



Agricultural Marketing Service

7 CFR Part 1215

[Doc. No. AMS-SC-24-0038]

Updates to the Popcorn Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on updates to the Popcorn Promotion, Research, and Consumer Information Order (Order). This proposal would increase the mandatory assessment rate from 5 cents per hundredweight of popcorn to 6 cents to reflect the present rate which was administratively increased in 2001 and has been charged of processors since. Additionally, subpart C would be added to the Order prescribing late payment and interest charges on past due assessments.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments may be mailed to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or submitted electronically by Email: SM.USDA.MRP.AMS.MDDComment@usda.gov; or via the Internet at <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the *Federal Register*. All comments will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at <https://www.regulations.gov>. Comments submitted in response to this proposed rule will be included in the rulemaking record and

will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public.

FOR FURTHER INFORMATION CONTACT: George Webster, Marketing Specialist, Market Development Division, Specialty Crops Program, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW, Room 1406-S, Stop 0244, Washington, DC 20250-0244; Telephone: (202) 720-8085; or Email: George.Webster@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule affecting the Order (7 CFR part 1215) is authorized by the Popcorn Promotion, Research, and Consumer Information Act (Act) (7 U.S.C. 7481-7491).

Executive Orders 12866 and 13563

USDA is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866, and therefore, has not been reviewed.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has assessed the impact of this proposed rule on Indian Tribes and determined that this rule would not have Tribal implications that require consultation under Executive Order

13175. AMS hosts a quarterly teleconference with Tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations will be shared during an upcoming quarterly call, and Tribal leaders will be informed about the proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regard to these proposed changes to the Order.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988 - Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall 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 USDA's final ruling.

Background

Under the Order, the Popcorn Board (Board), with USDA oversight, administers a nationally coordinated program of research, promotion, and consumer information designed to maintain and expand markets for U.S. popcorn. The program is financed by assessments on processors of more than four million pounds of popcorn annually. The Board, which is composed of five popcorn processors, unanimously recommended these proposed changes during a meeting on August 28, 2024.

Assessment Rate Increase

Currently section 1215.51(c) of the Order states that the rate of assessment shall be 5 cents per hundredweight of popcorn. This rate was administratively increased by the Board in 2001 to 6 cents per hundredweight of popcorn and has been charged of processors since. This proposal would update the assessment rate stated in the Order to accurately reflect the change that took place in 2001. This update would help eliminate any confusion amongst the industry on what the current mandatory assessment rate is.

Interest Charges on Past Due Assessments

Section 575(j) of the Act (7 U.S.C. 7484(j)) states that “The order shall contain such other terms and conditions, consistent with this subtitle, as are necessary to effectuate this subtitle, including regulations relating to the assessment of late payment charges.”

Section 1215.51(e) of the Order states that “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.”

Section 1215.51(f) states that “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.”

Section 1215.51(g) states that “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.”

Currently, the Board outlines the late payment and interest fees charged on past due assessments from processors of popcorn in their Operational Policies and Procedures document; however, these fees are not detailed in the Order. This proposal would codify the Board’s ability to collect late payment and interest charges on past due assessments by creating a new section in the Order outlining these fees.

Under this proposal, a one-time late payment charge of \$250 would be imposed on any processor who fails to pay any assessments owed within 30 calendar days of the date they are due. This one-time late payment charge would increase to \$500 after 90 days of delinquency. These late payment charge amounts were chosen by the Board after reviewing Order language of other research and promotion programs of similar size and annual assessment collections.

Additionally, 1.25 percent per month interest on any outstanding balance, including any late payment and accrued interest would be added to any accounts for which payment has not been received within 30 calendar days of when the assessments are due. This monthly interest charge was chosen by the Board to match the current language in their Operational Policies and Procedures document.

Initial Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this proposed action on

small entities that would be affected by this rule, if finalized. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers of popcorn as those having annual receipts equal to or less than \$2.5 million (NAICS code: 111150 – Corn Farming) and small agricultural service firms (processors and importers) as those having annual receipts equal to or less than \$34 million (NAICS code: 115114 – Postharvest Crop Activities).

For the purpose of fitting regulatory actions to the scale of businesses for this RFA data used is from the National Agricultural Statistics Service (NASS)¹ and Popcorn Board (Board). The 2022 top five popcorn producing states according to the 2022 Census of Agriculture are Indiana, Nebraska, Illinois, Ohio, and Missouri. In 2022, Nebraska, Ohio, and Missouri had decreases in harvested acres while Indiana and Illinois saw increases compared to the 2017 Census of Agriculture. Overall, the 2022 United States total harvested acreage decreased by roughly 7.6 percent compared to 2017.

According to the 2022 Census of Agriculture published by NASS, there are roughly 860 total farms that produced a total of 10,141,686 hundredweight (a little over 1 billion pounds) of popcorn in 2022. NASS has reported on average the 2022 parity price received for popcorn was roughly \$60.80 per hundredweight (\$0.61 per pound) of popcorn.

Taking the total hundredweight of popcorn produced in 2022, which was 10,141,686, multiplied by the parity price of \$60.80 per hundredweight, gives a total parity price revenue of roughly \$616,614,509 for the industry in 2022. Using the total

¹ The only NASS data available for this proposed rule is the Agricultural Survey data on parity pricing (prices farmers receive) reported annual in January and the 2022 Agricultural Census.

parity price revenue the industry received in 2022 of roughly \$616.6 million dollars divided by the total 860 popcorn farms in 2022, assuming normal distribution, gives an average of roughly \$716,994 in revenue per farm from parity prices. Even with the potential of additional pricing being added into the parity price of popcorn per hundredweight from each producer, the average price per producer (inclusive of parity pricing) would not exceed the established revenue thresholds set by the SBA. Thus, most producers and processors of popcorn would be considered small entities and would not be disproportionately burdened.

Under the Order, the Board administers a nationally coordinated program of promotion, research, consumer information and industry information designed to strengthen the position of popcorn in the marketplace, and to maintain and expand domestic and foreign markets and uses for popcorn. The program is financed by assessments on domestic processors only who process and distribute 4 million pounds or more of popcorn annually. The current rate of assessment, established in 2001, is 6 cents per hundredweight of popcorn. The Order specifies that processors are responsible for submitting the assessment to the Board in a timely manner and maintaining records necessary to verify their reporting(s). Based on information from the Board, there are currently a total 18 processors who pay mandatory assessments into the program and 15 exempt processors (under the 4-million-pound threshold) for a total of 33.

Processors who process and distribute less than 4 million pounds of popcorn annually are exempt from this assessment. Processors that operate under an approved National Organic Program (NOP) (7 CFR part 206) system plan, process only products that are eligible to be labeled as 100 percent organic under the NOP and are not split operations shall also be exempt from the payment of assessments.

After auditing the 2022 total mandatory assessments collected as reported by the *2018 to 2022 Evaluation of the Popcorn Board* report (page 5) located on the Board's

website, the total assessments collected was \$686,339. Using the total 2022 mandatory assessment collected of \$686,339 divided by the Board's 6 cents per hundredweight mandatory assessment gives roughly the total popcorn hundredweight of 11,438,983 (roughly 1.14 billion pounds) assessed from domestic processors who processed and distributed over 4 million of popcorn annually. Some NASS data is not published to protect small producers and processors of the small domestic popcorn industry. This can account for the variance in why the total estimated 2022 hundredweight as reported by the *2018 to 2022 Evaluation of the Popcorn Board* is larger than as reported by the NASS 2022 Census of Agriculture.

This larger 2022 popcorn hundredweight as reported by the *2018 to 2022 Evaluation of the Popcorn Board* report (page 5) can be used to determine if small businesses are adversely affected by this rule. Taking this estimated total 11,438,983 hundredweight of popcorn produced in 2022 multiplied by the parity price of \$60.80 per hundredweight gives a total parity price revenue of roughly \$695,490,187 for the industry. Using the estimated total parity price revenue the industry received in 2022 of roughly \$695.5 million dollars divided by the total 860 popcorn farms in 2022 (assuming normal distribution), gives roughly an average of \$808,710 in revenue per farm from parity prices. Thus, even with this higher estimate most producers and processors of popcorn would be considered small entities and would not be disproportionately burdened by this rule. Most of the processors are classified as small businesses under the criteria established by the Small Business Administration.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that 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.

As with all Federal research and promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

Regarding alternatives, the Board considered not making the proposed changes to the Order and leaving it as-is. If the Order was left unchanged, the stated assessment rate would remain incorrect and would continue to cause confusion amongst the industry. By leaving the Order unchanged and not adding in language prescribing late fees and interest charges on unpaid assessments, the Board would also have trouble collecting assessments on a timely basis. After considering these potential issues, the Board decided against leaving the Order unchanged.

The Board discussed this proposal throughout 2023 and 2024, and unanimously recommended the proposed changes during their in-person meeting on August 28, 2024. The Board is made up of five processors of over four million pounds of popcorn annually.

AMS has determined that this proposed rule, if finalized, is consistent with, and would effectuate the purposes of the Act. A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1215

Administrative practice and procedure, Advertising, Agricultural research, Popcorn, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 1215 as follows:

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1215 continues to read as follows:

Authority: 7 U.S.C. 7481-7491; 7 U.S.C. 7401.

§ 1215.51 [Amended]

2. Amend § 1215.51 in paragraph (c) by removing the number “5” and adding in its place the number “6”.

3. Add subpart C – Past Due Assessments to read as follows:

Subpart C – Past Due Assessments

Sec.

§ 1215.520 Late payment and interest charges for past due assessments.

Subpart C – Past Due Assessments

§ 1215.520 Late payment and interest charges for past due assessments.

(a) A late payment charge shall be imposed on any processor who fails to make timely remittance to the Board of the total assessments for which such processor is liable. The late payment charge will be imposed on any assessments not received within 30 calendar days of the date they are due. This one-time late payment charge shall be \$250 and will be increased to \$500 after 90 days of delinquency.

(b) In addition to the late payment charge, 1.25 percent per month interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Board.

Erin Morris,
Administrator,
Agricultural Marketing Service.

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