



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: Final rule.

SUMMARY: This rule adds 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 rule also adds a producer member and alternate member to the Board to represent the State of Missouri. The Board recommended this action to ensure the Board's representation reflects changes in the geographical distribution of the production of peanuts.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Specialty Crops 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.

SUPPLEMENTARY INFORMATION: This rule 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 final rule falls within a
category of regulatory actions that the Office of
Management and Budget (OMB) exempted from Executive Order
12866 review. Additionally, because this 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 final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

In addition, 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 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 final rule adds the State of Missouri as a primary peanut-producing State under the Order. According to 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.

The Order is administered by the Board with oversight by USDA. Primary peanut-producing states have seats on the Board. This final rule adds one producer member and alternate seat to the Board to represent the State of Missouri. Board members and alternates are nominated by producers or producer groups. This final rule ensures 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. Pursuant to 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. Assessments are levied at a rate of \$3.55 per ton for Segregation 1 peanuts and \$1.25 per ton for Segregation 2 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. Accordingly, one producer member and one alternate member will be added to the Board to represent the State of Missouri.

These changes help ensure that the Board's representation reflects changes in the geographical distribution of the production of peanuts. Accordingly, this final rule amends §§ 1216.15 and 1216.21 to add the State of Missouri as a primary peanut-producing State. Prior to the changes made in this rule, the Board could be composed of no more than 12 peanut producers and their alternates. This final rule also revises § 1216.40(a) to specify that the Board can be composed of no more than 13 peanut producer members and their alternates. Further, § 1216.40(a)(1) is revised to provide that 12 Board members and their alternates represent primary peanut-producing states, up from 11.

Final 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 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 National Agricultural Statistics Service (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.

For the 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 final rule amends §§ 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. Pursuant to 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 final rule ensures 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 rule on affected entities, this rule imposes no costs on producers or handlers. The changes 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 production 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 will be imposed by this rule, was previously approved under OMB control number 0581-0093.

Adding a producer member and alternate to represent the State of Missouri on the Board requires 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 for this information collection by less than one hour. This additional burden will 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 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.

A proposed rule concerning this action was published in the Federal Register on December 2, 2019 (84 FR 65929). A 30-day comment period ending on January 2, 2020, was provided to allow interested persons to respond to the proposal.

Analysis of Comments

Four comments were received in response to the proposed rule. Two comments support the proposal. The other two comments expressed concern about the use of taxpayer dollars to fund the peanut Order.

Both commenters in support of the proposal pointed out that the Board's activities are fully funded by peanut farmers and not by taxpayers. These commenters explained that the Order supports activities that benefit the entire peanut industry, such as research to reduce production costs and improve quality and yield, and research about nutrition. One commenter stated that Missouri served on the Board as the at-large producer member in 2019, and that its average production over the last three years justifies its addition to the list of primary producing States. Both commenters agree that farmers will continue to benefit from Board activities under the Order.

Two commenters expressed concern regarding the use of taxpayer dollars to fund the peanut Order. However, the Order, which is authorized under the 1996 Act and administered by the Board for the benefit of the peanut industry, is funded through assessments paid by peanut producers, as described in the Final Regulatory Flexibility Analysis section of this document. The peanut program does

not receive taxpayer funds. Further, AMS charges the Board user fees for administrative oversight of the program.

One commenter suggested that Missouri should not be added to the Board because it produces a small amount of peanuts. However, as described in the proposed rule, Missouri maintained a three-year average production of at least 10,000 tons of peanuts, qualifying it as a primary peanut-producing State under the Order and producer membership on the Board. Therefore, Missouri is being added as a primary peanut-producing State on the Board. USDA has considered all comments received and has not made any changes to the rule as proposed based on those comments.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

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, amend 7 CFR Part 1216 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. Revise § 1216.15 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. Revise § 1216.21 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: March 10, 2020

Bruce Summers,
Administrator,
Agricultural Marketing Service

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