

Proposed Rules

Federal Register

Vol. 65, No. 107

Friday, June 2, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV-00-1216-PR]

Peanut Promotion, Research, and Information Order; Amendment No. 1 To Add a Public Member to the National Peanut Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would add a public member and alternate to the National Peanut Board (Board). The Board administers the Peanut Promotion, Research, and Information Order (Order) under the supervision of the U.S. Department of Agriculture (USDA or the Department). This rule would also add the authority for producers in minor peanut-producing states to conduct nominations by mail ballot, make changes related to the addition of the public member, and eliminate obsolete language. The addition of a public member is to provide for additional input from the public and increase the opportunity for diversity on the Board. The other proposed changes are intended to facilitate effective administration of the program.

DATES: August 1, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW, Washington, DC 20250-0244. Comments should be submitted in triplicate by August 1, 2000 and will be made available for public inspection at the above address during regular business hours or on the Internet at www.ams.usda.gov/fv/rpb.html. Comments may also be submitted electronically to:

Malinda.Farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Daniel R. Williams II, Research and Promotion Branch, FV, AMS, USDA, Room 2535-S, Stop 0244, Washington, DC 20250-0244; toll free telephone number (888) 720-9917, or facsimile (202) 205-2800.

SUPPLEMENTARY INFORMATION: The rule is issued under the Peanut Promotion, Research, and Information Order (Order) (7 CFR part 1216). 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).

Question and Answer Overview

Why Is USDA Proposing To Add a Public Member to the National Peanut Board?

A public member and alternate could provide valuable feedback to the Board in developing its consumer programs. In addition, these non-industry positions would increase the opportunity for women, minorities, and persons with disabilities to serve on the Board.

Why Is USDA Proposing To Allow Producers in Minor Peanut-Producing States To Nominate Persons To Serve as the At-Large Member and Alternate of the Board by Mail Ballot?

Allowing producers in minor peanut-producing states to make nominations for the at-large member and alternate of the Board by mail ballot would help ensure greater participation in the nomination process, particularly in those states with a small number of

producers who are not located in close proximity.

How Long Do I Have To Comment on This Proposed Rule?

You have 60 days to comment on this proposal. That means that your written comments must be received by August 1, 2000. You may mail, fax, or e-mail your comments. In addition, you have 60 days to provide written comments to OMB on the paperwork burden associated with this proposal. Those comments must be received by the same date.

Executive Orders 12866 and 12998 and the Regulatory Flexibility Act

This 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.

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.

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.

There are approximately 25,000 producers and 57 handlers of peanuts who are subject to the program. Most producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201), 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.

This rule would add a public member and alternate to the National Peanut Board (Board), add the authority for producers in minor peanut-producing states to conduct nominations by mail ballot, make changes related to the addition of the public member, make changes for the purpose of clarification and consistency, and eliminate obsolete language.

The information collection requirements, as discussed below, would be minimal. The addition of a public member and authorizing producers in minor peanut-producing states to conduct nominations for the at-large member and at-large alternate members to the Board by mail ballot would not impose a significant economic burden on producers. In fact, allowing producers in minor peanut-producing states to use mail balloting is expected to facilitate greater participation in the nomination process, particularly in those states with a small number of producers who are not located in close proximity.

USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this rule.

Accordingly, the Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, and invite comments from interested persons concerning the potential effects of the proposed rule on small entities.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the background information form, which represents the information collection requirements that

may be imposed by this rule, were submitted to OMB and have been approved under OMB control number 0505-0001.

Title: Advisory Committee Membership Background Information.

OMB Number: 0505-0001.

Expiration Date of Approval: July 31, 2002.

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 terms of the proposed amendment. The burden associated with the background information form is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.50 hours per response for each nominee.

Respondents: Public member and alternate nominees.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 2 hours.

The estimated annual cost of providing the information by an estimated two nominees for public member and two nominees for alternate public member would be a total annual cost of \$20.00 or \$5.00 per nominee.

The additional burden of four respondents will be added to the information collections approved for use under OMB Number 0505-0001.

Comments are 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 assumption 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.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581-0001, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the times frames specified above. All comments received will be available for public inspection

during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

The paperwork reduction requirements for the use of mail ballots within the minor peanut-producing states would not increase the burden previously submitted to and approved by OMB. Therefore, no additional burden will need approval concerning the proposed change of using mail ballots for nominations in minor peanut-producing states. The estimated annual cost of providing the information by an estimated number of 35 respondents is \$29.17 annually or \$0.83 per respondent (35 respondents \times .25 hour = 8.75 \times \$10.00 per hour = 87.50 dollars per hour/3 years = 29.17 dollars per year)

Background

The Order became effective on July 30, 1999, after a national referendum among all peanut producers. Under the Order, peanut producers are assessed 1 percent of the total value of all farmers stock peanuts, which generates about \$10 million in annual revenues. The program is administered by the National Peanut Board (Board) under USDA supervision. The initial Board held its first meeting in Washington, DC, in March 2000.

The Board is composed of 10 members and 10 alternates, nominated by producers and appointed by the Secretary of Agriculture. There is one member and alternate for each of the nine primary peanut-producing states and one at-large member and alternate representing all other peanut-producing states.

Currently, the nine major peanut-producing states are (in descending order) Georgia, Texas, Alabama, North Carolina, Florida, Virginia, Oklahoma, New Mexico, and South Carolina. The minor peanut-producing states are Arizona, California, Louisiana, Mississippi, and Tennessee.

This rule would add the authority for the addition of a public member and alternate public member to the Board, add the authority for producers in minor peanut-producing states to conduct nominations by mail ballot, make changes related to the addition of the public member, make changes for the purpose of clarification, and eliminate obsolete language as explained below.

Section 1216.40(a) *Establishment and membership* would be amended to add the authority for a public member and alternate to be appointed by the Secretary from nominations submitted by the Board and to provide eligibility requirements for the public member and alternate.

On December 15, 1999, the Secretary of Agriculture's Task Force (Task Force) on Research and Promotion Programs issued recommendations, which covered numerous areas relating to the operation of national commodity promotion boards supervised by USDA. One of the recommendations was that all national boards should have at least one public or consumer member. Subsequently, the North Carolina Farm Bureau and the National Farmers Union requested that USDA amend the Order to add a public member and alternate to the Board.

Therefore, this rule would add a public member and alternate to the Board. The addition of the public member and alternate would carry out the recommendations of the Task Force. The goal of the public member position is to provide valuable feedback to the board in developing its consumer programs. The addition of a public member and alternate would also increase the opportunity for women, minorities, and persons with disabilities to serve on the Board. The section is rewritten to remove language concerning nominations. Such information appears in § 1216.41.

Section 1216.41(a) *Nominations* would be amended to authorize producers in minor peanut-producing states to conduct nominations for the at-large member and at-large alternate member of the Board by mail ballot. This amendment would help ensure greater participation in the nomination process, particularly in those states with a small number of producers who are not located in close proximity. The initial nomination meetings in Fall 1999 in the minor peanut-producing states for the at-large member and alternate member of the Board were not well attended. In addition, the producer associations in several of the minor peanut-producing states requested that they be allowed to conduct their nominations by mail ballot. Based on experience during the initial nominations process, the Department believes the option of conducting nominations by mail ballot in the minor peanut-producing states should be available to the producers in these states.

Paragraph (b) of § 1216.41 would be revised to eliminate obsolete language relating to the initial nominations to the

Board and to correct a typographical error.

In addition, a new paragraph (f) would be added to § 1216.41 to require the Board to submit a minimum of two nominees for the public member position and a minimum of two nominees for the alternate member position by May 1 or such other date as required by the Secretary. Further, changes to § 1216.41 are made for clarity and consistency of language.

Also related to the proposed addition of a public member and alternate, a new sentence would be added at the end of § 1216.42 *Selection* which states that the Secretary shall select one public member and one alternate public member from all eligible nominations submitted by the Board.

In addition, § 1216.45 *Alternate members* would be amended to make the references to Board members more generic so that this provision would cover the public member and alternate as well as the producer members and alternates.

Further, paragraph (b) of § 1216.46 *Procedure* would be revised to provide that the public member has one vote with a zero value of production at Board meetings. This paragraph also would be revised to increase the minimum number of concurring votes for approval of a Board motion from five to six because the Board would have 11 rather than 10 members. In addition, editorial changes were made for the purpose of clarity.

All written comments received in response to this proposed rule by the date specified 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, Peanut promotion, Reporting and recordkeeping requirements.

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

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

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

Authority: 7 U.S.C. 7401–7425.

2. Revise § 1216.40(a) 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 10

peanut producers, one public member, and their alternates appointed by the Secretary as follows:

(1) Ten producer members and alternates. One member and one alternate for each primary peanut-producing state and one at-large member and one at-large alternate representing, collectively, the minor peanut-producing states.

(2) One public member and one alternate member. The public member and alternate member shall not represent an agricultural interest and shall not have a financial interest in, or be associated with the production, processing, financing, or marketing of peanuts except as a consumer, nor shall such members be a director, officer, or employee of any firm so engaged.

* * * * *

3. Revise § 1216.41 to read as follows:

§ 1216.41 Nominations.

(a) All nominations authorized under § 1216.40 shall be submitted to the Secretary by May 1 of the year in which the terms of office expire, or such other date as provided by the Secretary. A minimum of two nominees must be submitted for each vacancy.

(b) Producer members and alternates representing the primary peanut-producing states shall be nominated by eligible peanut producer organizations within each state as certified pursuant to § 1216.70. Each organization shall select nominees at an open meeting among peanut producers eligible to serve on the Board.

(c) The at-large producer member and alternate representing minor peanut-producing states shall be nominated by eligible peanut producer organizations or other organizations that include peanut producers as part of their membership as certified pursuant to § 1216.70. Each such organization may select nominees at an open meeting among peanut producers eligible to serve on the Board or by mail ballot. Any certified peanut producer organization representing a minor peanut-producing state may nominate two eligible persons for each member and two eligible persons for each alternate member.

(d) The Board shall make the nominations for the public member and alternate member.

(e) The Board shall issue the call for nominations by March 1 of each year or such other date as provide by the Secretary.

(f) The nomination meeting shall be announced 30 days in advance:

(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 deemed advisable.

(g) At nominations meetings, Department personnel will be present to oversee and to verify eligibility and count ballots.

4. Revise § 1216.42 to read as follows:

§ 1216.42 Selection.

From the nominations, the Secretary shall select the members of the Board and alternates for each primary peanut-producing state. The Secretary shall select one member and one alternate from all nominations submitted by certified peanut producer organizations or other organizations representing minor peanut-producing states. The Secretary shall select one public member and one alternate public member from nominations submitted by the Board.

5. Revise § 1216.45 to read as follows:

§ 1216.45 Alternate members.

An alternate member of the Board, during the absence of the member shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that member shall act for the member until a successor for such member is selected and qualified. In the event that both the member and the alternate member are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

6. Revise paragraph (b) of § 1216.46 to read as follows:

§ 1216.46 Procedure.

* * * * *

(b) At assembled meetings, all votes shall be cast in person. Producer member votes shall be weighted by value of production. The vote of producer members from primary peanut-producing states shall be weighted by the primary peanut-producing state's three-year running average of total gross farm income derived from all peanut sales. The at-large producer member's vote shall be weighted by the collective value of production from the three-year running average of total gross farm income derived from all peanut sales in all minor peanut-producing states. The public member shall have one vote. Any Board action shall require the concurring votes of members or

alternates from states representing more than 50 percent of total U.S. gross farm income derived from all peanut sales, plus an additional two votes from any other Board members, provided a minimum of six votes concur.

* * * * *

Dated: May 26, 2000.

Kathleen A. Merrigan,
Administrator, Agricultural Marketing Service.

[FR Doc. 00-13783 Filed 6-1-00; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-ASO-21]

Proposed Establishment of Class E Airspace; Columbia, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Columbia, KY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Westlake Regional Hospital. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

DATES: Comments must be received on or before July 3, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00-ASO-21, Manager, Airspace Branch, ASO-520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00-ASO-21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO-520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Columbia, KY. A GPS SIAP, helicopter point in space approach, has been developed for Westlake Regional Hospital. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999,