

give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2006–2007 fiscal period began on April 1, 2006, and the order requires that the rate of assessment apply to all assessable Washington sweet cherries handled during such fiscal period; (2) this action decreases the assessment rate for the 2006–2007 and subsequent fiscal periods; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

#### PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 923 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 923.236 is revised to read as follows:

##### § 923.236 Assessment rate.

On or after April 1, 2006, an assessment rate of \$0.50 per ton is established for the Washington Cherry Marketing Committee.

Dated: June 12, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–9598 Filed 6–16–06; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 1216

[Docket No. FV–05–701–FR]

##### Amendment to the Peanut Promotion, Research, and Information Order

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule to bring the sections of the Peanut Promotion, Research and Information Order (Order), into conformity with changes that have occurred since the implementation of the Order with regard to the collection of assessments. This order is issued under the authority of the Commodity Promotion, Research and Information Act of 1996. This rule continues in effect changes to the Order provisions on assessments and the deletion of a number of obsolete definitions.

**DATES:** Effective July 19, 2006.

##### FOR FURTHER INFORMATION CONTACT:

Deborah S. Simmons, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915 or fax (202) 205–2800.

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Peanut Promotion, Research and Information Order (7 CFR part 1216) as amended, to bring the provisions of the Peanut Promotion, Research and Information Order, into conformity with changes that have occurred since the implementation of the Order with regard to the collection of assessments, and deletion of a number of obsolete definitions, hereinafter referred to as the “Order.” The Order is effective under the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7401–7425), hereinafter referred to as the “Act.”

##### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any State or local laws 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. Thereafter, the Secretary will issue a ruling on a petition. The 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 the Secretary’s final ruling.

This rule continues in effect changes to the Order to bring the provisions of the Peanut Promotion, Research and Information Order, into conformity with changes that have occurred since the implementation of the Order with regard to the collection of assessments. This order is issued under the authority of the Commodity Promotion, Research and Information Act of 1996. This rule also continues in effect changes to the Order for the deletion of a number of obsolete definitions.

##### Executive Order 12866

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

##### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency has examined the impact of this rule 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.

There are approximately 13,000 producers and 57 first handlers of peanuts subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. Most first handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than \$6 million, and small agricultural producers are defined as those having annual receipts of not more than \$500,000 annually.

A number of changes have occurred to Farm Service Agency loan programs for peanuts since the 2002 Farm Bill. In view of this, and taking into account alternatives, several provisions of the Order needed to be updated. This final rule modifies Section 1216.51 of the Order which deals with the collection process for assessments including peanuts placed under marketing assistance loans. For loan peanuts, the

Commodity Credit Corporation will deduct and remit to the Board assessments deducted from the proceeds of the loan. Producers are also required to pay assessments directly to the Board in certain circumstances.

This rule, however, does not alter the amount of the assessment or the obligation of producers of peanuts to pay the assessment.

Additional changes are made to amend definitions and delete definitions that are no longer needed. Accordingly, § 1216.2 concerning additional peanuts, § 1216.3 concerning area marketing associations, § 1216.6 concerning contract export additional peanuts, and § 1216.24 concerning quota peanuts are deleted.

There are no relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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 information collection and recordkeeping requirements that are imposed by this Order were submitted to OMB for approval and were approved under OMB control number 0581-0093. This proposal will not cause any change in the information collection and recordkeeping requirement.

Additional changes are made to amend definitions and delete definitions that are no longer needed. Accordingly, § 1216.2 concerning additional peanuts, § 1216.3 concerning area marketing associations, § 1216.6 concerning contract export additional peanuts, and § 1216.24 concerning quota peanuts are deleted.

### Background

The Order became effective on July 29, 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 currently generates about \$6 million in annual revenues. The program is administered by the Board under USDA supervision.

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, Arkansas, California, Kansas, Louisiana, Mississippi, Missouri, and Tennessee.

There is an assessment rate of 1 percent of the price paid for all farmers stock peanuts sold. Peanut producers may sell their peanuts commercially or put them in the market assistance loan program. For peanuts sold commercially, the first handler will remit the assessment to the Board.

Further § 1216.51(d) currently provides that for peanuts placed under loan with the Department's Commodity Credit Corporation, each area marketing association shall remit to the Board the following: (1) One (1) percent of the initial price paid for either quota or additional peanuts no more than 60 days after the last day of the month in which the peanuts were placed under loan; and (2) One (1) percent of the profit from the sale of the peanuts within 60 days after the final day of the area marketing association's fiscal year.

A number of changes have occurred to Farm Service Agency loan program for peanuts since the 2002 Farm Bill. In view of this, the Board submitted a request to amend the Order to update the collection of assessments for all peanuts, including loan peanuts. This rule does not alter the amount of the assessment or the obligation of producers of peanuts to pay the assessment.

This rule does provide in § 1216.51(d) that for peanuts placed under a marketing assistance loan with the Department's Commodity Credit Corporation, the Commodity Credit Corporation or any entity determined by the Commodity Credit Corporation shall deduct and remit to the Board, from the proceeds of the loan paid to the producer, one (1%) percent of the loan value of the peanuts as determined by the warehouse receipt accompanying such peanuts, no more than 60 days after the last day of the month in which the peanuts were placed under a marketing assistance loan.

This rule also provides in § 1216.51(e) that if a producer places peanuts under a marketing assistance loan and subsequently redeems and sells such peanuts at a price greater than the loan proceeds, the producer shall pay the difference between the sales price and the loan proceed value of the peanuts multiplied by one (1%) percent to the Board within sixty (60) days of the date of sale.

An interim final rule concerning this action was published in the **Federal Register** on September 21, 2005 [70 FR 55225]. Copies of the rule were mailed by the Board's staff to all Board

members and made available to all handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 30-day comment period which ended October 21, 2005.

One comment was received and it was favorable to the rule as published. The commenter however, did urge AMS to make sure that in the case of the producer who places peanuts under loan and later redeems and sells them for a price greater than the loan, the *handler* who is paying the higher price is responsible for collecting the additional assessment due from the producer. The commenter urges the implementation of the interim final rule as a final rule with this one change concerning collection of assessments.

We disagree with that portion of the comment that requests the handler to collect the assessment from the producer. When the peanuts are redeemed from the loan, and sold at a price greater than the loan, it is the producer's responsibility to pay the additional assessment due. Because the producer sells the peanuts and receives the proceeds, the handler would not be the appropriate party to collect in this instance. Accordingly, no changes to the rule are made as a result of this comment.

After consideration of all relevant material presented, including comments, the Board's recommendation, and other information, it is determined that finalizing the interim final rule, without change, as published in the **Federal Register** (70 FR 55225) on September 21, 2005, is consistent with and will effectuate the purpose of the Act.

### List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Agricultural research, Peanuts, 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 70 FR 55225 on September 21, 2005, is adopted as a final rule without change.

Dated: June 12, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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