

East Feliciana  
Iberia  
Iberville  
Lafourche  
Livingston  
Pointe Coupee  
St. Helena  
St. James  
St. Martin  
St. Mary  
Tangipahoa  
Terrebonne  
Washington  
West Baton Rouge  
West Feliciana

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BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1216

[Docket No.: AMS-FV-08-0001; FV-08-701 FR]

#### **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:** The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule that added a producer member and alternate from the State of Mississippi to the National Peanut Board (Board). The change was proposed by the Board, which administers the nationally coordinated program, in accordance to the provisions of the Peanut Promotion, Research, and Information Order (Order) which is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). This change is made because Mississippi is now considered a major peanut-producing state based on the Board's review of the geographical distribution of the production of peanuts. The Order requires a review of the geographical distribution of the production of peanuts at least every five years. The addition of a member from Mississippi will provide for additional representation from another primary peanut-producing state.

**DATES:** *Effective Date:* August 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA,

1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915; or fax: (202) 205-2800; or e-mail: *Jeanette.Palmer@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Peanut Promotion, Research, and Information Order [7 CFR Part 1216]. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411-7425].

#### **Executive Order 12866**

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The 1996 Act provides that any person subject to an order may file a written petition with the Department of Agriculture if they believe 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. In any petition, the person may request a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The 1996 Act provides that the district court of the United States in any district in which the petitioner resides or conducts business shall have the jurisdiction to review the Department's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

#### **Regulatory Flexibility Analysis**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], AMS has considered the economic impact of this rule on small entities and has prepared this final regulatory analysis impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or 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 \$750,000 and small agricultural service

firms as having receipts of no more than \$6,500,000.

There are approximately 10,840 producers and 33 handlers of peanuts who are subject to the program. Most producers would be classified as small businesses under the criteria established by the SBA, and most of the handlers would not be classified as small businesses.

The Department's National Agricultural Statistics Service (NASS), reports U.S. peanut production from the 10 major peanut-producing states. The combined production from these states totaled 3.74 billion pounds in 2007. NASS data indicates that Georgia was the largest producer (44 percent of the total U.S. production), followed by Texas (20 percent), Alabama (11 percent), Florida (9 percent), North Carolina (7 percent), South Carolina (5 percent), Mississippi (2 percent), Oklahoma (2 percent), Virginia (2 percent), and New Mexico (1 percent). According to the 2002 Census of Agriculture, small amounts of peanuts were also grown in six other states. NASS data indicates that the farm value of the peanuts produced in the top 10 states in 2007 was \$763 million.

Three main types of peanuts are grown in the United States: Runners, 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.

According to the Department's *Agricultural Statistics* report, in 2005 there were 10,840 commercial producers of peanuts in the United States. If that number of growers is divided into the total U.S. production in 2005, the resulting average is 449,249 pounds of peanuts per grower. Peanuts produced during 2005 provided average gross sales of \$77,808 per peanut producer, and the total value of the 2005 crop was approximately \$843 million. During the 2005/2006 marketing season (which began August 1, 2005), the per capita consumption of peanuts in the United States was 6.6 pounds, the same as in the 2004/2005 season.

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 the Department's Foreign Agricultural Service, exports of the United States peanuts (including peanut meal, oil, and peanut butter expressed in peanut equivalents) totaled 743 million in-shell equivalent pounds in calendar year 2006, with a value of \$228 million (U.S. point of departure for the foreign country). Of the total quantity, 60 percent was shelled peanuts used as nuts, 19 percent was in peanut butter, 8 percent was blanched or otherwise prepared or preserved peanuts, 4 percent was in-shell peanuts, and 3 percent was shelled oil stock peanuts. The remaining 6 percent represents peanuts exported as either a meal or oil.

The major destinations in 2006 for domestic shelled peanuts for use as nuts are Canada, Mexico, the Netherlands, and Russia. Blanched or otherwise prepared peanuts are sent mainly to Western Europe, especially Norway, Denmark, 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, Mexico, and Germany. Peanut oil and oil stock peanuts are exported world-wide, but major destinations can vary from year to year.

Approximately 164 million in-shell equivalent pounds of peanuts and peanut butter were imported in 2006 with a combined value (freight on board country of origin) of \$45 million.

Peanut butter accounted for about 63 percent of the total quantity of nuts (in-shell basis) imported in 2006. Most peanut butter imports come from Canada, Mexico, and Argentina. The other major import category—processed peanuts, are shipped mainly from China. Imports of oil stock shelled peanuts and peanut meal were negligible in the United States.

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.

The Board is currently composed of 10 producer members and their alternates. There is one producer member and alternate from each of the nine major peanut-producing states (in descending order—Georgia, Texas, Alabama, Florida, North Carolina, South Carolina, Oklahoma, Virginia, and New Mexico) and one at-large member and alternate representing all other peanut-producing states. However, based on the Board's review of the geographical distribution of the production of peanuts, Mississippi is now considered a major peanut-producing state. The Order requires this review at least every five years. The Board membership would move from 10 members and their alternates to 11 members and their alternates.

The addition of a producer member and alternate would be consistent with section 1216.40(b) of the Order which indicates that at least once during each five-year period, the Board shall review the geographical distribution of peanuts and make recommendation to the Secretary of Agriculture (Secretary) to continue without change or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

The Order became effective on July 30, 1999, and it contains provision to add a producer member and alternate if the State meets and maintains a three-year average production of at least 10,000 tons of peanuts. At the Board's December 4–5, 2007, meeting, the Board voted unanimously to add the State of Mississippi as a primary peanut-producing state contingent on the NASS data for the 2007 crop year showing that Mississippi has maintained a three-year average annual peanut production of at least 10,000 tons per year. The most recent NASS data shows that for the years 2005, 2006, and 2007 Mississippi produced 22,400 tons, 23,200 tons, and 29,700 tons of peanuts respectively. Based on this data, the three-year average annual peanut production for Mississippi totals 22,410 tons per year (67,232 divided by 3), which well exceeds the threshold set in the Order.

With regard to alternatives, the Board reviewed the peanut distribution for all the minor peanut-producing states, and Mississippi was the only State that met the Order's requirement for a three-year average peanut production of at least 10,000 tons.

Nominations and appointments to the Board are conducted pursuant to sections 1216.40, 1216.41, and 1216.43

of the Order. According to these sections, appointments to the Board are made by the Secretary from a slate of nominated candidates. Pursuant to section 1216.41(a) of the Order, eligible peanut producer organizations within the State shall nominate two qualified persons for each member and each alternate member. The nomination meeting must be announced 30 days in advance. The nominees should be elected at an open meeting among peanut producers eligible to serve on the Board. At the nomination meeting, the Department will be present to oversee and to verify eligibility and count ballots. The nominees for the producer member and alternate member are then submitted to the Secretary for appointment to the Board.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the background form, which represents the information collection and recordkeeping requirements that may be imposed by this rule, was previously submitted to and approved by OMB under OMB Number 0505–0001.

The public reporting burden is estimated to increase by an average 0.5 hours per response for each of the four producers. The estimated annual cost of providing the information by the four producers would be \$19.80 or \$4.95 per producer. This additional burden will be included in the existing information collections approved for use under OMB Number 0505–0001.

With regard to information collection requirements, adding a producer member and alternate member representing the State of Mississippi for the Board means that four additional producers will be required to submit background forms to the Department in order to be considered for appointment to the Board. Four producers will be affected because two names must be submitted to the Secretary for consideration for each position on the Board. However, serving on the Board is optional, and the burden of submitting the background form would be offset by the benefits of serving on the Board. The estimated annual cost of providing the information by four producers would be \$19.80 for all four producers or \$4.95 per producer.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

### Background

The Order became effective on July 30, 1999, and is authorized under the

1996 Act. The Board is composed of 10 producer members and their alternates: one member and alternate from each primary peanut-producing state (in descending order—Georgia, Texas, Alabama, Florida, North Carolina, South Carolina, Oklahoma, Virginia, and New Mexico) and one at-large member and alternate collectively from the minor peanut-producing states. The members and alternates are nominated by producers or producer groups.

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, all peanut producers pay an assessment of one percent of the total value of all farmer's stock peanuts. The assessments are remitted to the Board by handlers and, for peanuts under loan, by the Commodity Credit Corporation.

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

The Board reviewed the most recent NASS data and it reported that in 2005, 2006, and 2007 Mississippi produced 22,400 tons, 23,200 tons, and 29,700 tons of peanuts respectively. Based on this data, the three-year average annual peanut production for Mississippi totals 22,410 tons per year (67,232 divided by 3) which exceeds the requirement set in the Order of 10,000 pounds per year to become a major peanut-producing state. In addition, NASS data showed that Mississippi has produced two percent of the total United States peanut crop which is the same as Oklahoma and Virginia, two of the primary peanut-producing states. At the Board's December 4–5, 2007, meeting, the Board voted unanimously to add Mississippi as a primary peanut-producing state.

Therefore, the addition of a producer member and alternate would carry out the recommendations of the Board. This action will add to the Board a member and an alternate from Mississippi which has become a primary peanut-producing state. The addition of a producer member and alternate member would allow Mississippi representation on the Board's decision making and also potentially provide an opportunity to increase diversity on the Board.

Furthermore, this rule would make amendments to sections 1216.15 and 1216.21 of the Order to add the State of Mississippi as a primary peanut-producing state. Also, this rule would revise sections 1216.40(a) and 1216.40(a)(1) of the Order to specify that the Board will be composed of 11 peanut producer members and their alternates rather than 10.

Nominations and appointments to the Board are conducted pursuant to sections 1216.40, 1216.41, and 1216.43 of the Order. According to these sections, appointments to the Board are made by the Secretary from a slate of nominated candidates. Pursuant to section 1216.41(a) eligible peanut producer organizations within the State as certified pursuant to section 1216.70 shall nominate two qualified persons for each member and each alternate member. The nomination meeting must be announced 30 days in advance. The nominees should be elected at an open meeting among peanut producers eligible to serve on the Board. At the nomination meeting, the Department was present to oversee and to verify eligibility and count ballots. The nominees for the producer member and alternate member will be submitted to the Secretary for appointment to the Board.

An interim final rule concerning this action was published in the **Federal Register** on March 20, 2008 (73 FR 14919). Copies of the rule were made available through the Internet by the Department and the Office of the Federal Register. That rule provided a 30-day comment period which ended on April 21, 2008. Three comments were received by the deadline.

Three favorable comments were received. The commenters state the addition of Mississippi as a major peanut-producing state will ensure that all growers have the opportunity to be equitably represented in setting the vision and goals of the Peanut Promotion, Research, and Information Order.

An interim final rule was published in the **Federal Register** on March 20, 2008 (73 FR 14919), allowing the Board to begin the nomination process to fill the Mississippi member and alternate positions. As a result, the Mississippi nomination process began in April 2008 to allow Mississippi to have representation on the Board for the next term of office beginning January 1, 2009, and ending December 31, 2011.

After consideration of all relevant material presented, the Board's recommendation, and other information, it is hereby found that this rule is consistent with and will tend to

effectuate the declared policy of the 1996 Act and therefore should be adopted as a final rule, without change.

#### 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

■ Accordingly, the interim final rule amending 7 CFR part 1216 which was published at 73 FR 14919 on March 20, 2008, is adopted as a final rule without change.

Dated: July 2, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–15522 Filed 7–8–08; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF THE TREASURY

##### Office of Thrift Supervision

##### 12 CFR Part 575

[No. OTS–2008–0005]

RIN 1550–[AC15]

##### Optional Charter Provisions in Mutual Holding Company Structures

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is amending its mutual holding company (MHC) regulations to permit certain MHC subsidiaries to adopt an optional charter provision that would prohibit any person from acquiring, or offering to acquire, beneficial ownership of more than ten percent of the MHC subsidiary's minority stock (stock held by persons other than the subsidiary's MHC).

**DATES:** *Effective Date:* This final rule is effective on October 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Donald W. Dwyer, (202) 906–6414, Director, Applications, Examinations and Supervision—Operations; or David A. Permut, (202) 906–7505, Senior Attorney, Business Transactions Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**