

by the dates prescribed in paragraph (d) of this section; further, at the end of the marketing year, each such manufacturer shall submit a statement of its actual countable purchases of eligible tobacco for that marketing year, by kind, for burley and flue-cured tobacco. For these purposes, countable purchases of eligible tobacco shall be as defined in, and determined under, paragraph (b) of this section. If a domestic manufacturer fails to file a statement of intentions, the Director shall declare the amount which will be considered that manufacturer's intentions for the marketing year. That declaration by the Director shall be based on the domestic manufacturer's previous reports or such other information as is deemed appropriate by the Director in the Director's discretion. Notice of the amount so declared shall be forwarded to the domestic manufacturer. If the domestic manufacturer fails to file a year-end report or files an inaccurate or incomplete report, then the Director may deem that the manufacturer has no purchases to report or take such other action as the Director believes is appropriate to fulfill the goals of this section. Intentions and purchases of countable tobacco will be compared for purposes of determining whether a penalty is due from the domestic manufacturer.

(b) *Eligible tobacco for statements of intentions and countable purchases toward those intentions.* For reports and determinations under this section, eligible tobacco for purposes of determining the countable purchases under paragraph (a) of this section will be unmanufactured domestic tobacco of the relevant kind for use to manufacture, for domestic or foreign consumption, cigarettes, semi-processed bulk smoking tobacco, and other tobacco products. Eligible tobacco for these purposes does not include tobacco purchased for export as leaf tobacco, stems, trimmings, or scrap. Countable purchases of eligible tobacco shall include purchases of eligible tobacco made by domestic manufacturers directly from the producers, from a regular auction market, or from the price support loan inventory and shall also include purchases by the manufacturer where the manufacturer purchases or acquires the tobacco from dealers or buyers who purchased the tobacco for the domestic manufacturer during the relevant marketing year directly from a producer, at a regular auction market, or from the price support loan inventory.

(c) *Weight basis and nature of reports.* The weight basis used for all reports and comparisons shall be a farm sales

weight basis unless the Director permits otherwise and all reports will be considered to have been made on that basis unless the report clearly states otherwise. Submitted reports shall be deemed to cover countable purchases of eligible tobacco only.

(d) *Due dates and addresses for reports.* For flue-cured tobacco the domestic manufacturer's statement of intentions shall be submitted by December 1 before the marketing year and the year-end report shall be submitted by August 20 following the end of the marketing year. Those dates for burley tobacco are January 15 and November 20, respectively. Reports shall be mailed or delivered to the Director, Tobacco and Peanuts Division, STOP 0514, P.O. Box 2415, Washington, DC 20013-2415.

(e) *Penalties.* A domestic manufacturer shall be liable for a penalty equal to twice the purchaser's no-net-cost assessment rate per pound for the applicable kind of tobacco for the relevant marketing year, if the manufacturer's purchases of either burley or flue-cured tobacco for the marketing year do not equal or exceed, as determined by the Director, 90 percent of their stated purchase intentions for that kind of tobacco for the relevant marketing year. The Director shall adjust the domestic manufacturer's intentions, however, to the extent, that producers have not produced the full amount of the national quota for the relevant marketing year for the particular kind of tobacco. The burden of establishing all purchases shall be with the domestic manufacturer and the Director may, in the case of indirect purchases for the manufacturer, require that the manufacturer obtain verification of the purchases by the dealer who made the purchase from the producer, at a regular auction market, or from the price support loan inventory, in order to assure that the tobacco was countable tobacco. The Director may require such additional information as determined needed to enforce this subpart.

(f) *Penalty notice and penalty remittance.* Penalties will be assessed after notice and an opportunity for a hearing before the Director. Remittances are to be made to the CCC and will be credited to the applicable producer loan association's no-net-cost fund or account as provided for in part 1464 of this title.

(g) *Maintenance and examination of records.* Each domestic manufacturer shall keep all relevant records of purchases, by kind, of burley and flue-cured tobacco for a period of at least 3 years. The Director, Office of Inspector

General, or other duly authorized representative of the United States may examine such records, receipts, computer files, or other information held by a domestic manufacturer that may be used to verify or audit such manufacturer's reports. The reasonable cost of such examination or audit may be charged to the domestic manufacturer who is the subject of the examination or audit. All records examined or received under this part by officials of the Department of Agriculture shall be kept confidential to the extent required by law.

§§ 723.1 through 723.504 [Amended]

10. Part 723 sections 723.1 through 723.504 are further amended by removing "ASC" wherever it appears and substituting "FSA" in its place.

Signed at Washington, DC, on March 11, 1997.

Bruce R. Weber,

Administrator, Farm Service Agency

[FR Doc. 97-6732 Filed 3-20-97; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 1215

[FV-96-706PR]

Proposed Popcorn Promotion, Research, and Consumer Information Order; Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This proposed rule would establish an industry-funded promotion, research, and consumer information program for popcorn. An order for the proposed program—the Popcorn Promotion, Research, and Consumer Information Order (Order)—was submitted to the Department by the Popcorn Institute. Under the proposed Order, processors would pay an assessment rate of 5 cents per hundredweight of popcorn to the proposed Popcorn Board (Board). Composed of popcorn processors, the Board would use the assessments collected to conduct a generic program of promotion, research, and consumer information to maintain and expand markets for popcorn. In addition, the U.S. Department of Agriculture is announcing that a referendum will be conducted among eligible popcorn processors to determine whether they favor the implementation of the program.

DATES: In order to be eligible to vote, popcorn processors must have processed and marketed more than 4 million pounds during the period from January 1 through December 31, 1996 (representative period). The referendum will be conducted from April 15 through 30, 1997.

FOR FURTHER INFORMATION CONTACT: Stacey L. Bryson, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456, telephone (888) 720-9917 or (202) 720-6930.

SUPPLEMENTARY INFORMATION: This proposed order is issued under the Popcorn Promotion, Research, and Consumer Information Act, (7 U.S.C. 7481-7491), hereinafter referred to as the Act.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. Further, section 580 of the Act states that nothing in the popcorn statute preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 577 of the Act, after an Order is implemented, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

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.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has examined the impact of the proposed rule on small entities.

Legislation to create a generic program of promotion and research for popcorn became effective on April 4, 1996. Congress found that this program is vital to the welfare of popcorn processors and persons concerned with marketing, using, and producing popcorn for the market, as well as to the agricultural economy of the United States.

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 popcorn. The program was initiated by the popcorn industry, which must approve the program in a referendum in advance of its implementation, and industry members would serve on the Board that would administer the program under the Department'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. Administrative proceedings were discussed earlier in this proposed rule.

In this program, processors would submit assessments and reports to the Board. In addition, exempt processors would be required to file an exemption application. While the proposed Order would impose certain recordkeeping requirements on processors, information required under the proposed Order could be compiled from records currently maintained. 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. The estimated cost in providing information to the Board by the estimated 67 respondents would be \$40.32 per respondent annually.

The Department would oversee program operations and, if the program is implemented, the Secretary may conduct referenda at the request of the Board or a representative group of processors to determine whether the popcorn industry supports continuation of the program.

There are approximately 35 processors who would pay the assessments, out of an industry of 67 processors in total.

Small agricultural service firms, which would include processors who would be covered under the Order, have been defined by the Small Business

Administration (13 CFR 121.607) as those whose annual receipts are less than \$5 million.

Almost 50 percent of the industry would be exempt from the program. Those processors marketing 4 million pounds of popcorn or less annually would be exempt from the proposed Order. It is also estimated that only 2 of the 35 eligible processors would be classified as small entities. Those processors marketing more than 4 million pounds of popcorn annually represent the majority of the tonnage processed each year.

The Department will seek ways to minimize the burden of complying with the program for the small businesses that would be affected by it. If the program is implemented, a compliance guide will be issued for the small businesses that will pay assessments as well as those that will be exempt. In addition, the Department will work with the Popcorn Board to ensure, to the extent practicable, that the procedures implemented represent the least burdensome alternatives.

It is estimated that there are 35 popcorn processors who will be eligible to vote in the referendum. It will take an average 15 minutes for each voter to read the voting instructions and complete the referendum ballot. The total burden on the total number of voters will be 2.9 hours.

The information collection requirements under the Order require the minimum information necessary to effectively carry out the requirement of the program, and their use is necessary to fulfill the intent of the Act. The monthly collection of information coincides with normal business practices and can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The estimated cost in providing information to the Board by the estimated 67 respondents would be \$19.28 per respondent annually. This total has been estimated by multiplying 129.15 (total burden hours requested) by \$10.00 per hour, a sum deemed to be reasonable if the respondents were compensated for their time.

According to the Popcorn Institute (Institute), a trade association consisting of popcorn processors representing the industry, annual sales of popcorn were 77.240 million pounds less in 1994 than they were in 1993, when sales totaled approximately 1.156 billion pounds.

The peak period for popcorn sales for home consumption is the fall. Sales remain constant throughout the winter

months and taper off during the spring and summer.

Almost all of the popcorn consumed throughout the world is grown in the United States, and Americans consume more popcorn than the citizens of any other country. Popcorn is grown in 19 states. According to the latest Census on Agriculture, the top five major popcorn-producing states in 1992 were, in descending order, Indiana (23 percent), Illinois (19 percent), Nebraska (18 percent), Ohio (10 percent), and Missouri (7 percent). This is the most recent official information on popcorn production released by the U.S. government.

U.S. exports of popcorn totaled nearly 290 million pounds in 1995, with a value of \$64.7 million. According to the Snack Food Association, retail sales of popcorn in the United States totaled \$1.469 billion in 1994.

The proposed popcorn Order authorizes an initial assessment on processors of 5 cents per hundredweight. The proposed Order provides that the rate of assessment may be raised or lowered as recommended by the Board and approved by the Secretary, but shall not exceed 8 cents per hundredweight in any fiscal year. At the maximum rate of assessment, it is estimated that \$800,000 would be collected under the program. The promotion Board would be composed of processors, who would be knowledgeable of the impact of any proposed assessment on processors, and other small entities prior to recommending any change of the assessment rate to the Secretary.

The proposed Order is necessary to accomplish the statutory objectives, to strengthen the position of the popcorn industry in the marketplace, and to maintain and expand domestic and foreign markets and uses for popcorn.

Over the past several years, the popcorn industry pursued several limited efforts to promote the sales and consumption of popcorn. These were financed primarily through voluntary contributions of some, but not all, popcorn processors. Under the limited and voluntary program, the resources available were not adequate to address the issues facing the industry from a national perspective and did not allow the industry to work collectively in an industry-wide manner.

The Order provides the industry with the opportunity to collectively address issues in areas such as nutrition and quality, which individual processors could not effectively accomplish due to lack of resources.

The industry considered pursuing a marketing order; however, industry

believes that popcorn is not a commodity covered under the existing marketing order statute. Furthermore, the marketing order system did not lend itself to addressing the issues that the promotion legislation clearly addresses, for example, establishing the definition of a processor.

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 September 30, 1996 (61 FR 51046) invited comments concerning the potential effects of the proposed Order. No specific comments were received concerning the impact of the proposed order on small entities except that a comment from the Popcorn Institute did note that the order would be very beneficial to popcorn processors, especially small processors who would not otherwise be able to afford a nationwide comprehensive program.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that would be imposed by this proposed Order were approved by OMB on December 16, 1996.

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

OMB Number: 0581-0093.

Expiration Date of Approval: October 31, 1997.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

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

While the proposed Order would impose certain recordkeeping requirements on processors, information required under the proposed Order could be compiled from records currently maintained. The proposed Order's provisions have been carefully reviewed and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

Although the proposed Order would impose some additional costs and requirements, it is anticipated that the program under the proposed Order would help to increase the demand and expand markets for popcorn. Therefore, any additional costs should be offset by the benefits derived from expanded

markets and sales benefiting all segments of the popcorn industry.

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 information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the promotion 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 less frequently would hinder the Board from effectively carrying out the provisions of its program. Collecting information monthly coincides with normal business practices. Requiring reports less frequently than monthly would impose additional recordkeeping requirements by requiring information from several months to be consolidated prior to filling out the form rather than just copying end-of-month figures already available on to the forms. 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. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual processors who are subject to or exempted from the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

In its comments on the proposed order concerning the information collection requirements, the Popcorn Institute reviewed the estimates presented in the proposed rule. It agreed with the Department on the estimates for the exemption application and the referendum ballot. It also stated that each of the information collection requirements presented is necessary for proper functioning of the program and government oversight and that the Board may want to consider developing a system whereby processors could submit the required reports electronically.

However, the Institute raised issues on the other information collections. Regarding nominations, the Institute's comment noted that respondents are not required to provide any other information with the nominations. This is correct. During the nomination process, respondents will nominate individuals to serve on the Board.

Regarding the nominations background statement, the Institute stated that the person making the nomination will submit the information—not the processor who is nominated. The Institute is incorrect in this instance. Each person nominated to serve on the Board must file a background statement with the Secretary of Agriculture. Only the final nominees chosen by the popcorn industry will be required to submit this form. The proposed rule estimated that there would be 20 respondents. This number should be 18 because there will be two nominees for each of the nine seats on the Board. Therefore, we have changed the burden information for this form accordingly.

Regarding the periodic report filed by processors, the Institute correctly points out that the number of responses per respondent would be four (not 12). Therefore, the burden for this form has been changed accordingly.

Regarding the requirement to maintain records, the Institute states in its comment that only processors of more than 4 million pounds of popcorn annually would be required to submit reports. This is correct. However, all processors will be required to maintain records. Processors of more than 4 million pounds of popcorn annually will be required to maintain records to document information contained in the reports they submit which indicate the amount of assessments due. Exempt processors will be required to maintain records to document their exempt status.

The estimated cost in providing information to the Board by the estimated 67 respondents would be \$19.28 per respondent annually. This total has been estimated by multiplying 129.15 (total burden hours requested) by \$10.00 per hour, a sum deemed to be reasonable if the respondents were compensated for their time.

Information collection requirements that are included in this proposal include:

(1) *A periodic report by each person who processes popcorn.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per each processor reporting on popcorn processed.

Respondents: Processors.

Estimated Number of Respondents: 35.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 70 hours.

(2) *An exemption application for processor of popcorn processing 4 million pounds or less a year.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each exempt processor.

Respondents: Exempt processors.

Estimated Number of Respondents: 32.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8 hours.

(3) *A referendum ballot to be used to determine whether processors covered by the Order favor implementation or continuance of the Order.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each processor.

Respondents: Processors.

Estimated Number of Respondents: 35.

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

Estimated Total Annual Burden on Respondents: 2.9 hours.

(4) *Nominations.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Processors.

Estimated number of Respondents: 35.

Estimated Number of Responses per Respondent: 1 every 3 years (.33).

Estimated Total Annual Burden on Respondents: 5.75 hours.

(5) *Nominations background statement.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Processors.

Estimated number of Respondents: 18 for initial Board and 6 annually thereafter.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9 hours for initial Board and 3 hours annually thereafter.

(6) *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 .5 hours per recordkeeper maintaining such records.

Recordkeepers: Processors.

Estimated number of Recordkeepers: 67.

Estimated Total Recordkeeping Hours: 33.5 hours.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a popcorn promotion, research, and consumer information program. The program would be funded by an assessment on processors not to exceed 8 cents per hundredweight of popcorn.

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

Consistent with the Act, processors would be required to maintain records regarding the collection, payment, or remittance of the assessments. All information obtained through processor reports would be kept confidential.

Assessments would be collected in a manner prescribed by the Board. The collection of assessments would commence on all popcorn processed in the United States on or after the date established by the Secretary, and would continue until terminated by the Secretary.

The Act requires the Secretary to conduct a referendum during the 60-day period preceding the proposed Order's effective date. Popcorn processors of more than 4 million pounds annually would vote in the referendum to determine whether they favor the proposed Order's implementation. The proposed Order must be approved by a majority of eligible processors voting in the referendum, and processors favoring approval must process more than 50 percent of the total volume of popcorn processed by persons voting in the referendum. Subsequent referenda would be conducted not earlier than three years after the effective date of the proposed Order at the request of the Board or a representative group of processors covered by the proposed Order.

A final rule on the referendum procedures which will be used is published separately in this issue of the **Federal Register**.

The Act provides for the submission of proposals for a popcorn promotion, research, and consumer information order by industry organizations or any other interested person affected by the Act. As stated earlier, the Act requires that the proposed Order provide for the establishment of the Board. The Board would be composed of nine members. Each member would serve a three-year term of office.

The Department issued a news release on May 22, 1996, requesting proposals

for an initial Order or portions of an initial Order.

An entire proposed Order was submitted by the Institute. In addition to minor editorial changes, the Department modified the Institute's proposed text by: adding definitions for "Part and subpart;" "Board member;" and "State;" combining the nominations and appointment sections; adding the requirement that the industry submit two nominees per position and a term of office limitation; creating a section on the removal of Board members; adding the duty for the Board to investigate violations of the Act, Order, and regulations; creating a contracts section; adding four requirements for budgets and expenses; providing that the Department's user fee shall not exceed 15 percent of the Board's projected annual revenues (the Popcorn Institute had recommended a 10 percent cap, which is inconsistent with the Act); limiting the Board's borrowing authority to its first year of operation; adding a reference to federal debt collection provisions; and adding the requirement for processors to provide the Board with their Social Security Number or Employer Identification Number and the amount of assessments paid on exported popcorn. In addition, the Department drafted proposed exemption procedures. Additional modifications were also made to provide consistency with the Act.

A proposed rule seeking comments on a proposed popcorn promotion, research, and consumer information order was published on September 30, 1996, in the **Federal Register** (61 FR 51046). Comments were to be received by November 29, 1996. Six comments concerning the proposed rulemaking were received. One comment was from the Popcorn Institute concerning information collection requirements. This comment has been discussed herein in relation to the Paperwork Reduction Act. A second comment was received from the Popcorn Institute. That comment suggested adoption of the proposed rule and provided a section-by-section analysis of the proposed Order. Separate comments were received from five popcorn processors supporting the comments submitted by the Popcorn Institute.

In the Popcorn Institute's section by section analysis, there were references to implementation of the Order and regulations. Any Order and regulations promulgated will be issued and applied in accordance with the applicable law, including the Popcorn Promotion,

Research, and Consumer Information Act.

Except for a revision in § 1215.60(a)(4) for clarity, no changes to the proposed Order are made as a result of the comments received on the text of the Order provisions as they were proposed in the September 30, 1996, **Federal Register**.

The proposed Order is summarized as follows:

Sections 1215.1 through 1215.20 of the proposed Order define certain terms, such as popcorn, processor, and process, which are used in the proposed Order.

Sections 1215.21 through 1215.30 include provisions relating to the establishment and membership of the Board; nominations and appointment; terms of office; vacancies; removal; procedure; compensation and reimbursement; powers; and duties of the Board. The Board would be the body organized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about popcorn, under the supervision of the Secretary. Further, the Board would be authorized to incur expenses necessary for the performance of its duties and to set a reserve fund. Sections 1215.40 through 1215.41 and 1215.50 provide information on these activities.

Sections 1215.51 through 1215.53 would authorize the collection of assessments, specify who pays them and how, and specifies individuals who would be exempt from paying the assessment. In addition, it would prohibit use of funds to influence government policy or action.

Except as otherwise provided by the Board and approved by the Secretary, the rate of assessment would be 5 cents per hundredweight of popcorn.

The assessment section also outlines the procedures to be followed by processors for remitting assessments and authorize a interest charge for unpaid or late assessments.

Sections 1215.60 through 1215.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information obtained from such books, records, or reports.

Sections 1215.60 through 1215.63 describe the rights of the Secretary, authorize the Secretary to suspend or terminate the Order when deemed appropriate, and prescribe proceedings after suspension or termination.

Sections 1215.64 through 1215.77 include the provisions involving

personal liability of Board members and employees; handling of patents, copyrights, inventions, and others; amendments to the Order; and separability of Order provisions.

In addition, the Institute states that the term "initially transferred" with reference to the number of pounds of popcorn marketed or otherwise subject to assessments in § 1215.60(a)(4) is confusing and should be removed. This change has merit. Therefore, § 1215.60(a)(4) is changed accordingly.

Referendum Order

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

The referendum shall be conducted from April 15 through 30, 1997. Ballots will be mailed to all known eligible popcorn processors on or before April 7, 1997. Eligible voters that 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 April 30, 1997, to be counted.

Stacey L. Bryson and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535-S, PO Box 96456, Washington, DC 20090-6456, 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 Popcorn Promotion, Research, and Consumer Information Order, 7 CFR 1215.500-1215.507, which is being published separately, shall be used to conduct the referendum.

List of Subjects in 7 CFR Part 1215

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Popcorn, Promotion, Reporting and recordkeeping requirements.

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

1. Part 1215 is proposed to be added to read as follows:

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

Definitions

Sec.

- 1215.1 Act.
- 1215.2 Board.
- 1215.3 Board member.
- 1215.4 Commerce.
- 1215.5 Consumer information.
- 1215.6 Department
- 1215.7 Fiscal year.
- 1215.8 Industry information.
- 1215.9 Marketing.
- 1215.10 Part and subpart.
- 1215.11 Person.
- 1215.12 Popcorn.
- 1215.13 Process.
- 1215.14 Processor.
- 1215.15 Programs, plans, and projects.
- 1215.16 Promotion.
- 1215.17 Research.
- 1215.18 Secretary.
- 1215.19 State.
- 1215.20 United States.

Popcorn Board

- 1215.21 Establishment and membership.
- 1215.22 Nominations and appointment.
- 1215.23 Acceptance.
- 1215.24 Term of office.
- 1215.25 Vacancies.
- 1215.26 Removal.
- 1215.27 Procedure.
- 1215.28 Compensation and reimbursement.
- 1215.29 Powers.
- 1215.30 Duties.

Promotion, Research, Consumer Information, and Industry Information

- 1215.40 Programs, plans, and projects.
- 1215.41 Contracts

Expenses and Assessments

- 1215.50 Budget and expenses.
- 1215.51 Assessments.
- 1215.52 Exemption from assessment.
- 1215.53 Influencing governmental action.

Reports, Books, and Records

- 1215.60 Reports.
- 1215.61 Books and records.
- 1215.62 Confidential treatment.

Miscellaneous

- 1215.70 Right of the Secretary.
- 1215.71 Suspension or termination.
- 1215.72 Proceedings after termination.
- 1215.73 Effect of termination or amendment.
- 1215.74 Personal liability.
- 1215.75 Patents, copyrights, inventions, publications, and product formulations.
- 1215.76 Amendments.
- 1215.77 Separability.

Subpart B—Rules and Regulations

Definitions

- 1215.100 Terms defined.

Exemption Procedures

- 1215.300 Exemption procedures.

Miscellaneous

- 1215.400 OMB control numbers.

Authority: 7 U.S.C. 7481–7491.

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

Definitions

§ 1215.1 Act.

Act means the Popcorn Promotion, Research, and Consumer Information Act of 1995, Subtitle E of Title V of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, 7 U.S.C. 7481–7491, and any amendments thereto.

§ 1215.2 Board.

Board means the Popcorn Board established under section 575(b) of the Act.

§ 1215.3 Board member.

Board member means an officer or employee of a processor appointed by the Secretary to serve on the Popcorn Board as a representative of that processor.

§ 1215.4 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1215.5 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of popcorn.

§ 1215.6 Department.

Department means the United States Department of Agriculture.

§ 1215.7 Fiscal year.

Fiscal year means the 12-month period from January 1 through December 31 each year, or such other period as recommended by the Board and approved by the Secretary.

§ 1215.8 Industry information.

Industry information means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the popcorn industry, or activities to enhance the image of the popcorn industry.

§ 1215.9 Marketing.

Marketing means the sale or other disposition of unpopped popcorn for human consumption in a channel of commerce but shall not include sales or disposition to or between processors.

§ 1215.10 Part and subpart.

Part means the Popcorn Promotion, Research, and Consumer Information Order and all rules and regulations and supplemental orders issued thereunder, and the term subpart means the Popcorn Promotion, Research, and Consumer Information Order.

§ 1215.11 Person.

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

§ 1215.12 Popcorn.

Popcorn means unpopped popcorn (Zea Mays L.) that is commercially grown, processed in the United States by shelling, cleaning, or drying, and introduced into a channel of commerce.

§ 1215.13 Process.

Process means to shell, clean, dry, and prepare popcorn for the market, but does not include packaging popcorn for the market without also engaging in another activity described in this paragraph.

§ 1215.14 Processor.

Processor means a person engaged in the preparation of unpopped popcorn for the market who owns or who shares the ownership and risk of loss of such popcorn and who processes and distributes over 4 million pounds of popcorn in the market per year.

§ 1215.15 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1215.16 Promotion.

Promotion means any action, including paid advertising, to enhance the image or desirability of popcorn.

§ 1215.17 Research.

Research means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of popcorn.

§ 1215.18 Secretary.

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

§ 1215.19 State.

State means each of the 50 States and the District of Columbia.

§ 1215.20 United States.

United States means all of the States.

Popcorn Board**§ 1215.21 Establishment and membership.**

(a) There is hereby established a Popcorn Board of nine members. The number of members on the Board may be changed by regulation: *Provided*, That the Board consist of not fewer than four members and not more than nine members. The Board shall be composed of popcorn processors appointed by the Secretary under § 1215.24.

(b) For purposes of nominating and appointing processors to the Board, the Secretary shall, to the extent practicable, take into account the geographic distribution of popcorn production.

(c) No more than one officer or employee of a processor may serve as a Board member at the same time.

§ 1215.22 Nominations and appointment.

(a) All nominations for appointments to the Board established under § 1215.21 shall be made as follows:

(1) As soon as practicable after the effective date of this subpart, nominations for appointment to the initial Board shall be obtained from processors by the Secretary. In any subsequent year in which an appointment to the Board is to be made, nominations for positions for which the term will expire at the end of that year shall be obtained from processors at least six months prior to the expiration of terms.

(2) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue a call for nominations in each year for which an appointment to the Board is to be made. The call shall include, at a minimum, the following information:

(i) A list of the vacancies for which nominees may be submitted and qualifications for nomination; and

(ii) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3)(i) Nominations for each position shall be made by processors. Notice shall be publicized to all processors.

(ii) All processors may participate in submitting nominations.

(4) Two nominees must be submitted for each vacancy. If processors fail to nominate a sufficient number of nominees, additional nominees shall be obtained in a manner prescribed by the Secretary.

(b) The Secretary shall appoint the members of the Board from nominations

made in accordance with paragraph (a) of this section.

(1) The Secretary may reject any nominee submitted. If there is an insufficient number of nominees from whom to appoint members to the Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in a manner prescribed by the Secretary.

(2) Whenever processors cannot agree on nominees for a position on the Board under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Board, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

(3) If a processor nominates more than one officer or employee, only one may be appointed to the Board by the Secretary.

§ 1215.23 Acceptance.

Each individual nominated for membership of the Board shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1215.24 Term of office.

(a) The members of the Board shall serve for terms of three years, except that members appointed to the initial Board shall serve, to the extent practicable, proportionately for terms of two, three, and four years.

(b)(1) Except with respect to terms of office of the initial Board, the term of office for each Board member shall begin on the date the member is seated at the Board's annual meeting or such other date that may be approved by the Secretary.

(2) The term of office for the initial Board member shall begin immediately following the appointment by the Secretary.

(c) Board members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(d) No Board member may serve more than two consecutive three-year terms, except as provided in § 1215.25(d). Initial members serving two- or four-year terms may serve one successive three-year term.

§ 1215.25 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary may appoint a successor from the most recent nominations submitted for positions on the Board or the Secretary may obtain nominees to fill such vacancy in such a manner as the Secretary deems appropriate.

(b) Each such successor appointment shall be for the remainder of the term vacated.

(c) A vacancy will not be required to be filled if the unexpired term is less than six months.

(d) If an unexpired term is less than 1.5 years, serving the term shall not prevent the appointee from serving two successive three-year terms.

(e) A Board member shall be disqualified from serving on the Board if such individual ceases to be affiliated with the processor the member represents.

§ 1215.26 Removal.

If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board is known to be engaged in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1215.27 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Board, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action upon the concurring votes by a majority of its members by mail, telephone, facsimile, or any other means of communication. If appropriate, any such action shall be confirmed promptly in writing. In that event, all members must be given prior notice and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in Board minutes.

(d) Meetings of the Board may be conducted by electronic communications, provided that each member is given prior notice of the

meeting and has the opportunity to be present either physically or by electronic connection.

(e) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1215.28 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by such members in the performance of their responsibilities under this subpart.

§ 1215.29 Powers.

The Board shall have the following powers:

(a) To administer the Order in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of the Order;

(c) To select committees and subcommittees of Board members, including an executive committee, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(d) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(e) To disseminate information to processors or industry organizations through programs or by direct contact using the public postal system or other systems;

(f) To propose, receive, evaluate and approve budgets, plans and projects of popcorn promotion, research, consumer information and industry information, as well as to contract with the approval of the Secretary with appropriate persons to implement plans and projects.

(g) To receive, investigate, and report to the Secretary for action any complaints of violations of the Order;

(h) To recommend to the Secretary amendments to the order;

(i) To accept or receive voluntary contributions;

(j) To invest, pending disbursement pursuant to a program, plan or project, funds collected through assessments authorized under this Act provided for in § 1215.51, and any other funds received by the Board in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest bearing account or certificate of deposit or a bank that

is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(k) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State popcorn processor organizations, or other organizations or entities, for the development and conduct of programs, plans or projects authorized under § 1215.40 and for the payment of the cost of such programs with assessments received pursuant to this subpart; and

(l) Such other powers as may be approved by the Secretary.

§ 1215.30 Duties.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 1215.50;

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books and records that clearly reflect all the acts

and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any processor;

(k) To investigate violations of the Act, order, and regulations issued under the order, conduct audits, and report the results of such investigations and audits to the Secretary for appropriate action to enforce the provisions of the Act, order, and regulations; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the popcorn industry's position in the marketplace, maintain and expand existing markets and uses for popcorn, develop new markets and uses for popcorn, and to carry out programs, plans, and projects designed to provide maximum benefits to the popcorn industry.

Promotion, Research, Consumer Information, and Industry Information

§ 1215.40 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, consumer information, and industry information with respect to popcorn; and

(2) The establishment and conduct of research with respect to the sale, distribution, marketing, and use of popcorn, and the creation of new uses thereof, to the end that the marketing and use of popcorn may be encouraged, expanded, improved, or made more acceptable.

(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 may 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, consumer information, or industry 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, consumer information, or industry information, then the Board shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any popcorn will be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

§ 1215.41 Contracts.

The Board shall not contract with any processor for the purpose of promotion or research. The Board may lease physical facilities from a processor for such promotion or research, if such an arrangement is determined to be cost effective by the Board and approved by the Secretary. Any contract or agreement shall provide that:

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

(b) Any such program, plan, or project shall become effective upon approval by the Secretary;

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

(d) 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.

Expenses and Assessments

§ 1215.50 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.

(b) Each budget shall include:

(1) A rate of assessment for such fiscal year calculated, subject to § 1215.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (g) of this section;

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

(3) A summary of anticipated revenue, with comparative data for at least one preceding year;

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

(5) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

(c) In budgeting plans and projects of promotion, research, consumer information, and industry information, the Board shall expend assessment and contribution funds on:

(1) Plans and projects for popcorn marketed in the United States or Canada in proportion to the amount of assessments projected to be collected on domestically marketed popcorn (including Canada); and

(2) Plans and projects for exported popcorn in proportion to the amount of assessments projected to be collected on exported popcorn (excluding Canada).

(d) The Board is authorized to incur such reasonable 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) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may also receive funds provided through the Foreign Agricultural Service of the United States Department of Agriculture for foreign marketing activities.

(f) As stated in § 575(f)(4)(A)(ii) of the Act, the Board shall reimburse the Secretary, from funds received by the Board, for costs incurred by the Secretary in implementing and administering this subpart: *Provided*, That the costs incurred by the Secretary to be reimbursed by the Board, excluding legal costs to defend and enforce the order, shall not exceed 15 percent of the projected annual revenues of the Board.

(g) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in this reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(h) With the 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 during its first year of operation only.

§ 1215.51 Assessments.

(a) Any processor marketing popcorn in the United States or for export shall pay an assessment on such popcorn at the time of introduction to market at a rate as established in § 1215.51(c) and shall remit such assessment to the Board in such form and manner as prescribed by the Board.

(b) Any person marketing popcorn of that person's own production to consumers in the United States either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such popcorn at the rate set forth in paragraph § 1215.51(c), and in such form and manner as prescribed by the Board.

(c) Except as otherwise provided, the rate of assessment shall be 5 cents per hundredweight of popcorn. The rate of assessment may be raised or lowered as recommended by the Board and approved by the Secretary, but shall not exceed 8 cents per hundredweight in any fiscal year.

(d) The collection of assessments under this section shall commence on all popcorn processed in the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Board and may hold such assessments until the Board is constituted, then remit such assessments to the Board.

(e) Each person responsible for remitting assessments under paragraphs (a) and (b) of this section shall remit the amounts due from assessments to the Board on a quarterly basis no later than the last day of the month following the last month in the previous quarter in which the popcorn was marketed, in such manner as prescribed by the Board.

(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 amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(g) The Board shall impose an additional charge on any person subject to a late payment charge, 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 rules and regulations as approved by the Secretary.

(h) In addition, persons failing to remit total assessments due in a timely manner may also be subject to penalties and actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36.

(i) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Board by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (f), (g), and (h) of this section shall be applicable.

(j) The Board, with the approval of the Secretary, may enter into agreements authorizing other organizations or entities to collect assessments on its behalf. Any such organization or entity shall be required to maintain the confidentiality of such information as is required by the Board for collection purposes. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

(k) The Board is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Board shall not be obligated to pay interest on any advance payment.

§ 1215.52 Exemption from assessment.

(a) Persons that process and distribute 4 million pounds or less of popcorn annually, based on the previous year, shall be exempted from assessment.

(b) To claim such exemption, such persons shall apply to the Board, in the form and manner prescribed in the rules and regulations.

§ 1215.53 Influencing governmental action.

No funds received by the Board under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart.

Reports, Books, and Records

§ 1215.60 Reports.

(a) Each processor marketing popcorn directly to consumers, and each processor responsible for the remittance of assessments under § 1215.51, shall be required to report quarterly to the Board, on a form provided by the Board, such information as may be required under this subpart or any rule and regulations issued thereunder. Such information shall be subject to § 1215.62

and include, but not be limited to, the following:

(1) The processor's name, address, telephone number, and Social Security Number or Employer Identification Number;

(2) The date of report, which is also the date of payment to the Board;

(3) The period covered by the report;

(4) The number of pounds of popcorn marketed or in any other manner are subject to the collection of assessments;

(5) The amount of assessments remitted;

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of popcorn divided by 100 and multiplied by the applicable assessment rate; and

(7) The amount of assessments remitted on exports (not including Canada).

(b) The words "final report" shall be shown on the last report at the end of each fiscal year.

§ 1215.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Board or the Secretary such books and records as are deemed necessary by the Board, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1215.62 Confidential treatment.

(a) All information obtained from books, records, or reports under the Act, this subpart, and the rule and regulations issued thereunder shall be kept confidential by all persons, including all employees, agents, and former employees and agents of the Board; all officers, employees, agents, and former officers, employees, and agents of the Department; and all officers, employees, agents, and former officers, employees, and agents of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or processors. Only those persons having a specific need for such information to administer effectively the provisions of this part 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 suit 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 part.

(b) No information obtained under the authority of this part may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of the Act and any investigatory or enforcement action necessary for the implementation of the Act.

(c) Nothing in paragraph (a) of this section may be deemed to prohibit:

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

(2) The publication, by direction of the Secretary, of the name of any person who has violated this part, together with a statement of the particular provisions of this part violated by such person.

(d) Any person who knowingly violated the provisions of this section, on conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both, or if the person is an officer, employee, or agent of the Board or the Department, that person shall be removed from office or terminated from employment as applicable.

Miscellaneous

§ 1215.70 Right of the Secretary.

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

§ 1215.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b) The Secretary may conduct additional referenda to determine whether processors favor termination or suspension of this subpart three years after the effective date, on the request of a representative group comprising 30 percent or more of the number of processors who have been engaged in processing during a representative period as determined by the Secretary.

(c) Whenever the Secretary determines that suspension or termination of this subpart is favored by two-thirds or more of the popcorn processors voting in a referendum under paragraph (b) of this section who, during a representative period

determined by the Secretary, have been engaged in the processing, the Secretary shall:

(1) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(2) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(d) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1215.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five 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 owned, in the possession of, or under the control of the Board, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

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

(2) Carry out the obligations of the Board under any contract or agreement entered into by it under this subpart;

(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 of the trustees, to such persons as the Secretary may direct; and

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

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart 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 used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information programs, plans, or projects authorized under this subpart.

§ 1215.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

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

§ 1215.74 Personal liability.

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

§ 1215.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Board under this subpart shall be the property of the United States Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Board and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1215.72 shall apply to determine disposition of all such property.

§ 1215.76 Amendments.

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

§ 1215.77 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.

Subpart B—Rules and Regulations

§ 1215.100 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Popcorn Promotion, Research, and Consumer Information Order of this part.

Exemption Procedures

§ 1215.300 Exemption procedures.

(a) Any processor who markets 4 million pounds or less of popcorn annually and who desires to claim an exemption from assessments during a fiscal year as provided in § 1214.52 of this part shall apply to the Board, on a form provided by the Board, for a certificate of exemption. Such processor shall certify that the processor's marketing of popcorn during the previous fiscal year was 4 million pounds or less.

(b) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one.

(c) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(d) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt popcorn.

Miscellaneous

§ 1215.400 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581-0093, except for the Promotion Board nominee background statement form which is assigned OMB control number 0505-0001.

Dated: March 18, 1997.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

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