UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice PF-107

For: State and County Offices

PFC Planting Violations

Approved by: Acting Deputy Administrator, Farm Programs

1 Overview

A Background

Several questions and concerns have arisen about the planting of fruits and vegetables (FAV) on contract acres. 1-PF, Part 4 provides the exceptions under which FAV may be planted on contract acres without violating PFC, and the consequences when those exceptions do not apply.

B Purpose

This notice:

- reminds County Offices of the consequences when producers plant FAV on contract acres
- informs County Offices that a request for comments from the public about the appropriateness of the current planting violation provisions has been published in the FR (Exhibit 1)

  Note: Comments will be analyzed to determine whether changes should be made and if changes are made, whether they should be retroactive. Until further notification, County Offices shall continue to follow the provisions in this notice, 1-PF, and 4-CP.

- directs County Offices to publicize FAV planting violation provisions by newsletter, handouts, news media, etc.

Disposal Date	Distribution
January l, 2000	State Offices; State Offices relay to County Offices

2 Planting Violation Provisions

A When a Planting Violation Occurs

Planting violations occur when FAV is **planted** on contract acres and none of the exceptions provided in 1-PF, Part 4 apply.

Important: Destruction of FAV's on contract acres does not nullify the planting violation.

B Consequences of Planting Violations

When a planting violation occurs, any and all producers subject to PFC on the violating farm shall have their shares terminated on all PFC's in which they have an interest.

If COC determines that the violation does not warrant termination, a planting violation payment reduction shall be assessed according to 4-CP, paragraphs 74 and 107.

C FAV's Subject to Violations

The producer shall be considered in violation when any FAV listed in 1-PF, Exhibit 7 is planted on contract acres, unless an exception applies.

Note: This includes any FAV that is planted to produce seed.

D FAV Exceptions

The only exceptions to the planting violation provisions are in 1-PF, Part 4. Subparagraph 207 A provides exceptions when planting FAV without a producer or farm history is not considered a planting violation. These include:

- home gardens
- lentils
- mung beans
- dry peas (Austrian, wrinkled seed, green, yellow, umatilla).

Important: Green peas raised for the fresh market, canning, or freezing are not considered dry peas. They shall be reported as snap, snow, sugar, sugar snap, or other. See 2-CP, Exhibit 10.

E FAV's Planted for Other Purposes

FAV that were planted for green manure, haying, or grazing shall not be considered as FAV's when determining PFC payment reductions. However, these cases are extremely rare and COC shall verify that the crop was used as intended.

Important: The intended use of FAV's cannot be changed to green manure, haying, or grazing to nullify a planting violation.

Request for Comments

Proposed Rules

Federal Register
Vol. 64, No. 86
Wednesday, May 5, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AF79

Production Flexibility Contracts for Wheat, Feed Grains, Rice, and Upland Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Commodity Credit Corporation (CCC) is issuing this Advance Notice of Proposed Rulemaking (ANPRM) to invite comment from all interested parties on reductions of Production Flexibility Contract (PFC) payments that were affected by the planting of fruits or vegetables in violation of section 118 (b)(1) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7218 (b)(1).

DATES: Comments must be received on or before June 2, 1999 to be assured consideration.

ADDRESSES: Comments should be directed to Sharon Biastock, Farm Service Agency (FSA), STOP 0517, 1400 Independence Avenue, S.W., Washington DC 20250–0517.

FOR FURTHER INFORMATION CONTACT: Sharon Biastock, (202) 720–6336.

SUPPLEMENTARY INFORMATION:

Background

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) provided producers the opportunity to enter into Production Flexibility Contracts (PFC's). The 1996 Act prohibited the planting of fruits and vegetables on PFC acreage except as provided by specific exceptions. Two exceptions require the application of an acre-for-acre payment reduction for each acre of fruit or vegetables planted on PFC acreage. A violation of the PFC occurs when producers do not comply with the fruit and vegetable provisions and the exceptions unless it is determined that the violation is not serious enough to warrant termination of the PFC. The 1996 Act provides that if the Secretary determines that a violation does not warrant termination of the PFC, the Secretary may require the owner or producer subject to the contract to: (1) refund to the Secretary that part of the contract payments received by the owner or producer during the period of the violation, together with interest on the contract payments as determined by the Secretary; or (2) to accept a reduction in the amount of future contract payments that is proportionate to the severity of the violation, as determined by the Secretary.

Under current regulations, if the county FSA committee determines that a planting violation does not warrant termination of the PFC, a reduction may be made in the current or future contract payments, proportionate to the severity of the violation and equal to the sum of either or both: (1) The market value of the fruits and vegetables planted on contract acreage, and (2) the contract payment for each contract acre. The market value is determined by the State committee for the specific fruit or vegetable without any adjustment to reflect costs associated with planting, cultivating or harvesting the fruit or vegetable. If the number of acres on the farm planted to fruits or vegetables exceeds the total PFC acreage and more than one fruit or vegetable has been planted on the farm, the calculation is based on the fruit or vegetable determined to have the highest value. If the acreage of fruit or vegetable with the highest value is less than the acres in violation, the calculation for the remaining acres in violation is based on the fruit or vegetable with the next highest value. The payment reduction is applied to current PFC payments and any future PFC payments for the farm on which the violation occurred and any other farm in which the producers who share in PFC payments on the violating farm have an interest.

For example, if the county committee determines that 25 acres of fruit or vegetables were planted on PFC acreage in violation of the PFC, but the violation did not warrant termination of the PFC, a payment reduction for the planting violation would be assessed in addition to an acre for acre reduction for each of the 25 acres. If, on the farm in this example, the producer planted 100 acres of green peas, which the State committee determined had a value of $500 per acre, and 1 acre of celery, which the State committee determined had a value of $3,000 per acre, the payment reduction for the planting violation in this example would be $15,000 plus a PFC payment reduction for 25 acres. The $15,000 payment reduction for the planting violation represents the value of the 1 acre of celery and 24 acres of green peas, as determined by the State committee. This payment reduction would be applied to the current year PFC payments and any future PFC payments for the farm on which the planting violation occurred and any other farm in which the producers sharing in the PFC payments for the farm on which the planting violation occurred have an interest.

The payment reductions calculated in accordance with the current implementing regulations and procedure are viewed by some to be out of proportion to the severity of the fruit or vegetable planting violation. Accordingly, as indicated below, the public is invited to comment on PFC violations for planting fruits and vegetables.

Purpose

The purpose of this ANPRM is to seek comments on: (1) the appropriateness of the current method of calculating PFC payment reductions as a result of a fruit or vegetable planting violation as set forth in 7 CFR 1412.206; (2) alternative methods for calculating PFC payment reductions for fruit or vegetable planting violations, if the current method of calculation is considered inappropriate; (3) the retroactivity of any change in the method of calculating payment reductions; and (4) the effect any change in the method of calculating payment reductions should have on PFC's which have been terminated, or for which contract acreage was reduced, because of the current method of calculating payment reductions for fruit or vegetable planting violations.

Signed at Washington, DC, on April 28, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–11229 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–05–P