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Office of the General Counsel

B-277128

May 30, 1997

The Honorable Richard G. Lugar  
Chairman  
The Honorable Tom Harkin  
Ranking Minority Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Bob Smith  
Chairman  
The Honorable Charles W. Stenholm  
Ranking Minority Member  
Committee on Agriculture  
House of Representatives

Subject: Department of Agriculture, Farm Service Agency: Amendments to the  
Peanut Poundage Quota Regulations

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture, Farm Service Agency (FSA), entitled "Amendments to the Peanut Poundage Quota Regulations" (RIN: 0560-AE82). We received the rule on May 6, 1997. It was published in the Federal Register as a final rule on May 9, 1997. 62 Fed. Reg. 25433.

When FSA submitted the rule to us it classified it as a non-major rule; we only recently identified it as a major rule. The Office of Management and Budget (OMB) agrees with that classification; it determined that this final rule was a major rule on April 28, 1997.

The rule implements the provisions of the Agricultural Market Transition Act of 1996 (7 U.S.C. § 7271) regarding the federal farm peanut poundage quotas for the 1996 through 2002 crops of peanuts.

The amendments adopted in this final rule principally involve: (1) eliminating the national poundage quota floor; (2) eliminating the undermarketing carryover provisions; (3) establishing temporary seed quota allocations; (4) establishing the

ineligibility of certain farms for quota allocation; (5) authorizing the intercounty transfer of farm poundage quotas in all states, subject to certain limitations in some states; (6) eliminating the special allocations of increased quotas for certain Texas counties; (7) establishing new provisions for "considered produced" credit with respect to a farm whose quota has been transferred; and (8) other minor clarifying and technical changes.

Section 801(a)(3) of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. § 801(a)(3)) generally requires that a major rule take effect no earlier than 60 days after the later of congressional receipt of the rule or publication in the Federal Register. The Administrator of FSA invoked the "good cause" exception contained in section 808 of the Act and made the rule effective upon publication in the Federal Register. This exception provides that "any rule which an agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest" may take effect when the promulgating agency determines (5 U.S.C. § 808(2)).

In this case, section 161(d) of the Agricultural Market Transition Act of 1996 (7 U.S.C. § 7281(d)) required FSA to issue implementing peanut poundage quota regulations within 90 days, and specifically exempted FSA from notice and comment procedures for those regulations. FSA did not use notice and comment procedures. It published an interim final rule on July 16, 1996 (61 Fed. Reg. 36997), and the rule published on May 9, 1997, amended that original regulation. A strong argument can be made that, based on the text of 7 U.S.C. § 161(d), the exemption from notice and comment procedures applied only to the initial rule and not subsequent amendments. If so, this provision would not constitute "good cause" for avoiding the required delay in the effective date. Perhaps for this reason, the agency stated that it invoked the "good cause" exception because any further delay would make it impossible for changes to be effective in time to give the producers interested in planting peanuts a proper understanding of the rules for quota distributions and forfeitures. In view of the fact that the period for submitting comments on the interim rule expired on August 15, 1996, and the agency had more than 9 months to promulgate these modifications to the interim rule, we believe that the bare assertion of the section 808 exemption does not constitute "good cause" for avoiding the 60-day delay before implementation.

Enclosed is our assessment of the FSA's procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Other than misclassifying the rule when filing with the General Accounting Office (GAO) and failing to issue the modifications in time to permit the 60-day delay for congressional review, our review indicates that FSA complied with the applicable requirements.

If you have any questions about this report, please contact Kathleen E. Wannisky, Associate General Counsel for Operations, at (202) 512-5207. The official responsible for GAO evaluation work relating to the Department of Agriculture, Farm Service Agency is Robert Robinson, Director for Food and Agriculture Issues. Mr. Robinson can be reached at (202) 512-5138.

Robert P. Murphy  
General Counsel

Enclosure

cc: Bruce R. Weber  
Acting Administrator  
Farm Service Agency  
Department of Agriculture

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY  
ENTITLED  
"AMENDMENTS TO THE PEANUT POUNDAGE QUOTA REGULATIONS"  
(RIN: 0560-AE82)

(i) Cost-benefit analysis

The Farm Service Agency summarized the economic impacts of the peanut program provisions of the Agricultural Market Transition Act of 1996 (1996 Act) in the supplemental information published with the final rule. It also provided us with a copy of the complete cost-benefit assessment. FSA's cost-benefit assessment describes why this regulation is needed. The assessment discusses the alternative options considered (2.15 billion pounds and 2.23 billion pounds) when determining the national poundage quota and provides an explanation of why the current quota of 2.2 billion pounds was selected. According to FSA's analysis, that figure represented the figure most likely to achieve production equal to domestic edible and related use.

FSA estimates that producers' revenue will be reduced by \$1.25 billion from 1996 to 2002 and that taxpayers will benefit by avoiding costs of \$0.5 billion compared with the FY 1997 baseline. First buyers will benefit from lower prices, part of which, FSA predicts, will be passed on to consumers.

FSA expects quota holders to experience a loss of about \$40 million annually because of lower leasing rates resulting from the reduced peanut price support. FSA also expects the capitalized value of quotas to decline by \$200 to \$300 million, which could result in reduced land values and tax bases for rural communities.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

FSA has determined that the Regulatory Flexibility Act does not apply to this final rule because it believes the notice and comment requirements of section 553 of the Administrative Procedure Act (5 U.S.C. §§ 551 et seq.) do not apply to this rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

According to FSA, this rule contains no federal mandates under title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

FSA asserts that the Agricultural Market Transition Act of 1996 (7 U.S.C. 7281(d)) specifically directs that FSA issue this final rule without regard to the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. § 553).

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The regulations set forth in this final rule contain an information collection requirement. The new form necessary to implement the peanut poundage quota program has been developed, and a notice and request for comments for revising a currently approved information collection was issued in the Federal Register on December 14, 1996 (61 Fed. Reg. 67767). Because the information collection is needed before the agency can forward its regular submission for the Office of Management and Budget's approval, it has sent to OMB an addendum to the approved information collection (OMB control number 0560-0006) and has requested emergency processing by OMB.

Executive Order No. 12866

This final rule was determined to be "economically significant" and was reviewed by OMB under the standards set forth in this executive order. The economic impacts of the peanut program provisions of the 1996 Act are discussed in the cost-benefit analysis section of this report.

Executive Order 12372

FSA reports that this program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with state and local officials.

Executive Order 12988

FSA reviewed this final rule under Executive Order 12988, Civil Justice Reform, and determined that the provisions of the rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any legal action is brought regarding determinations made under this rule, the administrative procedures set forth at 7 CFR Parts 11 and 780 must be exhausted.

## Environmental Evaluation

FSA determined that this rule will have no significant impact on the environment and, therefore, prepared neither an Environmental Assessment nor an Environmental Impact Statement.

## Statutory authorization for the rule

FSA cites as statutory authority for this rule 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375, and 7271.