



## **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:** Final rule.

**SUMMARY:** This final rule implements updates to the Popcorn Promotion, Research, and Consumer Information Order (Order). The updates 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 ever since. Additionally, subpart C is added to the Order, which prescribes late payment and interest charges on past due assessments.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** George Webster, Marketing Specialist, or Alexandra Caryl, Chief, Mid-Atlantic Region Branch, 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](mailto:George.Webster@usda.gov) or [Alexandra.Caryl@usda.gov](mailto:Alexandra.Caryl@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final 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 Order 12866**

This action is exempt from the Office of Management and Budget (OMB) review process required by Executive Order 12866. This rule amends an existing research and promotion program and is necessary for the continued operation of the Popcorn Promotion, Research, and Consumer Information Order. Additionally, this action is exempt from the requirements of Executive Order 14192, “Unleashing Prosperity Through Deregulation,” pursuant to section 5(c).

#### **Executive Order 13175**

This action was reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” AMS assessed the impact of this final rule on Indian Tribes and determined this rule does 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 changes to the regulations will be shared during an upcoming quarterly call. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regard to these changes to the Order.

#### **Executive Order 12988**

This action was reviewed under Executive Order 12988, “Civil Justice Reform.” It is not intended to have retroactive effect. Section 580 of the Act (7 U.S.C. 7489) provides that nothing in this subtitle preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State.

Under section 577 of the Act (7 U.S.C. 7486), a person subject to an order may file a written petition with USDA stating that the order, a provision of the order, or an obligation imposed in connection with the order, is not established in accordance with the law, and request a modification of an order or obligation or an exemption from the order

or obligation. 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 date of imposition of the obligation. 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 changes during a meeting on August 28, 2024.

### **Assessment Rate Increase**

This final rule updates § 1215.51(c) of the Order, which states that the rate of assessment shall be 5 cents per hundredweight of popcorn. The rate was administratively increased by the Board in 2001 to 6 cents per hundredweight of popcorn and has been charged of processors since. This action updates the assessment rate in the Order to accurately reflect the change that took place in 2001 and helps eliminate any confusion amongst the industry regarding the current mandatory assessment.

### **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.”

Previously, the Board outlined 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 were not reflected in the Order. This final rule codifies 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 rule, a one-time late payment charge of \$250 is 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 increases 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, is 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.

### **Final Regulatory Flexibility Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS considered the economic impact of this final action on small entities that would be affected by this rule. Accordingly, AMS prepared this final 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)<sup>1</sup> and Popcorn Board (Board). The 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

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<sup>1</sup> The only NASS data available for this final rule is the Agricultural Survey data on parity pricing (prices farmers receive) reported annually in January and the 2022 Agricultural Census.

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 that, 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 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 over 4 million pounds of popcorn annually. The currently charged 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 of 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 4 million pounds or less 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 final 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 imposed by the Order were approved previously under OMB control number 0581-0093. This final 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 final 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 these 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 these changes throughout 2023 and 2024 and unanimously recommended the 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.

A proposed rulemaking concerning this action was published in the *Federal Register* on June 10, 2025 (90 FR 24353). A copy of the proposed rulemaking was also made available through the internet by AMS via <https://www.regulations.gov>. A 30-day comment period ending July 10, 2025, was provided for interested parties to respond to the proposal.

### **Comment Analysis**

During the proposed rule's 30-day comment period, AMS received one comment which may be viewed on <https://regulations.gov>. The one comment received did not address the merits of the proposed rule, and accordingly, no changes were made to the rule as proposed.

After consideration of all relevant material presented, AMS has determined that that this rule is consistent with and will effectuate the purposes of the Act.

### **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 amends 7 CFR part 1215 as follows:

### **PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER**

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(c) by removing the number “5” and adding in its place the number “6”.

3. Add subpart C, consisting of § 1215.520, to read as follows:

**Subpart C – Past Due Assessments**

Sec.

§ 1215.520 Late payment and interest charges for 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.

**Melissa Bailey,**  
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