Discussion of Comments

1. Distribution of national quota increase and considered produced credit.

(a) *Quota increases.* Under the rule, in accordance with section 358 of the 1938 Act, if the national peanut quota is increased, each State will take a share of the increase based upon the State's previous percentage share of the national quota. Section 358 further provides that such increase shall be allocated equally among: (i) all farms in the State of each of which a farm poundage quota was established for the marketing year immediately preceding the marketing year for which the allocation is being made; and (ii) all other farms in the State on each of which peanuts were produced in at least two of the three immediately preceding crop years, as determined by the Secretary.

Under the rule, as proposed, two steps were taken in making this allocation for each State with farms eligible for a quota increase due to an increase in the national quota. First, the number of eligible farms in both categories were added and the total was divided into the amount by which the quota was increased. There were 226 comments expressing the view that the result so obtained should be the quota allocated to each of the quota and nonquota farms.

The proposed rule, however, provided a second step. The result so obtained was to be multiplied by the number of quota farms and by the number of nonquota farms to determine each category's share of the quota. The share for quota farms would then be divided among individual "quota farms" based upon the higher of: (1) The farm's quota for the preceding year or (2) the average production of peanuts on the farm for those two marketing years, out of the three preceding marketing years, in which the farm's production was highest. The share for nonquota farms would be divided among individual nonquota farms based on the same type of production history as provided for quota farms.

There were 226 comments supporting such an allocation. An additional 146 comments would also support this type of allocation if the allocation to quota farms was made only on the basis of the 1985 quotas.

Other comments supported varying alternative methods of allocation. There were also suggestions that the increase in quota be allocated to quota farms only and some suggestions that such increases be allocated to nonquota farms only. Neither allocation would be permitted by the 1985 Act.

From the comments received, the consensus appeared to be that the allocation of a State's increase in quota should be done on some basis other than each quota and nonquota farm receiving the same amount of the increase, regardless of production history or other factors. Factors suggested, as in the proposed rule, included previous production and previous quota.

It has been determined that the rule, as proposed, should be adopted on this issue. Ignoring actual production would produce disparate and unfair results by ignoring the actual investment of producers in peanut production. Moreover, to ignore production would fail to account for the fact that a number of peanut farms are combinations of other farms. In addition, to ignore production would mean that to some degree the ability to satisfy demand for food uses of peanuts could be moved from farms in one locale to those in another. Such results, it is believed, were not intended by the amendments made by the 1985 Act to Section 358 of the 1938 Act.

The language of section 358 of the 1938 Act, with respect to the allocation of an increase in a State's quota due to increases in the national quota, is similar to that which was contained in Section 802 of H.R. 2100, 99th Cong., 1st. Sess. House Report No. 99–271, accompanying H.R. 2100, contained at page 52 the following statement with respect to this provision:

> These changes in current law will provide a balance in the distribution of new quota and address the issue of new growers' entrance into the current program in a fair and equitable fashion. [sic] By recognizing the need to permit entrances of the new growers into the current system, the bill addresses issues raised previously in a manner which is least economically disruptive to the areas currently producing peanuts.

The rule as proposed accomplished such an equitable balance and met the demand of the statute for equal treatment for quota and nonquota farms. It has been determined in that regard that it would not be appropriate to ignore actual production for either "quota farms" or "nonquota farms". As indicated, some suggested that even if the proposed rule were otherwise adopted, the increase for "quota farms" should be based solely on each farm's previous quota. It is argued by those suggesting such a limitation that those farms that produced both quota and "additional peanuts" contributed to the costs of the peanut program and should not, by virtue of their production of additional peanuts, obtain a higher quota than they would have otherwise. However, there was nothing in the previous law which prohibited the growing of additional peanuts in an amount which the producer deemed appropriate and indeed it was anticipated by Congress when it reduced the national quota in previous years that a portion of the demand for domestic edible uses would be made up by sales of additional peanuts through special "buyback" procedures. Further, to ignore actual production for quota farms would not ignore the basic orientation of actual production of provisions with respect to allocation of the quota increase, but would also result in an unjustifiable treatment of farms which may have incidentally acquired a small peanut quota but produced a large quantity of additional peanuts. In such cases—were actual production to be ignored—the farm could receive a substantially lower quota than if the farm previously had no quota at all.

Commenters suggested other variations on quota increases; *e.g.*, one commenter objected to the provision of the proposed rule that a farm with one acre or less of production would not be considered to have produced peanuts for quota increase purposes. The 1938 Act specifically exempts production on one acre or less from regulation under the Act. Such production is treated, effectively, as nonproduction. To do otherwise in the rule would be contrary to the Act and unworkable.

Some commenters also suggested that producers be granted quota increases directly rather than tying the quota to a farm. Adoption of that suggestion is prohibited by the Act.ge a20jn0057

(b) *Considered produced credit.* Under the 1938 Act, for the 1986–1990 crops, quotas can, "insofar as practicable and on such fair and equitable basis" as the Secretary may prescribe, be reduced to the extent to quota is not produced or "considered produced" on the quota farm for two out of three preceding years.

The 1983 Act specifies that a quota can be "considered produced" on the quota farm if production was not possible due to a natural disaster or other condition beyond the producer's control.

The proposed rule specified that: (1) Quotas would be considered produced for the 1983–85 crops if leased or transferred to a farm with the same owner or operator, or if transferred by a "fall" (post-planting) lease and (2) for the 1986 and subsequent crops, quotas would be considered produced if

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