

Numerous inquiries have been received concerning reports that future allotments will be reduced approximately 8% each year the farm wheat allotment is overseeded. Following is a report from the General Counsel of the USDA.

BOB DOLE, M. C.

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UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE GENERAL COUNSEL
WASHINGTON 25, D.C.

JUNE 13, 1963

Honorable Bob Dole
House of Representatives
Washington 25, D. C.

Dear Mr. Dole:

Your letter of June 3, 1963, on behalf of one of your constituents, addressed to Mr. Horace Godfrey, Administrator, A.S.C.S., inquired as to the effect the overplanting of a farm wheat acreage allotment of a crop of wheat for which marketing quotas were disapproved in a referendum would have on future farm wheat acreage allotments. Since your inquiry involves the interpretation of section 334(c)(1) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1334(c)(1)), it has been referred to this office for reply.

You requested a copy of the original interpretation by this office of section 334(c)(1) of the 1938 Act, as well as any legislative history supporting such interpretation.

This office has issued no formal written opinion interpreting the language of section 334(c)(1) of the 1938 Act insofar as the effect on future allotments of overseeding the farm wheat acreage allotment for any year's crop. We have, however, approved statements issued by administrative officials of the Department to the effect that such overseeding of a crop for which marketing quotas are disapproved in a referendum will result in the farm being credited as wheat acreage history for such crop year with its allotment rather than its historical base or actual planted acreage for the purpose of determining future allotments.

Section 334(c)(1) of the Agricultural Adjustment Act of 1938, as amended, provides that "The allotment to the county shall be apportioned by the Secretary, through the local committees, among the farms within the county on the basis of past acreage of wheat, tillable acres, crop-rotation practices, type of soil, and topography". That section further provides that "the past acreage of wheat for 1959 and any subsequent year shall be the wheat acreage



on the farm which is not in excess of the farm wheat acreage allotment, plus, in the case of any farm which is in compliance with its farm wheat acreage allotment, the acreage diverted under such wheat allotment programs: Provided, That for 1959 and subsequent years in the case of any farm on which the entire amount of the farm marketing excess is delivered to the Secretary or stored in accordance with applicable regulations to avoid or postpone payment of the penalty, the past acreage of wheat for the year in which such farm marketing excess is so delivered or stored shall be the farm base acreage of wheat determined for the farm under the regulations issued by the Secretary for determining farm wheat acreage allotments for such year, but if any part of the amount so stored is later depleted and penalty becomes due by reason of such depletion, for the purpose of establishing farm wheat acreage allotments subsequent to such depletion the past acreage of wheat for the farm for the year in which the excess was produced shall be reduced to the farm wheat acreage allotment for such year".

Section 334(d) of the 1938 Act provides:

"(d) For the purposes of subsections (a), (b), and (c) of this section, any farm--

(1) to which a wheat marketing quota is applicable; and

(2) on which the acreage planted to wheat exceeds the farm wheat acreage allotment; and

(3) on which the farm marketing excess is zero shall be regarded as a farm on which the entire amount of the farm marketing excess has been delivered to the Secretary or stored in accordance with applicable regulations to avoid or postpone the payment of the penalty. This subsection shall be applicable in establishing the acreage seeded and diverted and the past acreage of wheat for 1959 and subsequent years in the apportionment of allotments beginning with the 1961 crop of wheat. For the purpose of clause (1) of this subsection, a farm with respect to which an exemption has been granted under section 335(f)^{1/} for any year shall not be regarded

^{1/} This is the feed wheat exemption, which was repealed, effective with the 1964 crop of wheat, by the Food and Agriculture Act of 1962.

as a farm to which a wheat marketing quota is applicable for such year, even though such exemption should become null and void because of a violation of the conditions of the exemption."

The wording of section 334(c)(1) of the 1938 Act is clear that with respect to any crop of wheat for which marketing quotas are in effect, overseeding the farm wheat acreage allotment will result in the acreage history for the farm for such crop, for the purpose of determining future allotments, being established at the farm acreage allotment, unless the farm qualifies for one of the exceptions provided for in the proviso in section 334(c)(1) or in section 334(d). Your inquiry is directed to whether the same result will apply with respect to a crop year for which quotas are disapproved, as for 1964.

As you know, section 334 of the 1938 Act provides generally for the establishment for State, county, and farm wheat acreage allotments. Such allotments are used for purposes of marketing quotas, price support, and other programs of the Department. Prior to the 1964 crop, National, State, county, and farm acreage allotments were established for each crop year (unless dispensed with under emergency provisions of the Act), even if marketing quotas were not required to be proclaimed, and were used to determine eligibility for price support. Beginning with the 1964 crop wheat acreage allotments are required to be established only upon a proclamation of marketing quotas (Sec. 333 of the 1938 Act, as amended by Sec. 312 of the Food and Agriculture Act of 1962). Thus, for any year for which wheat marketing quotas are proclaimed, National, State, county and farm wheat acreage allotments are required to be established and, in accordance with section 362 of the Act, producers must be notified of their farm acreage allotments prior to the date of the referendum. Allotments were established for 1964 and producers were notified of their farm acreage allotments prior to the date of the referendum. Quotas will not be in effect for 1964 because they were disapproved in the referendum held on May 21, 1963, but the farm acreage allotments will remain in effect for the purpose of determining eligibility for price support under the Agricultural Act of 1949.

There is no provision in the 1938 Act specifically limiting the applicability of section 334(c)(1) of the Act to the crops of

wheat for which marketing quotas are in effect. Accordingly, unless a farm comes within one of the two exceptions to the rule for limiting acreage history to the farm allotment for an over-seeded farm, it would appear that the rule should be applied to a crop of wheat for which quotas were disapproved in a referendum.

The first exception is contained in the proviso in Sec. 334(c)(1) of the Act and applies only to a farm for which a farm marketing excess is determined. Obviously, no farm marketing excess of wheat will be determined for any farm for the 1964 crop or for any other crop for which quotas are disapproved. The second exception in Sec. 334(d) of the Act applies only to a farm "to which a wheat marketing quota is applicable", and obviously does not apply to any farm for the 1964 crop or any other crop for which quotas are not in effect.

We conclude, therefore, that as a matter of law the overseeding of a farm wheat acreage allotment for the 1964 crop or any other crop for which quotas are disapproved in a referendum will result in the wheat acreage history for the farm for such crop being established equal to the farm acreage allotment.

We have examined the legislative history of the pertinent parts of sections 334(c)(1) and 334(d) involved herein and find nothing at variance with this conclusion. In fact the committee reports evidence an intention that complying farms should receive an advantage over noncomplying farms in the determination of future wheat acreage allotments.

The comments above apply to farm wheat acreage allotments established under section 334(c)(1) of the Act. As you know, if any such allotment is established at less than 15 acres, a small-farm base acreage and a different and larger acreage allotment may be established for the farm, beginning with the 1964 crop, under section 335 of the Act, as amended by section 315 of the Food and Agriculture Act of 1962. Such small-farm base acreage for the farm is "the smaller of (A) the average acreage of the crop of wheat planted for harvest in the three years 1959, 1960, and 1961, or such later three-year period, excluding 1963, determined by the Secretary to be representative, with adjustments for abnormal weather conditions, established crop-rotation practices on the farm,

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and such other factors as the Secretary determines should be considered for the purpose of establishing a fair and equitable small-farm base acreage, or (B) fifteen acres. The acreage allotment for any such farm shall be the larger of (1) the small-farm base acreage determined as provided above on the basis of the three-year period 1959-1961, reduced by the same percentage by which the national acreage allotment for the crop is reduced below fifty-five million acres, or (2) the acreage allotment determined without regard to (1) above".

The farm acreage allotment for any farm determined under section 335 of the Act (referred to hereinafter as "alternative allotment") is computed on the basis of the smaller of the wheat history during the three years 1959, 1960, and 1961, or 15 acres. Thus, the overseeding of the farm acreage allotment for 1964 or any subsequent crop of wheat would have no effect on the size of the alternative allotment computed under section 335. However, overseeding the 1964 or any subsequent year's allotment could have the effect of decreasing the regular allotment for the farm under section 334(c)(1) of the Act and might therefore have some effect on whether the allotment under section 334(c)(1) of the Act or the alternative allotment under section 335 would be controlling for any particular crop year.

I hope that this letter will serve to express the opinion of this office on your inquiry. If you have any further question, we shall be glad to consider it.

Sincerely yours,


John C. Bagwell
General Counsel