

inventory reserve such that the total primary inventory reserve does not exceed 50-million pounds; Provided, That such 50-million-pound quantity may be changed upon recommendation of the Board and approval of the Secretary. Any such change shall be recommended by the Board on or before September 30 of any crop year to become effective for the following crop year, and the quantity may be changed no more than one time per crop year. Handlers will be permitted to divert (at plant or with grower diversion certificates) as much of the restricted percentage requirement as they deem appropriate, but may not establish a primary inventory reserve in excess of the percentage established by the Board for restricted cherries. In the event handlers wish to establish inventory reserve in excess of this amount, they may do so, in which case it will be classified as a secondary inventory reserve and will be regulated accordingly.

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5. Add a new paragraph (d) to § 930.54 to read as follows:

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

* * * * *

(d) Should the volume of cherries held in the primary inventory reserves and, subsequently, the secondary inventory reserves reach a minimum amount, which level will be established by the Secretary upon recommendation from the Board, the products held in the respective reserves shall be released from the reserves and made available to the handlers as free tonnage.

6. Revise paragraph (b) of § 930.55 to read as follows:

§ 930.55 Primary inventory reserves.

* * * * *

(b) The form of the cherries, frozen, canned in any form, dried, or concentrated juice, placed in the primary inventory reserve is at the option of the handler. The product(s) placed by the handler in the primary inventory reserve must have been produced in either the current or the preceding two crop years. Except as may be limited by § 930.50(i) or as may be permitted pursuant to §§ 930.59 and 930.62, such inventory reserve portion shall be equal to the sum of the products obtained by multiplying the weight or volume of the cherries in each lot of cherries acquired during the fiscal period by the then effective restricted percentage fixed by the Secretary; Provided, That in converting cherries in each lot to the form chosen by the handler, the inventory reserve

obligations shall be adjusted in accordance with uniform rules adopted by the Board in terms of raw fruit equivalent.

* * * * *

Dated: May 27, 2010.

Rayne Pegg

Administrator, Agriculture Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1215

[Document Number AMS-FV-10-0010]

Popcorn Promotion, Research, and Consumer Information Order; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to reduce the Popcorn Board (Board) membership from nine to five members to reflect the consolidation of the popcorn industry and therefore, fewer popcorn processors in the industry. In accordance with the Popcorn Promotion, Research and Consumer Information Order (Order) which is authorized by the Popcorn Promotion, Research and Consumer Information Act (Act), the number of members on the Board may be changed by regulation; provided, that the Board consist of not fewer than four members and not more than nine members. In addition, the Order states that for purposes of nominating and appointing processors to the Board, the Secretary may take into account the geographical distribution of popcorn processors.

DATES: Comments must be received by July 6, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at: <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, (Department) Room 0632-S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250-0244; *facsimile:* (202) 205-2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>. All comments

received will be posted without change, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Deborah Simmons, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, 1400 Independence Avenue, SW., Room 0632-S, Washington, DC 20250-0244; *telephone:* (888) 720-9917; *facsimile:* (202) 205-2800; or electronic mail: deborah.simmons@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Popcorn Promotion, Research, and Consumer Information Order [7 CFR part 1215]. The Order is authorized under the Popcorn Promotion, Research and Consumer Information Act [7 U.S.C. 7481-7491].

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act provides that any person subject to an order may file a written petition with the Department if they believe that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with law. In any petition, the person may request a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or conducts business shall have the jurisdiction to review the Department's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Initial Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], AMS has considered the economic impact of this action on the processors that would be affected by this rule. 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.

Small agricultural service firms which would include processors who are covered under the Order, have been defined by the Small Business Administration (13 CFR 121.607) as those having annual receipts of no more than \$7 million. Almost 50 percent of the industry is exempt from paying assessments. Based on information from the Board there are currently a total of 40 processors in the industry. Of those, 21 processors pay mandatory assessments into the program. Of the 21 processors, 11 would be classified as small processors representing 7 percent of the popcorn assessed. The top five popcorn producing states are Nebraska, Indiana, Illinois, Ohio and Iowa. In 2009, Indiana, Kansas, Michigan and Ohio had decreases in acreage planted and harvested while Kentucky, Illinois, Iowa, Missouri and Nebraska had increases in acreage planted and harvested over the acreage planted and harvested in 2008. Overall 2009 acreage planted increased by 1 percent and acreage harvested increased by 4 percent over 2008 numbers.

Most of the processors would be classified as small businesses under the criteria established by the Small Business Administration. Processors who process and distribute 4 million pounds or less of popcorn annually are exempt from this program. Persons that operate under an approved National Organics 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 be exempt from the payment of assessments.

The Board currently consists of 9 members which represent small, medium and large processors in the industry.

The Board voted during its October 5, 2009, conference call to request that the Secretary reduce the number of members from nine to five and to appoint persons to reflect the consolidation of the popcorn industry and therefore, fewer popcorn processors in the industry who will equitably make up the board between large, medium and small processors. The Board would continue to strive for diversity within the industry.

Nominations and appointments to the Board are conducted pursuant to sections 1215.22, 1215.23, and 1215.25 of the Order. Appointments to the Board are made by the Secretary from a slate of nominated candidates. Pursuant to section 1215.22(3)(i) of the Order, nominations for each position shall be made by processors, and be submitted to the Secretary for appointment to the Board. The Order requires that two

nominees be submitted for each vacant position.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Background

The Order became effective on July 22, 1997, and it is authorized under the Act. The Board is composed of nine processors. Nominations take into consideration the geographical distribution of popcorn production. The States that currently have representation on the Board are Nebraska, Indiana, Iowa, Missouri and Colorado. Based on information from the Board, in 2008, the top five popcorn producing states were Nebraska, Indiana, Illinois, Ohio and Iowa.

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. This program is financed by assessments on processors who process and distribute 4 million pounds or more of popcorn annually. The current rate of assessment is 6 cents per hundredweight of popcorn. The Order specifies that processors are responsible for submitting the assessment to the Board and maintaining records necessary to verify their reporting(s). Processors who process and distributes less than 4 million pounds of popcorn annually are exempt from this assessment.

On October 5, 2009, the Board voted to decrease its membership from nine to five.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that the proposed amendments, if adopted, may be implemented before the 2010 term of office expires on December 31, 2010. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until thirty days after publication in the **Federal Register** because (1) a final rule needs to be in effect before the Board makes a call for nominations for the term of office beginning January 1, 2011.

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, 7 CFR part 1215 is proposed to be amended 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.

2. § 1215.21, paragraph (a) is revised to read as follows:

§ 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 section 1215.24.

* * * * *

Dated: May 28, 2010.

Rayne Pegg,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0548; Directorate Identifier 2010–NM–041–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: