



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1216**

**[Document Number AMS-SC-19-0073]**

**Peanut Promotion, Research, and Information Order;**

**Amendment to Primary Peanut-Producing States and Adjustment of Membership**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal invites comments on adding the State of Missouri as a primary peanut-producing State under the Peanut Promotion, Research, and Information Order (Order). The Order is administered by the National Peanut Board (Board) with oversight by the U.S. Department of Agriculture (USDA). This proposal would also add a producer member and alternate member to the Board to represent the State of Missouri. The Board recommended this action to ensure that the Board's representation reflects changes in the geographical distribution of the production of peanuts.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must

be submitted on the Internet at: <http://www.regulations.gov> or to the Docket Clerk, Promotion and Economics Division, Specialty Crops Program, Agricultural Marketing Service (AMS), USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; facsimile: (202) 205-2800. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Specialty Crop Program, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 1406-S, Washington, DC 20250-0244; telephone: (202) 720-9915; facsimile: (202) 205-2800; or electronic mail: [Jeanette.Palmer@usda.gov](mailto:Jeanette.Palmer@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal affecting the Order (7 CFR part 1216) is authorized under the Commodity

Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

**Executive Orders 12866, 13563, and 13771**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

**Executive Order 13175**

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and

Coordination with Indian Tribal Governments. The review reveals that this proposed regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

**Executive Order 12988**

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective

date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have 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 USDA's final ruling.

### **Background**

This proposed rule invites comments on adding the State of Missouri as a primary peanut-producing State under the Order. The Order is administered by the Board with oversight by USDA. This proposal would also add a producer member and alternate member to the Board to represent the State of Missouri. Under the Order, primary peanut-producing states must maintain a 3-year average production of at least 10,000 tons of peanuts to maintain this classification. Missouri's peanut production meets this requirement. Primary peanut-producing states also have a seat on the Board. The members and alternates are nominated by producers or producer groups. This action would ensure that the Board's representation reflects

changes in the geographical distribution of the production of peanuts covered by the Order.

The Order became effective on July 30, 1999. Under the Order, the Board administers a nationally-coordinated program of promotion, research and information designed to strengthen the position of peanuts in the market place and to develop, maintain and expand the demand for peanuts in the United States. Under the program, assessments are levied on all farmers stock peanuts sold at a rate of \$3.55 per ton for Segregation 1 peanuts and \$1.25 per ton for Segregation 2 peanuts and 3 peanuts, as those terms are defined in §§ 996.13(b)-(d) of title 7. The assessments are remitted to the Board by handlers and, for peanuts under loan, by the Commodity Credit Corporation.

The Order distinguishes between the terms "minor peanut-producing states" and "primary peanut-producing states" for purposes of Board representation and voting at meetings. Section 1216.21 currently defines primary peanut-producing states as Alabama, Arkansas, Florida, Georgia, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Texas and Virginia. These States must maintain a 3-year average production of at least 10,000 tons of peanuts. All other peanut-producing States are defined as minor peanut-producing States in § 1217.15.

Pursuant to § 1216.40(b), at least once in each five-year period, the Board must review the geographical distribution of peanuts in the United States and make a recommendation to the Secretary of Agriculture (Secretary) to continue the program without change or recommend that changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

**Board Recommendation**

As required by the Order, the Board met and reviewed the geographical distribution of peanuts. According to data from the USDA's Federal State Inspection Service, for the years 2016, 2017 and 2018, 9,552, 13,059 and 12,597 tons of peanuts were inspected in Missouri, respectively. Based on this data, the 3-year average annual peanut production for Missouri totals 11,736 tons per year which exceeds the requirement in the Order of maintaining a 3-year average of 10,000 tons per year to be considered a primary peanut-producing State.

Based on Federal State Inspection Service data, the Board voted unanimously on August 28, 2019, to add Missouri as a primary peanut-producing State under the Order. Therefore, one producer member and one alternate member

will be added to the Board to represent the State of Missouri.

These changes would help ensure that the Board's representation reflect changes in the geographical distribution of the production of peanuts. Accordingly, this proposed rule would amend §§ 1216.15 and 1216.21 to add the State of Missouri as a primary peanut-producing State. This proposal would also revise § 1216.40(a) to specify that the Board would be composed of no more than 13 peanut producer members and their alternates rather than 12. Further, § 1216.40(a)(1) would be revised to reflect the new number of primary peanut-producing states, by changing 11 to 12.

#### **Initial Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR Part 121, small agricultural producers as those having

annual receipts of no more than \$1 million and small agricultural service firms (handlers) as those having annual receipts of no more than \$30 million.

According to the Board, there were approximately 8,126 producers and 34 handlers of peanuts who were subject to the program in 2018.

Most producers would be classified as small agricultural production businesses under the criteria established by the SBA (no more than \$1 million in annual sales). USDA's NASS reports that the crop values of the peanuts produced in the top 11 peanut-producing states in the years 2016 through 2018 were \$1.09 billion, \$1.63 billion and \$1.16 billion, respectively. The 3-year crop average was \$1.29 billion. With a 2018 crop value of \$1.16 billion and a total of 8,126 producers, average peanut sales per producer were approximately \$142,000. With a 2015-2018 average crop value of \$1.29 billion, average sales per producer were approximately \$159,000. Both figures are well below the \$1 million threshold for a small producer, providing strong evidence that most peanut producers are small businesses.

With 34 handlers, the average annual peanut crop value per handler from 2016 to 2018 ranged from \$32 million to \$48 million, with a 3-year average of \$38 million. With

average sales figures moderately higher than the small business threshold size of \$30 million, it appears that a number of handlers are small businesses and there are also a number that are large businesses - no definitive statement can be made.

The pounds of U.S. peanut production from the 11 primary peanut-producing states for 2016 through 2018 are 5.58 billion, 7.12 billion and 5.46 billion, respectively. The 3-year average was 6.05 billion pounds. Computations based on NASS data show that Georgia was the largest producer, with 50.8 percent of the 3-year average quantity, followed by Alabama (10.3 percent), Texas (9.6 percent), Florida (9.3 percent), North Carolina (6.7 percent), South Carolina (6.0 percent), Mississippi (2.3 percent), Arkansas (2.1 percent), Virginia (1.6 percent), with Oklahoma and New Mexico both under one percent.

This proposal would amend §§ 1216.15, 1216.21 and 1216.40 to add the State of Missouri as a primary peanut-producing State and to add a member and alternate to the Board to represent Missouri. The Order is administered by the Board with oversight by USDA. Under the Order, primary peanut-producing States must maintain a 3-year average production of at least 10,000 tons of peanuts. Missouri's peanut production meets this requirement. This action

would ensure that the Board's representation reflects changes in the geographical distribution of the production of peanuts covered under the Order. This action is authorized under § 1216.40(b) and Section 515(b)(3) of the 1996 Act.

Regarding the economic impact of this proposed rule on affected entities, this action would impose no costs on producers or handlers. The changes would define the State of Missouri as a primary peanut-producing State based on recent production data and add a seat on the Board for the State of Missouri.

With regard to alternatives, the Board reviewed the peanut distribution for all the minor peanut-producing States and determined that Missouri was the only State so designated that met the Order's requirement for a 3-year average peanut production of at least 10,000 tons in order to qualify to become a primary peanut-producing State.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the background form (AD-755), which represents the information collection and recordkeeping requirements that may be imposed by this proposed rule, was previously approved under OMB control number 0581-0093.

Adding a producer member and alternate member representing the State of Missouri to the Board would

require four additional producers to submit background forms (AD-755) to USDA, once every three years, in order to be considered for appointment to the Board. The Secretary requires two names to be submitted for each open seat on the Board. The public reporting burden is estimated to increase the total burden hours by less than one hour. This additional burden would be included in the existing information collection approved for use under OMB control number 0581-0093. In addition, serving on the Board is optional, and the burden of submitting the background form would be offset by the benefits of additional representation on the Board.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, the Board discussed Missouri's peanut production level at its December 4-5, 2018 meeting. All the Board's meetings are open to the public and interested persons are invited to participate and express their views. The Board notified the primary peanut-producing States (Georgia, Alabama, Texas, Florida, North Carolina, South Carolina, Mississippi, Arkansas, Virginia, Oklahoma and New Mexico) of Missouri's production numbers by disseminating information through the Board's weekly newsletter, which is titled *News in a Nutshell*. The Board voted on August 28, 2019 to recommend adding the State of Missouri as a primary peanut-producing state.

We have performed this initial RFA regarding the impact of this proposed action on small entities and we invite comments concerning potential effects of this action on small businesses.

While this proposed rule as set forth below has not yet received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the 1996 Act.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule will be considered prior to finalizing this action.

**List of Subjects in 7 CFR Part 1216**

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

For the reasons set forth in the preamble, 7 CFR Part 1216 is proposed to be amended as follows:

**PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER**

1. The authority citation for 7 CFR part 1216 continues to read as follows:

**Authority:** 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

2. Section 1216.15 is revised to read as follows:

**§ 1216.15 Minor peanut-producing states.**

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Texas and Virginia.

3. Section 1216.21 is revised to read as follows:

**§ 1216.21 Primary peanut-producing states.**

Primary peanut-producing states means Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Texas and Virginia, Provided, these states maintain a 3-year average production of at least 10,000 tons of peanuts.

4. Amend § 1216.40 by revising paragraph (a) introductory text and paragraph(a)(1) to read as follows:

**§ 1216.40 Establishment and membership.**

(a) Establishment of a National Peanut Board. There is hereby established a National Peanut Board, hereinafter called the Board, composed of no more than 13 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) Twelve members and alternates. One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

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Dated: November 25, 2019

Bruce Summers  
Administrator

BILLING CODE 3410-02 P  
[FR Doc. 2019-25936 Filed: 11/29/2019 8:45 am; Publication Date: 12/2/2019]