

**§ 1214.104 Subagents.**

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

**§ 1214.105 Ballots.**

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

**§ 1214.106 Referendum report.**

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

**§ 1214.107 Confidential information.**

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

**§ 1214.108 OMB control number.**

The control number assigned to the information collection requirement in this subpart 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 0581-0267.

## **Subpart C—Provisions Implementing the Christmas Tree Promotion, Research, and Information Order**

SOURCE: 81 FR 38897, June, 15, 2016, unless otherwise noted.

**§ 1214.520 Late payment and interest charges for past due assessments.**

(a) A late payment charge shall be imposed on any producer or importer who fails to make timely remittance to the Board of the total assessments for which such producer or importer 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, 1.5 percent per month interest on the outstanding balance, including any late payment charge and accrued interest, will be added to any accounts for which payment has not been received by the Board within 30 calendar days after the date the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board.

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

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

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AUTHORITY: 7 U.S.C. 7481–7491 and 7 U.S.C. 7401.

SOURCE: 62 FR 39389, July 22, 1997, unless otherwise noted.

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## Subpart A—Popcorn Promotion, Research, and Consumer In- formation 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.

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### § 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 five members. The number of members on the board may be changed by rulemaking: *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.

[62 FR 39389, July 22, 1997, as amended at 75 FR 67610, Nov. 3, 2010]

### § 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

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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).

(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

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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

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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 will 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,

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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;

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(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:

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(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:

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(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 section 75(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 ex-

penses, 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



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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) Persons that operate under an approved National Organic Program (7

CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as "organic" or "100 percent organic" (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified "organic" or "100 percent organic" (as defined in the NOP) products of a processor regardless of whether the agricultural commodity subject to the exemption is processed by a person that also processes conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The processor maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any processor so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

[70 FR 2757, Jan. 14, 2005, as amended at 80 FR 82028, Dec. 31, 2015]

### § 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:

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(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 infor-

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mation 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

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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**

DEFINITIONS

**§ 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) Persons eligible for an organic assessment exemption as provided in §1215.52(b) may apply for such an exemption by submitting a request to the Board on an *Organic Exemption Request Form* (Form AMS-15) at any time during the year initially, and annually thereafter on or before January 1, as long as the processor continues to be eligible for the exemption.

(c) A processor request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant processes organic products eligible to be labeled "organic" or "100 percent organic" under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the processor within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same time-frame.

(e) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Board by January 1 of that year.

(f) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

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

[62 FR 39389, July 22, 1997, as amended at 70 FR 2757, Jan. 14, 2005; 80 FR 82028, Dec. 31, 2015]

### 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.

## PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

### Subpart A—Peanut Promotion, Research, and Information Order

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- 1216.19 Peanut producer organization.
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- 1216.100 General.
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AUTHORITY: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

SOURCE: 64 FR 20105, Apr. 23, 1999, unless otherwise noted.