paragraph (a), (b), or (c) of this section shall be reduced if, with respect to any 2 years of the base period, the county committee determines that part, or all, of the basic quota for such farm was not produced or considered produced on the farm. The amount of the reduction