

audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1216.82 shall apply to determine disposition of all such property.

Dated: November 2, 1998.

**Enrique E. Figueroa,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 98-29729 Filed 11-5-98; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1216

[FV-98-703-PR]

#### **Peanut Promotion, Research, and Information Order; Referendum Procedures**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Peanut Promotion, Research, and Information Order (Order) is favored by a majority of the producers voting in the referendum. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published in a separate document. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act). In addition, in accordance with the Paperwork Reduction Act of 1995 (PRA), this proposed rule specifies the public reporting burden for the collection of information involved in conducting the referendum.

**DATES:** Comments must be received by January 5, 1999.

**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, S.W., Washington, D.C. 20250-0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address

during regular business hours. Comments may also be submitted electronically to: malinda\_e\_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](http://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, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Angela C. Snyder, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, S.W., Washington, D.C. 20250-0244; telephone (910) 860-4689 or facsimile (202) 205-2800.

**SUPPLEMENTARY INFORMATION:** A referendum would be conducted among eligible peanut producers to determine whether the issuance of the proposed Peanut Promotion, Research, and Information Order (Order) (7 CFR Part 1216) is favored by a majority of persons voting in the referendum. 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). A proposed Order is being published separately in the **Federal Register**.

#### **Executive Order 12988**

This proposed 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 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.

#### **Executive Order 12866**

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.

#### **Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency is required to examine 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.

The Act, which authorizes the Secretary to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) by a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. The American Farm Bureau Federation (proponent) has recommended that the Secretary conduct a referendum in which the Order must be approved by a majority of those persons voting. The proponent also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This proposed rule would establish the procedures under which producers may vote on whether they want a

peanut promotion, research, and information program to be implemented. This proposal would add a new subpart which establishes procedures to conduct an initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 25,000 producers and 57 handlers of peanuts who would be subject to the program. Most producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR § 121.601], 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.

According to USDA's National Agricultural Statistics Service (NASS), the nine major peanut-producing states in the United States account for 99 percent of the peanuts grown in this country. The combined production from these states totaled 3.5 billion pounds in 1997. NASS reports that Georgia was the largest producer (38 percent of the total), followed by Texas (23 percent), Alabama (11 percent), North Carolina (9 percent), Florida (6 percent), Virginia (5 percent), Oklahoma (5 percent), New Mexico (1 percent), and South Carolina (1 percent). The farm value of peanuts in 1997 reached \$932 million. According to 1992 Census of Agriculture (Census) data, small amounts of peanuts were also grown in seven other states.

According to the proponent, and based on the Census for these nine states, 36 percent of the peanut-producing counties in the United States had 35 percent or more of their total crop income from peanuts. Twenty-four percent of the counties had 50 percent or more of their crop income from peanuts. From a state perspective, 70 percent of the crop income in Alabama's peanut-producing counties is generated from peanuts. For Virginia, the percentage is 48 percent. In addition, 16,194 farms harvested peanuts in 1992. Of these, 15,914 were located in the nine primary peanut-producing states.

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

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 USDA's Foreign Agricultural Service, exports of U.S. peanuts (including peanut meal, oil, and peanut butter) totaled 880 million inshell equivalent pounds in 1997, with a value of \$285 million (U.S. point of departure for the foreign country). Of the total quantity, 60 percent was shelled peanuts used as nuts, 11 percent was blanched or otherwise prepared or preserved peanuts, 10 percent was inshell peanuts, 7 percent was peanut butter, 4 percent was shelled oil stock peanuts, 4 percent was crude peanut oil, and 3 percent was refined peanut oil.

The major destinations for domestic shelled peanuts for use as nuts are Canada, Mexico, the United Kingdom, and the Netherlands. Blanched or otherwise prepared peanuts are sent mainly to Western Europe, especially the Netherlands, France, and Spain. Inshell 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 and Saudi Arabia. Peanut oil and oil stock peanuts are exported world-wide, but major destinations can vary from year to year.

Approximately 250 million inshell equivalent pounds of peanuts and processed peanuts (including oil and peanut butter) were imported in 1997 with a combined value (f.o.b. country of origin) of \$73 million. Most of the imports (45 percent) were shelled peanuts for use as nuts. The major U.S. supplier is Argentina, but several other countries export shelled peanuts to the United States, including Mexico, Nicaragua, and South Africa.

Peanut butter imports are also significant and accounted for about 32 percent of the total quantity of nuts (inshell basis) imported in 1997. Most peanut butter imports come from Canada and Argentina. The other major import category—crude and refined peanut oil—are shipped mainly from Argentina and Nicaragua and account for approximately 18 percent of total imports (inshell equivalent basis). Inshell peanuts, primarily from Mexico, accounted for nearly 3 percent of total imports in 1997. About 3 percent of total imports consisted of blanched or other processed peanuts, mainly from China. Imports of oil stock shelled peanuts were negligible.

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.

According to "The Agriculture Statistics Report" published by USDA, during the 1995–96 season, the average annual production per domestic producer was approximately 144,228 pounds of peanuts. Peanuts produced during these growing seasons provided average annual gross sales of \$42,222 per peanut producer. The value of the 1995–96 crop was approximately \$1.013 billion. During the same period, per capita consumption in the United States was 5.7 pounds of peanuts.

This proposed rule provides the procedures under which peanut producers may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 25,000 producers who will be eligible to vote in the first referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on producers. This rule provides for a ballot to be used by eligible producers in voting in the referendum. The estimated annual cost of providing the information by an estimated 25,000 producers would be \$12,500 or \$0.50 per producer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department will also accept ballots sent by facsimile (fax) machine. A pilot of this method was conducted during a recent referendum for another program. A fax machine was dedicated to the receipt of ballots. All ballots received in this manner were stored in the memory of the machine until the end of the voting period. Due to the large number of voters expected in the referendum on the proposed peanut program, USDA may use more than one such machine, providing voters in different states with different fax numbers in order to avoid exceeding the memory of the machine. Further, the Department would provide easy access to information for potential voters through a toll-free telephone line.

While other peanut programs have been implemented by the government, USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this rule.

We have preformed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to obtain all of the data necessary for a comprehensive analysis, we invite comments concerning the potential effects of this proposed rule. In particular, we are interested in obtaining more information on the number of small entities that may incur benefits or costs from the implementation of this proposed rule and information on the expected benefits or costs.

#### Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR 1320) which implements the Paperwork Reduction

Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581-0093.

*Expiration Date of Approval:* November 30, 2000.

*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 intent of the Act. The burden associated with the ballot is as follows:

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer.

*Respondents:* Producers.

*Estimated Number of Respondents:* 25,000.

*Estimated Number of Responses per Respondent:* 1 every 5 years (0.2).

*Estimated Total Annual Burden on Respondents:* 1,250 hours.

The estimated annual cost of providing the information by an estimated 25,000 producers would be \$12,500 or \$0.50 per producer.

The ballot will be added to the other information collections approved for use under OMB Number 0581-0093.

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. 0581-0093, 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 time 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.

#### Background

The Act authorizes the Secretary, under generic authority, to establish agricultural commodity research and promotion orders. The American Farm Bureau Federation (proponent), working in cooperation with 20 state and regional industry organizations from the peanut-producing states, has requested the establishment of a Peanut Promotion, Research, and Information Order (Order) pursuant to the Act. The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and information for peanuts. The program would be funded by an assessment levied on producers (to be collected by handlers) at a rate of 1 percent of the total value of all farmers stock peanuts. When peanuts are placed under loan, a deduction from the producer's loan draft equal to 1 percent of the price support value would be made and submitted to the Board by an area marketing association. Once peanuts are sold for disposition from a loan, the association would remit the balance of the assessment to the Board. In the proposed Order, peanuts are defined as the seeds of the legume *arachis hypogaea*, including both inshell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

Assessments would be used to pay for promotion, research, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 518 of the Act requires that a referendum be conducted among eligible peanut producers to determine whether they favor the Order. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. According to a proposed rule that is published separately in this issue of the **Federal Register**, the Order would become effective if it is approved by a majority of producers voting in the referendum,

which will be held before the program is implemented.

This proposed rule establishes the procedures under which producers may vote on whether they want the peanut promotion, research, and information program to be implemented. There are approximately 25,000 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. The subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the peanut industry. We also encourage the industry to comment on whether it has considered the impact of disaster transfers on the assessment process, whether peanuts under those transfers would be considered quota or additional peanuts.

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

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

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. Subpart B is added to proposed Part 1216 to read as follows:

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

\* \* \* \* \*

##### Subpart B—Procedure for the Conduct of Referenda in Connection with the Peanut Promotion, Research, and Information Order

Sec.

- 1216.100 General.
- 1216.101 Definitions.
- 1216.102 Voting.
- 1216.103 Instructions.
- 1216.104 Subagents.
- 1216.105 Ballots.
- 1216.106 Referendum report.
- 1216.107 Confidential information.

Authority: 7 U.S.C. 7401-7425.

##### Subpart B—Procedure for the Conduct of Referenda in Connection With the Peanut Promotion, Research, and Information Order

#### § 1216.100 General.

Referenda to determine whether eligible peanut producers favor the

issuance, amendment, suspension, or termination of the proposed Peanut Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

#### § 1216.101 Definitions.

Unless otherwise defined in this section, the definition of terms used in these procedures shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Peanut Promotion, Research, and Information Order.

(c) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a peanut farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(f) *Eligible producer* means any person who is engaged in the production and sale of peanuts in the United States and who:

(1) Owns, or shares the ownership and risk of loss of, the crop. This does not include quota holders who do not share in the risk of loss of the crop;

(2) Rents peanut production facilities and equipment resulting in the ownership of all or a portion of the peanuts produced;

(3) Owns peanut production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the peanuts produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to

produce peanuts who share the risk of loss and receive a share of the peanuts produced. No other acquisition of legal title to peanuts shall be deemed to result in persons becoming eligible producers.

#### § 1216.102 Voting.

(a) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer, or an administrator, executor, or trustee or an eligible producing entity may cast a ballot on behalf of such producer. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer, or an administrator, executive, or trustee of an eligible producing entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

#### § 1216.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(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 the agent may deem advisable.

(d) Mail to eligible producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

#### **§ 1216.104 Subagents.**

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

#### **§ 1216.105 Ballots.**

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

#### **§ 1216.106 Referendum report.**

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

#### **§ 1216.107 Confidential information.**

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: November 2, 1998.

**Robert C. Keeney,**  
*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc.98-29728 Filed 11-5-98; 8:45 am]

BILLING CODE 3410-02-P

## **SECURITIES AND EXCHANGE COMMISSION**

### **17 CFR Part 240**

[Release No. 34-40617; File No. S7-27-98]

RIN: 3235-AH48

### **Purchases of Certain Equity Securities by the Issuer and Others**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (Commission) ("Commission") today is proposing for public comment an amendment to Rule 10b-18 (Rule) under the Securities Exchange Act of 1934 (Exchange Act). Rule 10b-18 provides a "safe harbor" from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder, when an issuer or affiliated purchaser of the issuer bids for or buys shares of its common stock in compliance with the Rule's conditions. In order to improve liquidity during severe market downturns, the proposal would amend the Rule's timing condition during the trading session immediately following a market-wide trading suspension. In particular, the safe harbor now would be available to an issuer that bids for or purchases its common stock either: from the reopening of trading until the close of trading on the same day as the imposition of the market-wide trading suspension; or at the next day's opening, if the market-wide trading suspension was in effect at the scheduled close of trading. The proposed safe harbor requires that the issuer continue to comply with the Rule 10b-18 conditions governing the manner, price and volume of market purchases of its common stock.

**DATES:** Comments should be submitted on or before December 7, 1998.

**ADDRESSES:** Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-27-98. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, NW, Washington DC 20549. Electronically submitted comment letters will be

posted on the Commission's Internet web site (<http://www.sec.gov>).

#### **FOR FURTHER INFORMATION CONTACT:**

James A. Brigagliano, Assistant Director; Denise Landers, Attorney; and Jerome Roche, Attorney; Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, or at (202) 942-0772.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Introduction**

In response to a petition for rulemaking (Petition)<sup>1</sup> filed by the New York Stock Exchange, Inc. (NYSE), the Commission is proposing to amend Rule 10b-18<sup>2</sup> to modify the timing condition during the trading session immediately following a market-wide trading suspension.<sup>3</sup> The proposal extends the safe harbor to Rule 10b-18 bids or Rule 10b-18 purchases<sup>4</sup> effected either: (i) from the reopening of trading until the close of trading immediately following, and on the same day as, a market-wide trading suspension; or (ii) at the next day's opening, if the market-wide trading suspension was in effect at the scheduled close of trading. At such times, an issuer or an affiliated purchaser of the issuer (affiliated

<sup>1</sup> The Petition was filed with the Commission on January 9, 1998 and is publicly available in File No. 4-409 in the Commission's Public Reference Room.

<sup>2</sup> 17 CFR 240.10b-18.

<sup>3</sup> The proposed amendment defines market-wide trading suspension as either: (i) A market-wide trading halt imposed pursuant to the rules of a national securities exchange or a registered national securities association in response to a market-wide decline during a single trading session; or (ii) a market-wide trading halt ordered by the Commission pursuant to section 12(k) of the Exchange Act. Proposed Rule 10b-18(a)(15). For example, the proposed alternative safe harbor would apply in the trading session following a trading halt pursuant to NYSE exchange rule 80B or Market Closing Policy of the National Association of Securities Dealers, Inc. (NASD). The Commission approved the NASD's market closing policy statement, codified in IM-4120-3. Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (Circuit Breaker Approval Order). The Commission notes that it has a standing request with the NASD that the NASD halt trading as quickly as practicable whenever the NYSE and other markets have suspended trading, which the NASD continues to honor. See Letter to Howard L. Kramer, Senior Associate Director, Office of Market Supervision, Division of Market Regulation, Commission, from Richard Ketchum, Chief Operating Officer and Executive Vice President, NASD, dated January 23, 1998.

<sup>4</sup> Rule 10b-18 bid is defined as a bid for securities that, if accepted, or a limit order to purchase securities, that if executed, would result in a Rule 10b-18 purchase. 17 CFR 240.10b-18(a)(4). A Rule 10b-18 purchase is defined as a purchase of common stock of an issuer by or for the issuer, with certain exceptions. 17 CFR 240.10b-18(a)(3).