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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV–05–701–IFR]

Amendment to the Peanut Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The purpose of this rule is to bring the provisions of the Peanut Promotion, Research and Information Order (Order), into conformity with changes that have occurred since the implementation of the Order with regard to the collection of assessments. This order is issued under the authority of the Commodity Promotion, Research and Information Act of 1996. This rule invites comments on changes to the Order provisions on assessments and the deletion of a number of obsolete definitions.

DATES: September 22, 2005; comments received by October 21, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Washington, DC 20250–0237; Fax: (202) 205–2800, or E-mail:*deborah.simmons@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number, the date and the page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http//www.ams.usda.gov/fv/rpb.html.*

FOR FURTHER INFORMATION CONTACT: Deborah S. Simmons, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, D.C. 20250–0244; telephone (202) 720–9916 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: Legal Authority. The Peanut Promotion, Research and Information Order (Order) (7 CFR Part 1216) became effective July 29, 1999. It was issued under the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7401–7425).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any State or local laws authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency has examined the impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

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

A number of changes have occurred to Farm Service Agency loan programs for peanuts since the 2002 Farm Bill. In view of this, several provisions of the Order needed to be updated. The changes are to the collection process for assessments, Section 1216.51 of the Order as amended. This section included provisions concerning collection of assessments and peanuts placed under marketing assistance loans. The Commodity Credit Corporation will deduct and remit to the Board assessments deducted from the proceeds of the loan. Producers are also required to pay assessments directly to the Board in certain circumstances.

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

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

There are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Order on small entities, and we invite comments concerning potential effects of the proposed amendment.

Background

The Order became effective on July 29, 1999, after a national referendum among all peanut producers. Under the Order, peanut producers are assessed 1 percent of the total value of all farmers stock peanuts, which currently generates about $6 million in annual revenues. The program is administered by the Board under USDA supervision.

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

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

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

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

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

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

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

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by this Order were submitted to OMB for approval and were approved under OMB control number 0581–0093. This proposal will not cause any change in the information collection and recordkeeping requirement.

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

This rule invites comments on the amendment to the collection process set forth in the Order and on the deletion of § 1216.2, § 1216.3, § 1216.6 and § 1216.24. Any comments received before the October 21, 2005 will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The crop year began on August 1, 2005 and this action should be in place as soon as possible and (2) this notice does not alter the amount of assessment but only changes provisions concerning the collection of assessment. For these reasons, a thirty-day comment period is deemed appropriate.

General Findings

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure; Advertising; Agricultural research; Peanuts; Reporting and recordkeeping requirements.

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

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

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

Authority: 7 U.S.C. 7401–7425.

§§ 1216.2, 1216.3, 1216.6, 1216.24 [Removed and reserved]

■ 2. Sections 1216.2, 1216.3, 1216.6 and 1216.24 are removed and reserved.

■ 3. Section 1216.51 is revised to read as follows:

§ 1216.51 Assessments.

(a) The funds necessary to pay for programs and other costs authorized by this part 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 or first purchaser/handler 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 one (1%) percent of the price paid for all farmers stock peanuts sold. Price paid is one (1%) percent of loan value.

(d) For peanuts placed under a marketing assistance loan with the

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

(e) If a producer places peanuts under a marketing assistance loan and subsequently redeems and sells such peanuts at a price greater than the loan amount, the producer shall pay the difference between the sales price and the loan value of the peanuts multiplied by one (1%) percent to the Board within sixty (60) days after the final day of the loan availability period.

(f) 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.

(g) 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.

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

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

(j) The assessment rate may not be increased unless the new rate is approved by a referendum among eligible producers.

Dated: September 15, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–18759 Filed 9–20–05; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 712

Audit Requirement for Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its rule concerning credit union service organizations (CUSOs) to provide that a wholly owned CUSO need not obtain its own annual financial statement audit from a certified public accountant if it is included in the annual consolidated audit of the federal credit union (FCU) that is its parent. The amendment will reduce regulatory burden and conform the regulation with agency practice, which since 1997 has been to view credit unions with wholly owned CUSOs in compliance with the rule if the parent FCU has obtained an annual financial statement audit on a consolidated basis.

DATES: This rule is effective on October 21, 2005.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 2005, the NCUA Board requested comment on a proposed change to part 712 of its regulations to provide that that a CUSO that is wholly owned need not secure its own public accounting firm financial statement audit if it is included on a consolidated basis in the audit of the FCU itself. 70 FR 14579 (March 23, 2005). The proposal recognized that, where a CUSO is controlled by an FCU by virtue of its ownership of one hundred percent of its voting shares, generally accepted accounting principles (GAAP) call for the preparation of financial statements of both the FCU and the CUSO on a consolidated basis.

As noted in the preamble to the proposed rule, consolidated financial statements present the results of operations, financial position, and cash flows of a parent and its subsidiaries as if the group were a single enterprise. Under GAAP, consolidated financial statements generally include enterprises in which the parent has a controlling financial interest, usually, a majority voting interest. There is a presumption that consolidated statements are more meaningful than separate statements and are usually necessary for a fair presentation when one of the enterprises in a group directly or indirectly has a controlling financial interest in another.

Summary of Comments

NCUA received twelve comments on the proposal, eleven of which were fully supportive of the amendment. These commenters noted several bases for their support, including efficiency, flexibility and cost savings, as well as the generally more thorough and accurate financial picture that emerges when the operations of corporate parents and subsidiaries are included in a consolidated financial statement. The one commenter that did not offer express support did not indicate opposition to the proposal, but rather raised two questions about the operation of the rule in specified circumstances.

In the preamble to the proposed rule, the Board specifically recognized that GAAP would allow for consolidated financial reporting in cases that involve a CUSO that is majority owned. The Board noted, however, that it was not recommending extension of the rule to those cases, and indicated its belief that the proposal would ensure that prospective minority investors in CUSOs would have maximum disclosure of potential risks to their investment. Nine commenters recommended that NCUA extend the exemption for a separate audit to majority owned CUSOs, instead of limiting it to cases of one hundred percent ownership. Two of these commenters conditioned their support for this expanded treatment on including in the rule a safeguard to allow a minority owner to request the CUSO to obtain a separate opinion audit.

The Board remains convinced that the original proposal, with its limited application only to cases involving one hundred percent ownership of the CUSO, is the best course. Absent a provision in the rule, a minority investor could encounter some difficulty in asserting its right to a separate opinion audit. The Board notes, in this respect, that its concern for the safety and soundness of credit unions, rather than assuring that its rules conform in all respects to what may be formally permissible under GAAP, is of paramount importance. Accordingly, NCUA is adopting the proposed amendments as a final rule without change.

The Board notes that the rule change extends to cases involving CUSO subsidiaries that are also wholly owned. While cases of second tier CUSOs are relatively rare, the principles of the rule