

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1216**

[FV-98-703-FR]

Peanut Promotion, Research, and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Peanut Promotion, Research, and Information Order (Order) is favored by a majority of the producers voting in the referendum. These procedures will also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The Order is being published in a separate document. This program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: This final rule is effective April 24, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel R. Williams II, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535-S, Stop 0244, Washington, D.C. 20250-0244; telephone toll free (888) 720-9917, or facsimile (202) 205-2800.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible peanut producers to determine whether the issuance of the proposed Peanut Promotion, Research, and Information Order (Order) (7 CFR Part 1216) is favored by a majority of persons voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) (Pub. L. 104-427, 7 U.S.C. 7401-7425). The Order is being published separately in this issue of the **Federal Register**.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has examined the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Secretary to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, section 518 of the Act provides for referenda to ascertain approval of an Order to be conducted either prior to its going into effect or within three years after assessments first begin under the Order.

The American Farm Bureau Federation (proponent) has recommended that the Secretary conduct a referendum in which the Order must be approved by a majority of those persons voting. The proponent also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This rule establishes the procedures under which producers may vote on whether they want a peanut promotion, research, and information program to be implemented. This action will add a new subpart which establishes procedures to conduct the initial referendum and future referenda. The subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 25,000 producers and 57 handlers of peanuts who would be subject to the program. Most producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR § 121.601], and most of the handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than \$5 million, and small agricultural producers are defined as those having annual receipts of not more than \$500,000 annually.

According to USDA's National Agricultural Statistics Service (NASS), the nine major peanut-producing states in the United States account for 99 percent of the peanuts grown in this country. The combined production from these states totaled 3.5 billion pounds in 1997. The farm value of peanuts in 1997 reached \$932 million. NASS reports that Georgia was the largest producer (38 percent of the total), followed by Texas (23 percent), Alabama (11 percent), North Carolina (9 percent), Florida (6 percent), Virginia (5 percent), Oklahoma (5 percent), New Mexico (1 percent), and South Carolina (1 percent). According to 1992 Census of Agriculture (Census) data, small amounts of peanuts were also grown in seven other states.

According to the proponent, and based on the Census data for these nine states, 36 percent of the peanut-producing counties in the United States had 35 percent or more of their total crop income from peanuts. Twenty-four percent of the counties had 50 percent or more of their crop income from peanuts. From a state perspective, 70 percent of the crop income in Alabama's peanut-producing counties is generated from peanuts. For Virginia, the percentage is 48 percent. In addition, 16,194 farms harvested peanuts in 1992.

Of these, 15,914 were located in the nine primary peanut-producing states.

Three main types of peanuts are grown in the United States: Florrunners, Virginia, and Spanish. The southeast growing region grows mostly the medium-kernel Runner peanuts. The southwest growing region used to grow two-thirds Spanish and one-third Runner peanuts, but now more Runners than Spanish are grown. Virtually all of the Spanish peanut production is in Oklahoma and Texas. In the Virginia-Carolina region, mainly large-kernel Virginia peanuts are grown. New Mexico grows a fourth type of peanut, the Valencia.

Peanut manufacturers produce three principal peanut products: peanut butter, packaged nuts (including salted, unsalted, flavored, and honey-roasted nuts), and peanut candies. In most years, half of all peanuts produced in the United States for edible purposes are used to manufacture peanut butter. Packaged nuts account for almost one-third of all processed peanuts. Some of these (commonly referred to as "ballpark" peanuts) are roasted in the shell, while a much larger quantity is used as shelled peanuts packed as dry-roasted peanuts, salted peanuts, and salted mixed nuts. Some peanuts are ground to produce peanut granules and flour. Other peanuts are crushed to produce oil.

According to USDA's Foreign Agricultural Service, exports of U.S. peanuts (including peanut meal, oil, and peanut butter) totaled 880 million in-shell equivalent pounds in 1997, with a value of \$285 million (U.S. point of departure for the foreign country). Of the total quantity, 60 percent was shelled peanuts used as nuts, 11 percent was blanched or otherwise prepared or preserved peanuts, 10 percent was in-shell peanuts, 7 percent was peanut butter, 4 percent was shelled oil stock peanuts, 4 percent was crude peanut oil, and 3 percent was refined peanut oil.

The major destinations for domestic shelled peanuts for use as nuts are Canada, Mexico, the United Kingdom, and the Netherlands. Blanched or otherwise prepared peanuts are sent mainly to Western Europe, especially the Netherlands, France, and Spain. In-shell peanuts are mainly exported to Canada and various countries in Western Europe. Peanut butter is sent to many countries, with the largest amounts going to Canada and Saudi Arabia. Peanut oil and oil stock peanuts are exported world-wide, but major destinations can vary from year to year.

Approximately 250 million in-shell equivalent pounds of peanuts and processed peanuts (including oil and

peanut butter) were imported in 1997 with a combined value (f.o.b. country of origin) of \$73 million. Most of the imports (45 percent) were shelled peanuts for use as nuts. The major U.S. supplier is Argentina, but several other countries export shelled peanuts to the United States, including Mexico, Nicaragua, and South Africa.

Peanut butter imports are also significant and accounted for about 32 percent of the total quantity of nuts (in-shell basis) imported in 1997. Most peanut butter imports come from Canada and Argentina. The other major import category—crude and refined peanut oil—are shipped mainly from Argentina and Nicaragua and account for approximately 18 percent of total imports (in-shell equivalent basis). In-shell peanuts, primarily from Mexico, accounted for nearly 3 percent of total imports in 1997. About 3 percent of total imports consisted of blanched or other processed peanuts, mainly from China. Imports of oil stock shelled peanuts were negligible.

Most peanuts produced in other countries are crushed for oil and protein meal. The United States is the main producer of peanuts used in such edible products as peanut butter, roasted peanuts, and peanut candies. Peanuts are one of the world's principal oilseeds, ranking fourth behind soybeans, cottonseed, and rapeseed. India and China usually account for half of the world's peanut production.

According to the "Agricultural Statistics Report" published by USDA, during the 1995–96 season, the average annual production per domestic producer was approximately 144,228 pounds of peanuts. Peanuts produced during these growing seasons provided average annual gross sales of \$42,222 per peanut producer. The value of the 1995–96 crop was approximately \$1.013 billion. During the same period, per capita consumption in the United States was 5.7 pounds of peanuts.

This rule provides the procedures under which peanut producers may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 25,000 producers who will be eligible to vote in the first referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the

referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this rule are designed to minimize the burden on producers. This rule provides for a ballot to be used by eligible producers in voting in the referendum. The estimated annual cost of providing the information by an estimated 25,000 producers would be \$12,500 or \$0.50 per producer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department also will accept ballots sent by facsimile (fax) machine. A pilot of this method was conducted during a recent referendum for another program. A fax machine was dedicated to the receipt of ballots. All ballots received in this manner were stored in the memory of the machine until the end of the voting period. Due to the large number of voters expected in the referendum on the proposed peanut program, USDA may use more than one such machine, providing voters in different states with different fax numbers in order to avoid exceeding the memory of the machine. Further, the Department would provide easy access to information for potential voters through a toll-free telephone line.

While other peanut programs have been implemented by the government, USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Final Regulatory Flexibility Analysis regarding the impact of this rule on small entities. The results of this analysis have found that there would be no adverse effect on the small entities.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR 1320) which implement the Paperwork Reduction

Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, were submitted to OMB and have been approved under OMB control number 0581-0093.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581-0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer.

Respondents: Producers.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 1,250 hours.

The estimated annual cost of providing the information by an estimated 25,000 producers would be \$12,500 or \$0.50 per producer.

The ballot will be added to the other information collections approved for use under OMB Number 0581-0093.

In the proposed rule published on November 6, 1998 comments were invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

By the January 5, 1999, deadline for comments on information collections associated with this rule, no comments were received.

Background

The Act authorizes the Secretary, under generic authority, to establish agricultural commodity research and promotion Orders. The American Farm Bureau Federation (proponent), working

in cooperation with 20 state and regional industry organizations from the peanut-producing states, has requested the establishment of a Peanut Promotion, Research, and Information Order (Order) pursuant to the Act. The Order will provide for the development and financing of an effective and coordinated program of promotion, research, and information for peanuts. The program would be funded by an assessment levied on producers (to be collected by handlers) at a rate of 1 percent of the total value of all farmers stock peanuts. When peanuts are placed under loan, a deduction from the producer's loan draft equal to 1 percent of the price support value would be made and submitted to the Board by an area marketing association. Once peanuts are sold for disposition from a loan, the association would remit the balance of the assessment to the Board. In the Order, peanuts are defined as the seeds of the legume *arachis hypogaea*, including both in-shell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

Assessments would be used to pay for promotion, research, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 518 of the Act requires that a referendum be conducted among eligible peanut producers to determine whether they favor the Order. In addition, section 518 of the Act provides for referenda to ascertain approval of an Order to be conducted either prior to its going into effect or within three years after assessments first begin under the Order. According to the rule that is published separately in this issue of the **Federal Register**, the Order would become effective if it is approved by a majority of producers voting in the referendum, which will be held before the program is implemented.

The rule establishes the procedures under which producers may vote on whether they want the peanut promotion, research, and information program to be implemented. There are approximately 25,000 eligible voters.

This rule would add a new subpart which would establish procedures to be used in this and future referenda. The subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

A proposed rule on the Order was published in the November 6, 1998, issue of the **Federal Register** (63 FR

59893). On the same date, a proposed rule was published on the referendum procedures (63 FR 59907). As stated above, the comment period on the information collection requirements associated with this rule ended on January 5, 1999, and no comments were received on the information collection requirements. The comment period on the substance of the referendum procedures ended on January 5, 1999. Three comments were received on the procedures. Two commenters felt that the referendum period should be a least three weeks and one urged that the referendum be conducted in March or April. In addition, two comments were received on the proposed Order that stated that the referendum should be conducted no later than June 1, 1999. As is common practice, the representative period will be established in the referendum Order which is being published with the proposed Order. The referendum Order also establishes the voting period and identifies the referendum agents. The Department has established a three week voting period, but the referendum will be conducted in May. The proposed Order and referendum Order will be published separately in this issue of the **Federal Register**.

Two comments were received about § 1216.102 (c) which address how votes are to be cast. Both commenters expressed concern about how the Department would supervise the voting to provide that only eligible producers cast ballots. To ensure that only eligible producers cast ballots, information obtained from the Farm Service Agency (FSA) will be used to develop the mailing list that is generated to mail ballots to eligible producers. Also each commenter stated that voters should have the ability to hand deliver the ballots to local FSA offices. We deny the commenters' request to have hand delivery of the ballots to FSA offices. Conducting the referendum by mail will help ensure an accurate and precise count. This can be ensured by having one location for the delivery of the ballots which will allow for a daily monitoring of the process by the Agricultural Marketing Service's Office of Compliance and Analysis (OCA).

Two comments were received on § 1216.103 (2) (d) which addresses eligible persons' ability to receive a ballot. We deny this part of the comments concerning use of the local FSA offices. An FSA list of peanut producers will be used to determine eligible persons. As stated above, by conducting the referendum by mail an accurate and precise count can be determined by using one location for the

delivery of the ballots. In addition, any eligible voter that does not receive a ballot by mail may call the referendum agents as stated in the referendum Order which is being published with the proposed Order.

All ballot handling is done in the presence of an official from the OCA, and the referendum agents or the OCA official may request documentation from any or all voters. We believe this course of action addresses the commentors' concerns as well as allows for the timely tabulation of referendum results.

After consideration of all relevant material presented, it is found that this final rule is consistent with and will effectuate the purpose of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) A proposed rule with request for comments was published in the **Federal Register** and comments were received and they are addressed in this rule; (2) it is necessary to have these procedures in place in order to conduct the referendum in May 1999 prior to the beginning of the 1999 crop year; and (3) no useful purpose will be served by a delay of the effective date.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, Chapter XI of the Code of Federal Regulations is amended as follows:

1. Part 1216 is added to read as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—[Reserved]

Subpart B—Procedure for the Conduct of Referenda in Connection With the Peanut Promotion, Research, and Information Order

Sec.	
1216.100	General.
1216.101	Definitions.
1216.102	Voting.
1216.103	Instructions.
1216.104	Subagents.
1216.105	Ballots.
1216.106	Referendum report.
1216.107	Confidential information.

Authority: 7 U.S.C. 7401–7425.

Subpart A—[Reserved]

Subpart B—Procedure for the Conduct of Referenda in Connection With the Peanut Promotion, Research, and Information Order

§ 1216.100 General.

Referenda to determine whether eligible peanut producers favor the issuance, amendment, suspension, or termination of a Peanut Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1216.101 Definitions.

The following definitions apply to this subpart:

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Peanut Promotion, Research, and Information Order.

(c) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a peanut farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(f) *Eligible producer* means any person who is engaged in the production and sale of peanuts in the United States and who:

(1) Owns, or shares the ownership and risk of loss of, the crop. This does not include quota holders who do not share in the risk of loss of the crop;

(2) Rents peanut production facilities and equipment resulting in the ownership of all or a portion of the peanuts produced;

(3) Owns peanut production facilities and equipment but does not manage

them and, as compensation, obtains the ownership of a portion of the peanuts produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts who share the risk of loss and receive a share of the peanuts produced. No other acquisition of legal title to peanuts shall be deemed to result in persons becoming eligible producers.

§ 1216.102 Voting.

(a) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer, or an administrator, executor, or trustee or an eligible producing entity may cast a ballot on behalf of such producer. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer, or an administrator, executive, or trustee of an eligible producing entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

§ 1216.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Peanut Promotion, Research, and Information Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1216.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions under this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1216.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof.

Ballots invalid under this subpart shall not be counted.

§ 1216.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1216.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: April 19, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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