

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1216**

[FV-98-702-PR 2]

**Proposed Peanut Promotion,
Research, and Information Order****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule and referendum Order.

SUMMARY: This proposed rule would establish an industry-funded promotion, research, and information program for peanuts. A proposed program—the Peanut Promotion, Research, and Information Order (Order)—was submitted to U.S. Department of Agriculture (USDA or Department) by the American Farm Bureau Federation. Under the Order, peanut producers would pay an assessment of 1 percent of the price of farmers stock peanuts sold to first handlers. First handlers and marketing associations would remit the assessments to the proposed National Peanut Board (Board). The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act). In addition, the USDA is announcing that a referendum will be conducted among eligible peanut producers to determine whether they favor the implementation of the program.

DATES: In Order to be eligible to vote, peanut producers must have produced peanuts during the period from August 1, 1997, through July 30, 1998 (representative period). The voting period for the referendum will be May 24 through June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel R. Williams II, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535-S, Washington, D.C. 20250-0244; telephone (202) 720-9916 or fax (202) 205-2800.

SUPPLEMENTARY INFORMATION: This Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401-7425; Public Law 104-127, enacted April 4, 1996, hereinafter referred to as the Act.

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 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 2 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 of Agriculture (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.

Executive Order 12866

This proposed 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 (OMB).

Regulatory Flexibility Act

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 actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for peanuts. A proposal was submitted by the American Farm Bureau Federation

(proponent), working in cooperation with 20 state and regional peanut grower organizations representing the nine primary peanut-producing states and other states. The proponent has proposed that peanut producers approve the program in a referendum in advance of its implementation, and producer members would serve on the 10 member Board that would administer the program under USDA's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision is not in accordance with law and requesting a modification of the Order or an exemption from the Order.

While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. First handlers and area marketing associations—for peanuts placed under loan with the Commodity Credit Corporation (CCC) in the price support program administered for CCC by USDA's Farm Service Agency (FSA)—would collect and remit all assessments to the Board. Their responsibilities would include accurate recordkeeping and accounting of all peanuts purchased or contracted for, including the number of pounds handled, price paid to the producer, and when peanuts are purchased. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records shall be retained for at least two years. These requirements are either already being conducted as a normal business practice or are required by other USDA peanut regulations. The added burden to first handlers and area marketing associations for a peanut promotion, research, and information program is therefore expected to be minimal.

There is also a minimal burden on producers. The burden relates to those producers who would seek nomination to serve on the Board and those who vote in referenda. In addition, the proposed Order would require producers to keep records and to provide information to the Board or the Secretary when requested. However, it is not anticipated that producers would be required to submit forms to the Board. Most likely, the information would be obtained through an audit of a producer's records to confirm information provided by a first handler or if a first handler did not file the required reports as part of the Board's compliance operation.

The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) would be \$4,059.85 or \$5.00 per producer, \$66.05 per first handler, and \$9.50 per producer organization.

The Department would oversee program operations and, if the program is implemented, would conduct a referendum (1) every five years to determine whether peanut producers support continuation of the program, (2) at the request of the Board established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in referenda.

There are approximately 25,000 producers and 57 first handlers of peanuts that would be 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 121.601). Most first 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. The farm value of peanuts in 1997 reached \$932 million. 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). According to 1992 Census of Agriculture (Census) data, small amounts of peanuts were also grown in seven other states.

According to the proponent, based on Census data for these nine states, 36 percent of the peanut-producing counties in the United States acquired 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: Florunners, 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, U.S. exports of peanuts (including peanut meal, oil, and peanut butter) totaled 880 million in-shell 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 in-shell 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. 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 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 in-shell 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 (in-shell 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 (in-shell equivalent basis). In-shell 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 "Agricultural Statistics Report" published by USDA, during the 1995-96 season, the average annual production per U.S. producer was 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.

The Order would authorize a fixed assessment paid by producers (to be collected by first handlers) at a rate of 1 percent of the price paid for all farmers stock peanuts, regardless of whether the peanuts are sold commercially or placed under loan with CCC in the price support program administered for CCC by FSA.

Section 516(a)(1) of the Act provides authority to the Secretary to exempt from the Order any de minimis quantity of an agricultural commodity otherwise covered by the Order. The proponent

has elected not to provide for exemptions for a de minimis amount regarding peanuts. Therefore, the term de minimis is not defined in the proposed Order, and a de minimis exemption is not included.

At the proposed rate of assessment of 1 percent of farm value, the Board would collect approximately \$10 million annually, assuming 1 billion pounds of peanuts are produced. It is expected that the 1 percent rate of assessment would represent approximately 1 percent of producers' average return. In 1995-96, the average price for peanuts was \$0.293 per pound.

USDA will keep all individuals informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will publicize information regarding the referendum process so that trade associations and related industry media can be kept informed. If the program is implemented, the newly established Board would recommend to USDA regulations for the program.

In addition, the peanut industry would nominate producers to serve as members on the Board. The Board would recommend the assessment rate, programs and projects, a budget, and any other rules and regulations that might be necessary for the administration of the program. USDA would ensure that the nominees represent the peanut industry in accordance with the Act. Primary peanut-producing states are defined in the Order as Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain 3-year average production of at least 10,000 tons of peanuts each. Minor peanut-producing states are defined in the Order as all peanut-producing states other than the primary peanut-producing states. Currently, the following states would be considered minor states: Arizona, California, Louisiana, Mississippi, and Tennessee.

Each primary producing state would have one member on the Board, and the minor peanut-producing states would be represented collectively by one member on the Board. Each member would have an alternate. Therefore, the Board would have 10 members and 10 alternates.

Proposed recordkeeping and reporting requirements for the peanut promotion, research, and information program would be designed to minimize the burden on first handlers. It is USDA's goal to collect as much information as possible from forms already submitted to another USDA agency. In addition, any information collection that could

not occur through forms already in use would pose a minimal additional burden. The peanut promotion program would be designed to strengthen the position of peanuts in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for peanuts.

The estimated annual cost of providing the information to the proposed Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) would be \$4,059.85, or \$5.00 per producer, \$66.05 per first handler, and \$9.50 per producer organization.

With regard to alternatives to this proposed rule, the Act itself does provide for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an Order in Section 516 of the Act, and other sections provide for alternatives. For example, Section 514 of the Act provides for Orders applicable to (1) producers, (2) first handlers and other persons in the marketing chain as appropriate, and (3) importers (if imports are subject to assessment). Section 516 authorizes an Order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. 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 3 years after assessments first begin under the Order. An Order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers, and others in the marketing chain as appropriate and importers, if importers are subject to assessment.

The proposal included provisions for both domestic and foreign market expansion and improvement; reserve funds; and an initial referendum to be conducted prior to the Order going into effect, with approval based upon a

majority of those persons voting in a referendum.

In order to conduct the Regulatory Flexibility Analysis regarding the impact of this proposed Order on small entities, the proposed rule that was published in the **Federal Register** on November 6, 1998 (63 FR 59907) invited comments concerning the potential effects of the proposed Order. Concerning the information collection burden, one comment was received regarding the effect of the paperwork burden on first handlers. The concern of the commenter was that there would be significant administrative and financial burdens associated with collecting the information necessary to produce these reports and, finally, the production of the reports. The Department recognizes the burden that may be placed on first handlers due to the reports. In order to reduce this burden on first handlers, we modified § 1216.60 to eliminate the monthly requirement for first handlers to identify each producer, the address of the producer, and the date assessments were collected. However, we have also modified § 1216.61 *Books and records* to clarify what books and records first handlers and producers must maintain and make available to the Secretary and Board employees as necessary. This section now states that copies of FSA 1007 forms, the names and addresses of producers, and the date when assessments were collected must be maintained by first handler and producer. One purpose of this change is to help ensure that this information is available for enforcement purposes.

Paperwork Reduction Act

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 may be imposed by this Order have been submitted to OMB for approval and have been approved under OMB control number 0581-0093.

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

OMB Number for background form (number 1 below): 0505-0001.

Expiration Date of Approval: June 30, 1999.

OMB Number for other information collections: 0581-0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on producers of voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a final rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under this program, first handlers would be required to collect assessments from producers and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability. The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) would be \$4,059.85, or \$5.00 per producer, \$66.05 per first handler, and \$9.50 per producer organization.

The Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other peanut programs administered by the Department.

Most of the proposed forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied from the FSA Form 1007 without data processing equipment or outside technical expertise. FSA Form 1007 Inspection Certificate and Sales Memorandum is a standard form used within the peanut industry to collect peanut crop characteristics and value of the load from the producer to the first handler. This form will provide the information that would be needed in order to complete the first handlers form for the Board. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly would coincide with normal industry business practices. Reporting other than monthly would impose an additional

and unnecessary recordkeeping burden on first handlers. The timing and frequency of collecting information is intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports.

Information collection requirements that are included in this proposal include:

(1) *A background information form to be completed by candidates nominated by certified producer organizations for appointment to the Board.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each producer.

Respondents: Producers.

Estimated number of Respondents: 21 (average of 40 for initial nominations to the Board and approximately 12 respondents annually thereafter for each 3-year period).

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

Estimated Total Annual Burden on Respondents: 20 hours for the initial nominations to the board and 6 hours annually thereafter.

(2) *A monthly report by each first handler of peanuts.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on peanuts handled.

Respondents: First handlers.

Estimated number of Respondents: 57.

Estimated number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 342 hours.

(3) *Nomination information by which certified producer organizations would nominate producers for membership on the Board.*

Estimate of Burden: Public reporting burden for this collecting of information is estimated to average 0.5 hours per response.

Respondents: Certified producer organizations.

Estimated number of Respondents: 20.

Estimated number of Responses per Respondent: 1 per year.

Estimated Total Annual Burden on Respondents: 10 hours.

(4) *An application for peanut producer organizations for certification of eligibility to nominate Board members.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each organization.

Respondents: Peanut producer organizations.

Estimated number of Respondents: 9.
Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9 hours.

(5) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: First handlers.

Estimated number of recordkeepers: 57.

Estimated total recordkeeping hours: 28.5 hours.

Comments were invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information 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 assumptions 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. Information that is needed for recordkeeping would come from the FSA 1007 form. As stated earlier, this form is a standard form within the peanut industry and its use would result in no new training of personnel.

As discussed previously in the Regulatory Flexibility Analysis, one comment was received regarding the effect of the paperwork burden on first handlers. The concern of the commenter was that there would be significant administrative and financial burdens associated with collecting the information necessary to produce these reports and, finally, the production of the reports. The Department recognizes the burden that may be placed on first handlers due to the reports. In order to reduce this burden on first handlers, we have modified § 1216.60 to eliminate the monthly requirement for first handlers to identify the name and address of each producer and the date assessments were collected. However, we have also modified § 1216.61 *Books and records* to clarify what books and records that first handlers and producers must maintain and make available to the Secretary and Board employees. This section now states that

copies of FSA 1007 forms, the name and addresses of producers, and the date when assessments were collected must be maintained by the first handler and producer. The purpose of this change is to help ensure that this information is available for enforcement purposes.

Background

The Act authorizes the Secretary, under a generic authority, to establish agricultural commodity research and promotion Orders. Section 516 of the Act provides permissive terms for Orders, and other sections provide for alternatives. For example, Section 514 of the Act provides for Orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if importers are subject to assessment). Section 516 authorizes an Order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. 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 3 years after assessments first begin under the Order. The Order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for both domestic and foreign market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect and with approval based upon a majority of those persons voting in the referendum.

The Act provides for a number of optional provisions that allow the tailoring of Orders for different commodities.

The proponent, working in cooperation with 20 state and regional peanut industry organizations representing the nine primary peanut-producing states, has requested the establishment of a national peanut promotion, research, and information Order pursuant to the Act. The Act authorizes the establishment and operation of generic promotion

programs which includes a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal provides for the development and financing of an effective and coordinated program of research, promotion, and information for peanuts. The purpose of the program is to strengthen the position of peanuts in domestic and foreign markets, and to develop, maintain, and expand markets for peanuts.

The program would not become effective until approved by peanut producers in a referendum to be conducted by USDA. Section 518 of the Act provides for the Department (1) to conduct an initial referendum, preceding a proposed Order's effective date, among persons who would pay assessments under the program or (2) to implement a proposed Order, pending the conduct of a referendum, among persons subject to assessments, within 3 years after assessments first begin.

In accordance with Section 518(e) of the Act, the results of the referendum must be determined one of three ways: (1) approval by a majority of those persons voting; (2) approval by persons voting who represent a majority of the volume of the commodity covered by the program; or (3) approval by a majority of the persons voting who also represent a majority of the volume of the commodity produced, handled, or imported by the persons voting.

The proponent proposes that the Department conduct an initial referendum preceding the proposed Order's effective date and that approval of the Order be determined by a simple majority of the producers voting.

In accordance with the Act, the Department would oversee the program's operations. In addition, the Act requires the Secretary to conduct subsequent referenda: (1) not later than 7 years after assessments first begin under the Order; or (2) at the request of the board established under the Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The proponent group has requested that a referendum be conducted every 5 years to determine if producers want the program to continue.

In addition to these criteria, the Act provides that the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote.

The proponent states that the United States Congress has established a number of programs since the early 1930's to support and stabilize farm prices and income and to adjust production in 1934. In 1949, a revised system of marketing quotas and acreage allotments for peanuts began. Since then, Congress has amended and changed the peanut program a number of times, with the latest changes made to the peanut title in 1996 with the passage of the Federal Agriculture Improvement and Reform (FAIR) Act. The new program retains its price support and supply management elements while operating at no cost to the government other than administrative expenses common to all price support programs. The new program also lowers the loan rate for quota peanuts from \$678 per ton to \$610 per ton and freezes that price for the life of the program, through 2002. In addition, the quota level, which the Secretary could not set below 1.35 million tons prior to passage of the FAIR Act, has been reduced to equal the anticipated domestic demand for peanuts.

The proponent has identified a number of market and production factors that suggest the need for a national research, promotion, and information program for peanuts. The most basic problem affecting peanut marketing is a drop in demand caused by negative health perceptions of peanuts' fat content, competition from other snack foods, and lack of awareness among young people.

In addition, the proponent cites other factors. Government purchases of peanut butter are down. If purchases return to historic heights, purchases will still not be enough to reverse supply/demand trends. Also, a 1997 Gallup survey revealed that 87 percent of all consumers are peanut users, while 13 percent did not consume any peanuts in the past year. Per capita consumption of peanuts has been decreasing. It appears now that demand trends have bottomed out and are starting to rise. National promotion could bolster this trend.

The same survey indicated that the percent of peanut non-users is increasing, as is the percent of young people not consuming peanuts or peanut products. Thirty-five percent of all consumers surveyed indicated they did not consume any snack peanuts, and more than 40 percent thought peanuts contained cholesterol when, in fact, peanuts contain none.

The proponent also states that 26 percent of all consumers did not consume any peanut butter in 1997. Peanut butter could be an affordable

alternative for low-income consumers in comparison to other sandwich options, but fewer and fewer low income consumers are using peanut butter as an alternative.

In addition, in 1996, the farm value of U.S. peanuts fell below \$1 billion, to \$970 million, for the first time since 1982.

Further, the domestic industry is facing increased competition in the United States and abroad from lower-priced peanuts produced in other countries. The value of peanuts and peanut products imported into the United States exceeded \$100 million in 1996.

All of these factors have led the domestic peanut industry to seek a national promotion program to find ways to further increase the consumption of U.S. peanuts.

Section 516(f) of the Act allows an Order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the Order. The program would not assess imports.

The assessment levied on domestically produced peanuts will be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Board. Expenses incurred by the Secretary in implementing and administering the Order, including referenda costs, also would be paid from assessments.

Sections 516(e)(1) and (2) of the Act state that the Secretary may provide credits of assessments for generic and branded activities. The proponent did not elect to propose credits for generic or branded activities. Therefore, the terms "generic activities" and "branded activities" are not defined in the Order, and credits for assessments on generic and branded activities would not be made.

First handlers will be responsible for the collection of assessments from the producer and payment to the Promotion Board. First handlers will be required to maintain records for each producer for whom peanuts are handled, including peanuts produced by the first handler. In addition, first handlers will be required to file reports regarding the collection, payment, or remittance of the assessments.

All information obtained from persons subject to this Order as a result of recordkeeping and reporting requirements will be kept confidential by all officers, employees, and agents of the Department and of the Board.

However, this information may be disclosed only if the Secretary considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to an Order if the statements do not identify the information furnished by any person or the publication, by direction of the Secretary of the name of any person violating the Order and a statement of the particular provisions of the Order violated by the person.

The proposed Order provides for the Department to conduct an initial referendum preceding the proposed Order's effective date. Therefore, the proposed Order must be approved by a majority of the producers voting for approval in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) every 5 years after the program is in effect, (2) at the request of the Board established under the Order, or (3) when requested by 10 percent or more of peanut producers covered by the Order. In addition, the Secretary may conduct a referendum at any time.

The Act requires that such a proposed Order provide for the establishment of a Board to administer the program under USDA supervision. The proponent's proposal provides for a 10-member National Peanut Board.

To ensure fair and equitable representation of the peanut industry on the Board, the Act requires membership on the Board to reflect the geographical distribution of the production of peanuts. To that end, this proposal provides that each primary peanut-producing state will be represented on the Board by one producer member and alternate and that the minor peanut-producing states will be represented collectively by one at-large producer member and alternate. Based on current information on production in the various states, the Order defines the primary peanut-producing states as Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain three-year average production of at least 10,000 tons of peanuts.

Upon implementation of the Order and pursuant to the Act, the Board will at least once in each five-year period, but not more frequently than once in

each three-year period, review the geographical distribution of peanuts in the United States and make a recommendation to the Secretary after considering the results of its review and other information it deems relevant regarding the reapportionment of the Board.

Members and alternates would serve for three-year terms, except that the members and alternates appointed to the initial Board would serve proportionately for two-, three-, and four-year terms. No member or alternate would serve more than two consecutive three-year terms.

The Department received an entire proposed Order from the American Farm Bureau Federation on June 15, 1998.

Prior to publication, the Department modified the proponent's proposal to make it consistent with the Act, other similar national research and promotion programs, and other Federal peanut programs administered by the Department; for consistency throughout the text; and for clarity.

In the definitions and throughout the text of the Order, "farmer stock peanuts" was changed to "farmers stock peanuts" for consistency with industry use and existing regulations.

A definition for "first handler" was added for consistency with similar national research and promotion programs, and subsequent sections were renumbered accordingly.

The definition of "information" was rewritten to include activities designed to enhance peanuts' image, to add definitions of "consumer information" and "producer information," and to conform with the Act.

The definition of "quota peanuts" was rewritten to reference 7 CFR Part 729.

In § 1216.41 (Nominations), the phrase "qualified nominating organizations" was changed to read "certified nominating organizations" for consistency with the text.

In addition, § 1216.50 (h) was revised to be consistent with the Act. Paragraph (e)(5) *Limitation on spending* of § 515 of the Act states that a Board "may not expend for administration (except for reimbursements to the Secretary . . .)" an amount that exceeds 15 percent of the Board's income during any fiscal year. The proposal submitted set a more stringent limitation of 10 percent and stated that administrative expenses included reimbursement to the Secretary. The Order may set the more stringent limitation of 10 percent because that amount is less than the 15 percent provided in the Act. However, the Order may not provide that

reimbursements to the Secretary are covered by the limitation on spending.

Other minor changes which did not materially affect the text were made for consistency. For instance, in the definitions, "additional peanuts are . . ." was changed to read "additional peanuts means . . ." As another example, in sections containing only one paragraph, the paragraph designation was removed. Minor grammatical changes also were made.

The proponent also submitted "Subpart B—Voting Procedures and Approval of the Peanut Promotion, Research, and Information Order." This proposed subpart was revised and included as § 1216.81 of the proposed Order.

A proposed rule seeking comments on the national research and promotion program for peanuts was published on November 6, 1998 in the **Federal Register** [63 FR 59893]. Comments were invited on the entire proposal with the deadline for comments on January 5, 1999. Fourteen comments were received. Comments were received from 10 peanut producers associations or growers associations, two manufacturer associations, one manufacturer, and one peanut producer. Four commenters simply stated that they supported the proposal and/or recommended that USDA conduct the referendum as early in Spring 1999 as possible. The other comments are discussed below.

Two comments were submitted about § 1216.03 which defines area marketing associations. Each felt that the statement in § 1216.03 that area marketing associations will assist in the collection of assessments conflicted with the assessment provisions in § 1216.51(h). To correct this we have accepted their solution of changing the word "will" to "may" in § 1216.03.

One comment noted that § 1216.06 includes peanuts for crushing for exportation and asked if peanuts for domestic crushing were covered by the proposed Order. In response, § 1216.11 *Handle* includes peanuts for domestic crushing.

One comment was received about § 1216.18 which defines peanut producer organizations eligible for receipt of check-off funds. The commenter felt that any peanut producer organization that is involved in lobbying activities should not be eligible for receipt of check-off funds. We do not find merit in this comment. Any peanut producer organization that receives funds will only be eligible for the funds after meeting the certification as outlined in § 1216.70 and will be prohibited from using Board funds for lobbying, pursuant to § 1216.49.

A comment was submitted about § 1216.23 which defines quota peanuts. The commenter felt that this definition should provide for the assessment of peanuts that are not marketed and held back in storage. We disagree and believe that the term does not need further clarification in the proposed Order. Section 1216.51 *Assessments* outlines which peanuts are to be assessed and how to handle farmers stock peanuts. In addition, § 1216.11 defines handle. The intent of this Order is only to assess peanuts that enter the current of commerce.

A comment was received on § 1216.24 which defines research as any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of peanuts, including research relating to nutritional value and cost of production. The commenter felt that this section allowed for research to justify the continued existence of the FSA peanut program. We don't find merit in this comment. The research as outlined is performed to increase the marketability of peanuts and not justify other peanut programs.

A comment was submitted on § 1216.41 which outlines the nomination procedures. The commenter felt that the nomination procedures should be clarified to indicate that all peanut producers eligible to serve on the Board would participate in the nomination process. We have accepted the comment and revised the third sentence in § 1216.41 (a) to read: "The nominees shall be chosen at an open meeting by election among peanut producers eligible to serve on the Board."

In addition, we have adopted the following recommendations made by the same commenter and revised § 1216.41 to require (1) widespread announcements in addition to public notice to all growers; (2) 30 day advanced notice prior to a nomination meeting; and (3) USDA personnel to be present to oversee and to verify eligibility and count ballots. The commenter also requested USDA to conduct the nomination meeting for the initial Board appointments. However, by having USDA personnel present at the initial meeting, we do not find it necessary for USDA to hold the initial grower meetings for nominations. Therefore, that part of the comment is denied. In addition, this commenter wished for pre-addressed ballots to be issued at nomination meetings and a list of persons eligible to vote at the open nominations meeting be issued upon entrance to said meetings. These

comments are denied. USDA's role in these meetings is to oversee the process and not set the procedures of the meetings.

A comment was received in respect to § 1216.48(j) which outlines the powers and duties of the National Peanut Board. The commenter questioned why the Board would act as intermediary between the Secretary and any producer or first handler, especially when there is no first handler member on the Board. It is true that there is no handler member on the Board. However, handlers would be collecting the assessments under the program and remitting them to the Board. Therefore, a handler's first point of contact regarding the requirements of the program would be the staff of the Board. This does not preclude any first handler from contacting the Secretary. Therefore, this comment is denied.

One comment was received about § 1216.49. This section deals with the prohibited activities of the Board, employees, and agents of the Board. The commenter felt that this section should be modified using stronger language to ensure that funds are not used for other activities other than promotion, research and consumer/producer information. We deny this comment. This language is consistent with other National Promotion Programs and has prohibited improper activities.

Three comments were received about § 1216.50(h). This section limits the amount the Board may spend on administration, maintenance, and functioning in any fiscal year to no more than 10 percent of assessments. Two comments recommended lowering this to 5 percent of the assessments. The third comment recommended maintaining the 10 percent requirement. The first two comments are denied. Although 10 percent is stated in the proposed Order, the Board may in fact operate below that rate, but to mandate this amount could restrict the Board in its daily operations.

Five comments were received on § 1216.50(i) which addresses budget and expenses. Each commenter had concerns that the use of the words "quota peanuts" to describe the peanuts that would be assessed was too narrow in scope. We accept their comments and have revised § 1216.50(i) to state that the allocation of funds would be based on the assessments collected from all peanuts.

Two comments about § 1216.50(i) were received addressing the allocation of the assessments. The commenters recommended that this provision be revised to ensure that no less than 80 percent of the Board's funds are used in

national programs. We believe that this comment has merit. To reduce the possibility of having more than the 20 percent of the Board's funds spent on state or regional research, we have revised § 1216.50(i) to state that the Board shall allocate, to the extent practicable, no less than 80 percent of the assessments to national and regional promotion, research, and information and no more than 20 percent to state or regional research.

Two comments were received about § 1216.50(k) which provided for assessments collected from the gross sales of contract export additional peanuts to be provided to a primary contractor for the promotion and related research of export peanuts. Each commenter felt that assessments collected from contract export additional peanuts would not share the burden of research at the state and regional level. We don't find merit in these comments. We feel that § 1216.50(k) provides for either market or production research to be conducted. Research that is done for export peanuts does overlap with research for domestic peanuts. In addition, § 1216.50(l) provides the Board with the flexibility to change how funds are used in § 1216.50(k). Therefore, this comment is denied.

One comment stated that half of the financial burden should be shifted to handlers, whereas § 1216.51(a) specifies that assessments will be paid by producers. This comment is denied. The proponent group, which was comprised of producers, recommended only a producer assessment.

One comment was received concerning the language of the Act and payment of assessments. The commenter questioned whether the Act's assessment language covered only handler paid type programs. The Act authorizes producer assessment type programs as provided in this proposal. We do not find merit in this comment.

A comment was received in regard to § 1216.51(b) which deals with the collection of the assessments. The commenter believed that the words ". . . peanuts owned by the first handler . . ." is vague and subject to interpretation. We agree with this comment and have changed § 1216.51(b) to read: ". . . peanuts produced by the first handler . . ."

Three comments were received on § 1216.51(c) which sets the assessment rate. The commenters wished to change the basis of the assessments to either a per ton basis or a percent of the support price. We do not find merit in these comments. This proposal was submitted by producer groups which

recommended the assessments be collected on a percent of the price paid (the "value of segment" on FSA 1007). They maintain this is the most equitable system. If assessments were based on the number of tons, an inequity would exist because of the variation in prices paid for different types and qualities of peanuts. Also, there would have to be at least two assessment rates: one for quota peanuts and one for contract export additional peanuts. Basing the assessment on the price paid allows the program to have one assessment rate that is applied equally to all peanuts. If the assessment were based on the support price, the proposed Order would have to be revised if the support program is changed or eliminated. For example, if the support price is lowered, the promotion program assessment would need to be raised to compensate for the loss in income in order to assure continuity in the Board's programs. Basing assessments on the price paid would provide continuity in funding for a national program, regardless of the changes in or the existence of the support program. Therefore, these comments are denied.

In addition, a comment was submitted about the use of the words "price paid" in § 1216.51(c). The commenter felt that the use of the words "price paid" can be subject to interpretation. We have accepted this comment and added the following language to § 1216.51(c): Price paid shall mean the value of segment on the FSA 1007 form.

One comment requested clarification of who is responsible for collection assessments on peanuts when the immediate buyback is used. In response, § 1216.51(d) states that area marketing associations shall remit assessments to the Board on all peanuts placed under loan, which would have included buyback peanuts.

Two comments were submitted on § 1216.51(f) which addresses late payments. The commenters requested confirmation that late payments of assessments should be subject to penalties in the form of interest and not any damages that may have been incurred from the late payment. In response, it should be noted that § 1216.51(f) only provides for late payment charges in the form of interest on the outstanding balance due as recommended by the commenters. Therefore no change to this section is made.

Three comments were submitted on the Board having the ability to raise or lower the rate of assessment with the approval of the Secretary. The concern was that the Board could raise the rate without a producer referendum. In order

to assure that producers have the ability to vote on the raising of the assessment rate, a new § 1216.51(i) has been added to the Order. This section would require a producer referendum in addition to notice and comment rulemaking when the Board recommends raising the assessment rate. Further, the Act provides for this action.

One comment was submitted on § 1216.60 which addresses the reports that first handlers must submit at the time monthly assessments are paid. The commenter felt there would be significant administrative and financial burdens associated with preparing these reports. The Department recognizes the burden that may be placed on first handlers. In order to reduce this burden on first handlers, we have changed § 1216.60 to eliminate the requirement to identify each producer, the address of the producer, and the date assessments were collected. In addition, § 1216.60 has been re-worded to correspond with the change in § 1216.51(c) which now defines the price paid as the entry in the value of segment section on the FSA 1007 form as recommended by the commenter. Also, we have added a new § 1216.60(b) to clarify when first handlers are to submit monthly reports and assessments.

We also have modified § 1216.61 *Books and records* to clarify what books and records that first handlers and producers must maintain and make available to the Secretary and Board employees. This section now states that copies of FSA 1007 forms, the names and addresses of producers, and the date when assessments were collected must be maintained by the first handler and producer. The purpose of this change is to help ensure that this information is available for enforcement purposes.

A comment was submitted on § 1216.62 which deals with confidential treatment. The commenter stated that this section does not provide adequate safeguards for the confidentiality of proprietary information. We disagree with this comment. This confidentiality provision is common to other similar national programs and has prevented any improper release of information. Therefore, we deem it sufficient in this Order. In addition, the Act states that any person who willfully violates this provision shall be subject, on conviction, to a fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both.

Nonetheless, to address the commenter's concern, the modification to § 1216.61 *Books and Records* clarifies that only the Secretary and agents and employees of the Board (not

Board members) will have access to first handlers' and producers' records.

Three comments were submitted on § 1216.81(b), formerly § 1216.80(b), which outlines the implementation of the Order. Each commenter felt that this section was unclear and may contradict the definition of producer in § 1216.21. We concur with these comments. Therefore, in order to assure a clear understanding of the implementation provisions, we have inserted in § 1216.81(b) a reference to the definition of producer in § 1216.21.

Comments were submitted on § 1216.87 *Amendments*, formerly § 1216.86. The comments were in favor of requiring a referendum especially when increasing the assessment. As indicated above, we agree that there should be a referendum before the assessment rate is raised. However, we deny the comment because the addition of § 1216.51(i) addresses the need of a referendum to raise the assessment rate.

In summary, § 1216.03, § 1216.41, § 1216.50(i), § 1216.51(b), § 1216.51(c), § 1216.51(i), § 1216.60(a), § 1216.60(b), § 1216.60(c), § 1216.60(d), § 1216.61, and § 1216.81(b) have been revised as a result of comments received. Other changes to the proposed rule made by AMS are noted and discussed below.

Section 1216.03 was revised to use the word "may" instead of "will" in describing the role of an area marketing association in collecting assessments.

Section 1216.08 was added by AMS to provide a definition for the Department's Farm Service Agency. This will provide clarity to the proposed Order. Section of the Order have been renumbered accordingly.

Section 1216.41 was revised to ensure that the nominating process is open to all peanut producers. This was accomplished by adding new subsections (d) and (e).

Section 1216.50(i) was revised to change "quota peanuts" to "all peanuts" available. In addition, language was added to provide at least 80 percent of the assessments for national programs.

Section 1216.50(j) was modified by AMS. The language "and approved" was removed from this section. AMS felt that this language was repetitive and unnecessary.

Section 1216.50(k) was modified by AMS. The language "to an appropriate organization approved by the Secretary as the primary contractor" was removed from this section. This will provide flexibility to the Board.

Section 1216.51(b) was revised for clarification by changing "owned" to "produced". Section 1216.51(i) was revised to include the following language: Price paid is the value of

segment entry on the FSA 1007 form. A new sub-section (i) was added to § 1216.51 to require a producer referendum on raising the assessment rate.

Section 1216.60 was revised to reduce the burden that was placed on first handlers. In order to accomplish this, sub-sections (a) and (b) were re-written.

Section 1216.61 was revised to state that copies of FSA 1007 forms, the names and addresses of producers, and the date when assessments were collected must be maintained by first handlers and producers.

A new § 1216.80 *Right of the Secretary* was added to provide conformity with existing programs. This section was added by AMS for consistency with similar National Research and Promotion Programs, and subsequent sections were renumbered accordingly.

Section 1216.81(b) was revised to prevent any contradiction with § 1216.21 by citing § 1216.21 in § 1216.81(b).

Other minor changes which did not materially affect the text of the Order were made for clarity.

The Order is summarized as follows: Sections 1216.01 through 1216.29 of the proposed Order define certain terms, such as peanuts, minor peanut-producing states, primary peanut-producing states, producer, and quota peanuts, which are used in the proposed Order.

Sections 1216.40 through 1216.49 include provisions relating to the Board establishment and membership, nominations, selections and acceptance, term of office, vacancies, alternate members, and compensation and reimbursement; procedures for conducting Board business; and powers and duties of the Board, which is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about peanuts, subject to oversight by the Secretary. These sections also include maintenance of books and records by the Board and prohibited activities of the Board, its employees, and agents.

In order to ensure support throughout the production area for all Board votes, § 1216.46(b) provides that all Board members' votes would be weighted by the value of production represented by each member. The votes of members from primary peanut-producing states would represent their respective states' three-year running average of total gross farm income derived from all peanut sales. The votes of the at-large Board

member would equal the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income from all peanut sales. Any Board action would require the concurring votes of members collectively representing more than 50 percent of the total U.S. gross farm income derived from all peanut sales plus an additional two votes from other Board members, provided a minimum of five members concur. Therefore, regardless of the volume voted by the members, no Board action would be approved unless at least five members voted in favor of it. Similarly, if five members vote in favor of a motion and those five members do not represent more than 50 percent of the total U.S. gross farm income derived from all peanut sales, the motion would not be approved.

Sections 1216.50 through 1216.55 would cover budget review and approval; authorize the collection of assessments; use of assessments, including reimbursement of necessary expenses incurred by the Board for the performance of its duties, including expenses incurred for the Department's oversight responsibilities; specify who pays the assessment and how; authorize the imposition of a late-payment charge on past-due assessments; address programs, plans, and projects; require the Board to conduct periodically an independent review of its overall program; specify a program operating reserve; and cover the investment of assessment funds.

There will be 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 a government loan program. For peanuts sold commercially, the first handler would remit the assessment to the Board. The assessment would be 1 percent of the price paid for the peanuts. Under a loan program administered by FSA, a peanut producer also has the option of delivering the peanuts to an area marketing association and receiving payment for the peanuts from CCC. If the peanut promotion program is implemented, the area association would deduct 1 percent of the payment from the producer's proceeds and remit that amount to the Board as the producer's initial assessment payment on the peanuts. After the association sells the peanuts, the area association reimburses CCC the amount of the payment to the producer and deducts its expenses from the selling price. If the peanut promotion program is implemented and if there is any profit from the sale of the peanuts,

the association would deduct 1 percent of the profit, remit that amount to the Board to pay the producer's assessment, and pay the balance to the producer.

The Board may raise or lower the rate of assessment with the approval of the Secretary and a producer referendum.

The federal debt collection procedures referenced in § 1216.51(g) include those set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by AMS (60 FR 12533, March 7, 1995).

Sections 1216.60 through 1206.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Section 1216.70 describes the certification requirements for peanut-producer organizations to be eligible to nominate Board members and submit requests for funds from the Board.

Sections 1216.80 through 1216.88 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; address personal liability, separability, and amendments; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

The Department has determined that this Order is consistent with and will effectuate the purposes of the Act.

For the Order to become effective, the Order must be approved by a simple majority of peanut producers voting in a referendum.

Referendum Order

It is hereby directed that a referendum be conducted among peanut producers to determine whether they favor implementation of the Peanut Promotion, Research, and Consumer Information Order.

The referendum shall be conducted from May 24 through June 11, 1999. Ballots will be mailed to all known eligible peanut producers on or before May 17, 1999. Eligible voters who do not receive a ballot by mail should call the following toll-free telephone number to receive a ballot: 1 (888) 720-9917. All ballots will be subject to verification. Ballots must be received by the referendum agents no later than June 11, 1999, to be counted.

Daniel R. Williams II and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535-S, Stop 0244, Washington, D.C. 20250-

0244, are designated as the referendum agents of the Secretary of Agriculture to conduct the referendum. The Procedure for the Conduct of Referenda in Connection with the Peanut Promotion, Research, and Consumer Information Order, 7 CFR 1216.101-1216.107, which is being published separately in this issue of the **Federal Register**, shall be used to conduct the referendum.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanuts, 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:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

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

Authority: 7401-7425.

2. Subpart A is added to part 1216 to read as follows:

Subpart A—Peanut Promotion, Research, and Information Order

Definitions

Sec.

1216.01	Act.
1216.02	Additional peanuts.
1216.03	Area marketing association.
1216.04	Board.
1216.05	Conflict of interest.
1216.06	Contract export additional peanuts.
1216.07	Department.
1216.08	Farm Service Agency.
1216.09	Farmers stock peanuts.
1216.10	First handler.
1216.11	Fiscal year.
1216.12	Handle.
1216.13	Information.
1216.14	Market.
1216.15	Minor peanut-producing states.
1216.16	Order.
1216.17	Part and subpart.
1216.18	Peanuts.
1216.19	Peanut producer organization.
1216.20	Person.
1216.21	Primary peanut-producing states.
1216.22	Producer.
1216.23	Promotion.
1216.24	Quota peanuts.
1216.25	Research.
1216.26	Secretary.
1216.27	Suspend.
1216.28	State.
1216.29	Terminate.
1216.30	United States.

National Peanut Board

1216.40	Establishment and membership.
1216.41	Nominations.
1216.42	Selection.
1216.43	Term of office.

1216.44	Vacancies.
1216.45	Alternate members.
1216.46	Procedure.
1216.47	Compensation and reimbursement.
1216.48	Powers and duties of the National Peanut Board.
1216.49	Prohibited activities.

Expenses and Assessments

1216.50	Budget and expenses.
1216.51	Assessments.
1216.52	Programs, plans, and projects.
1216.53	Independent evaluation.
1216.54	Operating reserve.
1216.55	Investment of funds.

Reports, Books, and Records

1216.60	Reports.
1216.61	Books and records.
1216.62	Confidential treatment.

Certification of Peanut Producer Organizations

1216.70	Certification.
---------	----------------

Miscellaneous

1216.80	Right of the Secretary.
1216.81	Implementation of Order.
1216.82	Suspension and termination.
1216.83	Proceedings after termination.
1216.84	Effect of termination or amendment.
1216.85	Personal liability.
1216.86	Separability.
1216.87	Amendments.
1216.88	Patents, copyrights, trademarks, information, publications, and product formulations.

Subpart A—Peanut Promotion, Research, and Information Order

Definitions

§ 1216.01 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401-7425; Public Law 104-127, 110 Stat. 1029), or any amendments thereto.

§ 1216.02 Additional peanuts.

Additional peanuts means peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

§ 1216.03 Area marketing association.

Area marketing association means an association selected and approved by the Secretary to conduct activities under regulations of the Department's Farm Service Agency. Under an inter agency agreement, area marketing associations may assist in the collection of assessments under this subpart. The approved area marketing associations and the areas served by such associations are as follows:

(a) *GFA Peanut Association of Camilla, Georgia (GFA)*. GFA serves the southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the states of Alabama, Florida, Georgia,

Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(b) *Peanut Growers Cooperative Marketing Association of Franklin, Virginia (PGCMA)*. PGCMA serves the Virginia-Carolina area consisting of the District of Columbia, and the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers; and

(c) *Southwestern Peanut Growers Association of Gorman, Texas (SWPGA)*. SWPGA serves the southwestern area consisting of the states of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, and all other territories of the United States not listed in paragraph (a) or (b) of this section.

§ 1216.04 Board.

Board means the administrative body referred to as the National Peanut Board established pursuant to § 1216.40.

§ 1216.05 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1216.06 Contract export additional peanuts.

Contract export additional peanuts are additional peanuts for exportation, including peanuts for crushing for exportation, for which a contract has been entered into between a first handler and a producer.

§ 1216.07 Department.

Department means the U.S. Department of Agriculture.

§ 1216.08 Farm Service Agency.

Farm Service Agency or FSA means the U.S. Department of Agriculture's Farm Service Agency.

§ 1216.09 Farmers stock peanuts.

Farmers stock peanuts means picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels and

excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

§ 1216.10 First handler.

First handler means any person who handles peanuts in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman, or other intermediary between the producer and the person handling.

§ 1216.11 Fiscal year.

Fiscal year is synonymous with crop year and means the 12-month period beginning with August 1 of any year and ending with July 31 of the following year, or such other period as determined by the Board and approved by the Secretary.

§ 1216.12 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning in-shell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned in-shell or shelled peanuts, or other activity causing peanuts to enter the current of commerce: *Provided*, that this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and *Provided further*, that this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 1216.13 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of peanuts on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of peanuts; and

(b) *Producer information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the peanut industry, and activities to enhance the image of the peanut industry.

§ 1216.14 Market.

Market means to sell or otherwise dispose of peanuts into interstate, foreign, or intrastate commerce by buying, marketing, distributing, or otherwise placing peanuts into commerce.

§ 1216.15 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

§ 1216.16 Order.

Order means an Order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1216.17 Part and subpart.

Part means the Peanut Promotion, Research, and Information Order and all rules, regulations, and supplemental Orders issued pursuant to the Act and the Order. The Order shall be a "subpart" of such part.

§ 1216.18 Peanuts.

Peanuts means the seeds of the legume *arachis hypogaea* and includes both in-shell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

§ 1216.19 Peanut producer organization.

Peanut producer organization means a state-legislated peanut promotion, research, and education commission or organization. For states without a state-legislated peanut promotion, research, and education commission or organization, "peanut producer organization" means any organization which has the primary purpose of representing peanut producers and has peanut producers as members.

§ 1216.20 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1216.21 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, *Provided*, these states maintain three-year average production of at least 10,000 tons of peanuts.

§ 1216.22 Producer.

Producer means any person engaged in the production and sale of peanuts and who 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.

§ 1216.23 Promotion.

Promotion means any action taken by the National Peanut Board under this Order, including paid advertising, to present a favorable image of peanuts to the public to improve the competitive position of peanuts in the marketplace, including domestic and international markets, and to stimulate sales of peanuts.

§ 1216.24 Quota peanuts.

Quota peanuts means peanuts which are:

- (a) Eligible for domestic edible uses; and
- (b) Marketed or considered marketed from a farm as quota peanuts pursuant to the provisions of 7 CFR Part 729 and are not in excess of the effective farm poundage quota established for the farm on which such peanuts were produced.

§ 1216.25 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of peanuts, including research relating to nutritional value and cost of production.

§ 1216.26 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1216.27 Suspend.

Suspend means to issue a rule under section 553 of title 5, United States Code, to temporarily prevent the operation of an Order during a particular period of time specified in the rule.

§ 1216.28 State.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1216.29 Terminate.

Terminate means to issue a rule under section 553 of title 5, United States Code, to cancel permanently the operation of an Order beginning on a date certain specified in the rule.

§ 1216.30 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

National Peanut Board**§ 1216.40 Establishment and membership.**

(a) Establishment of a National Peanut Board. There is hereby established a National Peanut Board, hereinafter called the Board, composed of no more than 10 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) Nine members and alternates. One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

(2) The minor peanut-producing states shall collectively have one at-large member and one alternate, who are producers, to be appointed by the Secretary from nominations submitted by certified peanut producer organizations within minor peanut-producing states or from other certified farm organizations that include peanut producers as part of their membership.

(b) Adjustment of membership. At least once in each five-year period, but not more frequently than once in each three-year period, the Board, or a person or agency designated by the Board, shall review the geographical distribution of peanuts in the United States and make recommendation(s) 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.

§ 1216.41 Nominations.

(a) All nominations authorized under § 1216.40 shall be made within such a period of time as the Secretary shall prescribe. Eligible peanut producer organizations within each state as certified pursuant to § 1216.70 shall nominate two qualified persons for each member and each alternate member. The nominees shall be elected at an open meeting among peanut producers eligible to serve on the Board. 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.

(b) As soon as practicable after this subpart becomes effective, the Secretary shall obtain nominations for

appointment to the initial promotion Board from certified nominating organizations. In any subsequent year in which an appointment to the Board is to be made, nominations for positions whose terms will expire shall be obtained from certified nominating organizations by the Board's staff and submitted to the Secretary by May 1 of such year, or other such date as approved by the Secretary.

(c) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue the call for nominations by March 1 of each year.

(d) 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.

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

§ 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 representing minor peanut-producing states.

§ 1216.43 Term of office.

All members and alternates of the Board shall each serve for terms of three years, except that the members and alternates appointed to the initial Board shall serve proportionately for two-, three-, and four-year terms, with the length of the terms determined at random. No member or alternate may serve more than two consecutive three-year terms. An alternate, after serving two consecutive three-year terms, may serve as a member for an additional two consecutive three-year terms. A member, after serving two consecutive three-year terms, may serve as an alternate for an additional two consecutive three-year terms. Each member and alternate shall continue to serve until a successor is selected and has qualified.

(a) Those members serving initial terms of two or four years may serve one successive three-year term.

(b) Any successor serving one year or less may serve two consecutive three-year terms.

§ 1216.44 Vacancies.

To fill any vacancy resulting from the failure to qualify of any person selected as a member or as an alternate member of the Board, or in the event of death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in § 1216.40.

§ 1216.45 Alternate members.

An alternate member of the Board, during the absence of the member for the primary peanut-producing state or at-large member for whom the person is the alternate, 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 state or at-large member shall act for the member until a successor for such member is selected and qualified. In the event that both a producer member of the Board and the alternate 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.

§ 1216.46 Procedure.

(a) A majority of the members of the Board, including alternate members acting for members, shall constitute a quorum.

(b) At assembled meetings, all votes shall be cast in person. Board actions shall be weighted by value of production as determined by a primary peanut-producing state's three-year running average of total gross farm income derived from all peanut sales. The at-large Board member's vote shall be weighted by the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income derived from all peanut sales. 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 five votes concur.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not time to call an assembled meeting of the Board, the

Board may also take action as prescribed in this section by mail, facsimile, telephone, or any telecommunication method appropriate for the conduct of business, but any such action shall be confirmed in writing within 30 days.

(d) There shall be no voting by proxy.

(e) The chairperson shall be a voting member.

§ 1216.47 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1216.48 Powers and duties of the National Peanut Board.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor;

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1216.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(j) To act as intermediary between the Secretary and any producer or first handler;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the peanut industry's position in the marketplace; maintain and expand existing markets and uses for peanuts; and to carry out programs, plans, and

projects designed to provide maximum benefits to the peanut industry.

§ 1216.49 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, including local, state, national, and international, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order, that is false or misleading or disparaging to another agricultural commodity.

Expenses and Assessments

§ 1216.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and

perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

(i) The Board shall allocate, to the extent practicable, no less than 80 percent of the assessments collected on all peanuts available for any fiscal year on national and regional promotion, research, and information activities. The Board shall allocate, to the extent practicable, no more than 20 percent of assessments collected on all peanuts available for any fiscal year for use in state or regional research programs. Specific percentages and amounts shall be determined annually by the Board, with the approval of the Secretary.

(j) Certified peanut producer organizations may submit requests for funding for research and/or generic promotion projects. Amounts approved for each state shall not exceed the pro rata share of funds available for that state as determined by the Board and approved by the Secretary. Amounts allocated by the Board for state research or promotion activities will be based on requests submitted to the Board when it is determined that they meet the goals and objectives stated in the Order.

(k) Assessments collected, less pro rata administrative expenses, from the gross sales of contract export additional peanuts shall be allocated by the Board

for the promotion and related research of export peanuts.

(l) The Board shall determine annually how total funds shall be allocated pursuant to paragraphs (i), (j), and (k) of this section, with the approval of the Secretary.

§ 1216.51 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon producers in a manner prescribed by the Secretary.

(b) Each first handler, at such times and in such manner as prescribed by the Secretary, shall collect from each producer and pay assessments to the Board on all peanuts handled, including peanuts produced by the first handler, no later than 60 days after the last day of the month in which the peanuts were marketed.

(c) Such assessments shall be levied at a rate of 1 percent of the price paid for all farmers stock peanuts sold. Price paid is the value of segment entry on the FSA 1007 form.

(d) 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 association's fiscal year.

(e) All assessments collected under this section are to be used for expenses and expenditures pursuant to this Order and for the establishment of an operating reserve as prescribed in the Order.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(i) The assessment rate may not be increased unless the new rate is

approved by a referendum among eligible producers.

§ 1216.52 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to peanuts; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of peanuts and peanut products, and the creation of new products thereof, to the end that marketing and use of peanuts may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of peanuts.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project shall make any false claims on behalf of peanuts or use unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product. Peanuts of all domestic origins shall be treated equally.

§ 1216.53 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

§ 1216.54 Operating reserve.

The Board shall establish an operating monetary reserve and may carry over to

subsequent fiscal years excess funds in a reserve so established; *Provided*, that funds in the reserve shall not exceed any fiscal year's anticipated expenses.

§ 1216.55 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any state or any political subdivision of a state; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

Reports, Books, and Records

§ 1216.60 Reports.

(a) Each producer and first handler subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(1) Number of pounds of peanuts produced or handled;

(2) Price paid to producers (entry in value of segment section on the FSA 1007 form); and

(3) Total assessments collected.

(b) First Handlers shall submit monthly reports to the Board. These reports shall accompany the payment of the collected assessments and shall be due 60 days after the last day of the month in which the peanuts were marketed.

§ 1216.61 Books and records.

Each first handler and producer subject to this subpart shall maintain and make available for inspection by the Secretary and employees and agents of the Board such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall include but are not limited to the following: copies of FSA 1007 forms, the names and address of producers, and the date the assessments were collected. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1216.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all

officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, importers, exporters, or handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Certification of Peanut Producer Organizations

§ 1216.70 Certification.

(a) Organizations receiving certification from the Secretary will be entitled to submit nominations for Board membership to the Secretary for appointment and to submit requests for funding to the Board.

(b) For major peanut-producing states, state-legislated peanut promotion, research, and information organizations may request certification, provided the state-legislated promotion program submits a factual report that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(c) If a state-legislated peanut promotion, research and information organization in a major peanut-producing state does not elect to seek certification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any peanut producer organization whose primary purpose is to represent peanut producers within a primary peanut-producing state, or any other organization which has peanut

producers as part of its membership, may request certification. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(d) For minor peanut-producing states, any organization that has peanut producers as part of its membership may request certification.

(e) The information required for certification by the Secretary may include, but is not limited to, the following:

(1) The geographic distribution within the state covered by the organization's active membership;

(2) The nature and size of the organization's active membership in the state, proportion of total such active membership accounted for by producers, a map showing the peanut-producing counties in such state in which the organization has members, the volume of peanuts produced in each such county, the number of peanut producers in each such county, and the size of the organization's active peanut producer membership in each such county;

(3) The extent to which the peanut producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization;

(7) The organization's ability and willingness to further the aims and objectives of the Act and Order; and,

(8) Demonstrated experience administering generic state promotion and research programs.

(f) The Secretary's determination as to eligibility or certification of an organization shall be final.

Miscellaneous

§ 1216.80 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1216.81 Implementation of the Order.

The Order shall not become effective unless:

(a) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(b) The Order is approved by a simple majority of the peanut producers as

defined in § 1216.21 voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

§ 1216.82 Suspension and termination.

(a) The Secretary shall suspend or terminate this subpart or a provision thereof if the Secretary finds that this subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) Every five years, the Secretary shall hold a referendum to determine whether peanut producers favor the continuation of the Order. The Secretary will also conduct a referendum if 10 percent or more of all eligible peanut producers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

(c) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a simple majority of the producers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

(d) If, as a result of the referendum conducted under paragraph (b) of this section, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1216.83 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or

agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the peanut producer organizations, certified pursuant to § 1216.70, in the interest of continuing peanut promotion, research, and information programs.

§ 1216.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1216.85 Personal liability.

No member or alternate member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

§ 1216.86 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the

applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1216.87 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1216.88 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product

formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and 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: April 19, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99-10134 Filed 4-22-99; 8:45 am]

BILLING CODE 3410-02-P