

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) 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: September 24, 1996.

D.M. Holbrook,

Acting Administrator.

[FR Doc. 96-25003 Filed 9-27-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 1215

[FV-96-709PR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to provide procedures which the Department of Agriculture (Department) will use in conducting the referendum to determine whether the issuance of the proposed Popcorn Promotion, Research, and Consumer Information Order is favored by a majority of the processors voting in the referendum and that the majority process more than 50 percent of the popcorn certified as being processed by those voting in the referendum.

DATES: Comments must be received by October 30, 1996. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by November 29, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456, Fax (202) 205-2800. Three copies of all written materials should be submitted, and they will be made available for public inspection in the Research and Promotion Branch, during regular working hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register. Pursuant to the Paperwork Reduction Act, also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address.

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

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible popcorn processors to determine whether the issuance of the proposed Popcorn Promotion, Research, and Consumer Information Order (Order) (7 CFR part 1215) is favored by

a majority of persons voting in the referendum. The Order is authorized under the Popcorn Promotion, Research and Consumer Information Act (Act) (Pub. L. 104-427, 7 U.S.C. 7481-7491).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. In accordance with section 580 of the Act, 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 section 577 of the Act, 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 is required to examine 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.

Section 576 of the Act provides that the Secretary shall conduct a referendum, within the 60-day period immediately preceding the effective date of the Order, to determine whether the issuance of the Order is favored by a majority of the processors voting in the referendum. Paragraph (2) of section

576 of the Act requires that the Order become effective only if favored by a majority of the processors voting in the referendum and if the majority processed more than 50 percent of the popcorn certified as having been processed during the representative period by the processors voting.

Small agricultural service firms, which would include processors who would be covered under the proposed Order, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5 million. The Department estimates that there are approximately 35 processors who would pay the assessments out of an industry of 67 processors in total. Almost 50 percent of the industry would be exempt from the program; those processors marketing 4 million pounds or less of popcorn annually would be exempt from the proposed Order. Further, only 2 of the 35 eligible processors have been identified as small entities.

According to the Popcorn 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.

This proposed rule provides the procedures under which eligible popcorn processors may vote on whether they want the proposed popcorn promotion and research program to be implemented.

The referendum procedures provide definitions of who is eligible to vote and instructions for referendum agents

regarding subagents, publicity for the referendum and the results, ballots, voting, ballot handling and tabulation, reporting, and confidentiality of referendum materials. The representative period for establishing voter eligibility for the referendum shall be determined by the Secretary. Persons who have processed over 4 million pounds of popcorn for market during the representative period will be eligible to vote; there are an estimated 35 eligible processors. The referendum will be conducted by mail ballot.

The Department would inform all eligible processors of record throughout the program implementation and referendum process to ensure awareness and participation. In addition, trade associations and related industry media would receive news releases and other information regarding the implementation and referendum process.

Voting in the referendum is optional. However, if processors choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether they want the program.

The Department considered requiring eligible voters to vote in person at various Department offices across the country. However, conducting the referendum from one central location by mail ballot is more cost effective for this program. Also, the Department would provide easy access to information for potential voters through a toll free telephone line.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, have been submitted to OMB for approval.

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.

The burden associated with the ballot is as follows:

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 (.33).

Because there may be insufficient time for normal clearance procedures, AMS is seeking temporary approval from OMB for the use of the ballot for the referendum. The ballot would be added to the other information collections approved for use under OMB Number 0581-0093.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of the AMS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

Comments should reference OMB No. 0581-0093, the docket number, and the date and page number of this issue of the Federal Register. Comments should be sent to Stacey L. Bryson, at the address listed above by November 29, 1996. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Background

The purpose of the Act is to provide an orderly procedure for developing and financing an effective and coordinated program of promotion, research, and consumer information to strengthen the markets for popcorn. The program would be funded by an assessment of no more than 8 cents per hundredweight levied on popcorn processors. Processors who process and market 4 million pounds or less of popcorn annually would be exempt from paying the assessment. Assessments would be used to pay for: Promotion, research, consumer information, and industry information; administration, maintenance, and functioning of the Popcorn Board which would operate the program under the Secretary's supervision; and expenses incurred by

the Secretary in implementing and administering the program, including referendum costs.

A proposed rule on the Order is published separately in this issue of the Federal Register.

This proposed rule would add a new subpart which would establish procedures to be used in the initial referendum required by the Act. This subpart would be in effect for the referendum period only and would not be part of the Code of Federal Regulations. The proposed Order would go into effect only if the Secretary determines that the Order is approved by no less than a majority of the processors voting in the referendum and if the majority processed more than 50 percent of the popcorn certified as having been processed during the representative period by the processors voting.

The referendum procedures provide definitions of who is eligible to vote and instructions for referendum agents regarding subagents, publicity for the referendum and the results, ballots, voting, ballot handling and tabulation, reporting, and confidentiality of referendum materials. The representative period for establishing voter eligibility for the referendum shall be determined by the Secretary. Persons who have processed over 4 million pounds of popcorn for market during the representative period will be eligible to vote; there are an estimated 35 eligible processors. The referendum will be conducted by mail ballot.

All written comments received in response to this proposed rule by the date specified herein will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for popcorn processors.

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. In proposed part 1215, subpart C is added to read as follows:

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

* * * * *

Subpart C—Procedure for the Conduct of Referenda in Connection With the Popcorn Promotion, Research, and Consumer Information Order

Sec.

1215.500 General.
1215.501 Definitions.
1215.502 Voting.
1215.503 Instructions.
1215.504 Subagents.
1215.505 Ballots.
1215.506 Referendum report.
1215.507 Confidential information.

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

Subpart C—Procedure for the Conduct of Referenda in Connection With the Popcorn Promotion, Research, and Consumer Information Order

§ 1215.500 General.

A referendum to determine whether eligible processors favor the issuance of the Order shall be conducted in accordance with these procedures.

§ 1215.501 Definitions.

Unless otherwise defined below, the definitions of terms used in these procedures shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Popcorn Promotion, Research, and Consumer Information Order.

(c) *Referendum agent or subagent* means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, processing facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called "joint ventures" wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the processing of popcorn and the authority to transfer title to the popcorn so processed.

(f) *Eligible processor* means any person who processes over 4 million pounds of popcorn during the representative period and who:

(1) Owns or shares in the ownership of processing facilities and equipment resulting in the ownership of the popcorn process;

(2) Rents processing facilities and equipment resulting in the ownership of all or a portion of the popcorn processing;

(3) Owns processing facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the popcorn processing; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to process popcorn who share the risk of loss and receive a share of the popcorn processing. No other acquisition of legal title to popcorn shall be deemed to result in persons becoming eligible processors.

§ 1215.502 Voting.

(a) Each person who is an eligible processor as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each processor in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to process popcorn, in which more than one of the parties is a processor, shall be entitled to cast one ballot in the referendum covering only such processor's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate processor or an administrator, executor, or trustee of an eligible processing entity may cast a ballot on behalf of such processing entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible processor, or an administrator, executor, or trustee of an eligible processing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail.

§ 1215.503 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedures to be followed

by the referendum agent. Such agent shall:

(a) Prepare ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and

(2) The total volume of popcorn processed by the voting processor during the representative period.

(b) Give reasonable advance public notice of the referendum by utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio and such other means as the agent may deem advisable.

(c) Mail to each eligible processor whose name and address is known to the agent, the instructions on voting and a ballot. No person who claims to be eligible to vote shall be refused a ballot.

(d) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of the Office of Inspector General.

(e) Prepare a report on the referendum.

(f) Announce the results to the public.

§ 1215.504 Subagents.

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

§ 1215.505 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem 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 these procedures shall not be counted.

§ 1215.506 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on

results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1215.507 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any processor in the referendum shall be held strictly confidential and shall not be disclosed.

Dated: September 24, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-25002 Filed 9-27-96; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-160-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that currently requires either the application of a vapor sealant on the back of the receptacle of the auxiliary power unit (APU) power feeder cable; or a one-time visual inspection for gold-plating and evidence of damage of the connector contacts of the power feeder cable of the APU generator, and various follow-on actions. This action would add a requirement for replacement of certain connector contacts (pins/sockets) with gold-plated contacts. This proposal is prompted by reports of burning and arcing of the connector contacts of the power feeder cable of the APU generator. The actions specified by the proposed AD are intended to reduce the potential for a fire hazard as a result of such burning or arcing.

DATES: Comments must be received by November 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-