

employee with lower retention standing except:

(1) As required under § 351.606 when an employee is retained under a mandatory exception or under § 351.806 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.607 when an employee is retained under a permissive continuing exception or under § 351.608 when an employee is retained under a permissive temporary exception.

(b) At its option an agency may provide for intervening displacement within the competitive level before final release of the employee with the lowest-retention standing from the competitive level.

(c) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

■ 5. In § 351.701, paragraphs (g), (h), and (i) are added, to read as follows:

**§ 351.701 Assignment involving displacement.**

\* \* \* \* \*

(g) If a competitive area includes more than one local commuting area, the agency determines assignment rights under this part on the basis of the representative rates for one local commuting area within the competitive area (i.e., the same local commuting area used to establish competitive levels under § 351.403(c)(4), (5), and (6)).

(h) If a competitive area includes positions under one or more pay bands, a released employee shall be assigned in accordance with paragraphs (a) through (d) of this section to a position in an equivalent pay band or one pay band lower, as determined by the agency, than the pay band from which released. A preference eligible with a service-connected disability of 30 percent or more must be assigned in accordance with paragraphs (a) through (d) of this section to a position in an equivalent pay band or up to two pay bands lower, as determined by the agency, than the pay band from which released.

(i) If a competitive area includes positions under one or more pay bands, and other positions not covered by a pay band (e.g., GS and/or FWS positions), the agency provides assignment rights under this part by:

(1) Determining the representative rate of positions not covered by a pay band, consistent with § 351.203;

(2) Determining the representative rate of each pay band, or competitive level within the pay band(s), consistent with § 351.203;

(3) As determined by the agency, providing assignment rights under paragraph (b) of this section (bumping), or paragraphs (c) and (d) of this section (retreating), consistent with the grade intervals covered in paragraphs (b)(2) and (c)(2) of this section, and the pay band intervals in paragraph (h) of this section.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1160

[Docket No. AMS-DA-07-0156; DA-07-05]

#### National Fluid Milk Processor Promotion Program

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Fluid Milk Promotion Order (Order) by reducing the burden of late-payment charges applied to processors who mistakenly underreport the amount of assessments owed to the National Fluid Milk Processor Promotion Board (Board), provided that the processor has not made more than two reporting errors in the prior 12 months.

**DATES:** *Effective Date:* July 1, 2008.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** This final rule adopts a proposal submitted by the Board to reduce the burden of late payment fees applied to processors who underreport the amount of assessments they owe due to unintentional errors or miscalculations. Specifically, the amendment reduces late-payment charges provided that the processor has not made more than two reporting errors in the prior 12 months.

The Fluid Milk Promotion Order is issued under the Fluid Milk Promotion Act as amended (Act) [7 U.S.C. 6401-6417].

#### Executive Order 12866

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

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to the Order may file with the Secretary of Agriculture (Secretary) a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or to be exempted from the Order. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

#### Regulatory Flexibility Act

The Agricultural Marketing Service (AMS) has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612). The final rule imposes no new burden on the industry but will in fact reduce late-payment charges applied to processors who underreport the amount of assessments which they owe to the Board provided that the processors have not made more than two reporting errors in the prior 12 months.

Small businesses in the fluid milk processing industry have been defined by the Small Business Administration (13 CFR 121.201) as those processors employing not more than 500 employees. As of April 2008, there were approximately 100 fluid milk processors subject to the provisions of the Order. While some processors own multiple plants, the majority of processors own just one plant with fewer than 500 employees, and are, therefore, small entities.

#### Paperwork Reduction Act

Information collection requirements and recordkeeping provisions contained in 7 CFR Part 1250 have been previously approved by the Office of Management

and Budget and assigned OMB Control No. 0581-0093 under the Paperwork Reduction Act of 1980.

#### Prior Documents in This Proceeding

*Proposed Rule:* Issued January 18, 2008; published January 28, 2008 (73 FR 4762).

#### Statement of Consideration

This final rule amends the Fluid Milk Promotion order (Order) by reducing the burden of late payment fees on processors who mistakenly underreport their pounds of fluid milk processed and marketed commercially (excluding direct delivery to the residence of a consumer). Processors will not be required to pay late-fee charges on additional assessments owed the National Fluid Milk Processor board (Board) provided: (1) that no more than two erroneous reports have occurred in the preceding 12-month period and; (2) the processor pays its past due assessments not later than the last day of the month following notification by the Board that additional assessments are due. If more than two erroneous reports have occurred in the preceding 12-month period or the processor fails to submit a past due assessment when notified, late-payment charges will be assessed in accordance with § 1160.214 of the Order.

The Fluid Milk Promotion Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 U.S.C. 6401-6417). The Order, in § 1160.211(a)(1) provides that each fluid milk processor shall pay to the Board an assessment of \$0.20 per hundredweight on fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processors. The Order further provides in § 1160.213 that if the Board or the Secretary determines through an audit of a processor's reports, records, books or accounts or through some other means that additional money is due to the Board, the Board is to notify that processor of the amount due or overpaid. If the processor owes money to the Board, the processor is to remit the underpaid amount by the next due date as provided in § 1160.211 of the Order. If the processor has overpaid, that amount is credited to the processor's account and applied against amounts due in succeeding months.

At the request and on behalf of the Board, Milk Market Administrators verify the total pounds of fluid milk products processed and commercially marketed in consumer-type packages (excluding delivering directly to the residence of a consumer) that were

reported to the Board by the milk processors. Total fluid milk products are the sum of fluid milk product route sales and packaged fluid milk products sold to any other plant, less any fluid milk products purchased from other plants. The results of the Market Administrators' verification are forwarded to the Board, and, in accordance with § 1160.214(a), any unpaid assessments are increased by 1.5 percent each month beginning with the day following the date such assessments were due.

Interested parties were provided an opportunity to file comments on the proposed rule. One comment, filed on behalf of the Milk Processor Education Program (MilkPEP) supported the proposed changes to the Order. MilkPEP stated that the proposed changes would encourage and ensure the receipt of assessments owed to the Board.

#### List of Subjects in 7 CFR Part 1160

Fluid milk, Milk, Promotion.

■ For the reasons set forth in the preamble, 7 CFR part 1160 is amended as follows:

#### PART 1160—FLUID MILK PROMOTION PROGRAM

■ 1. The authority citation for 7 CFR Part 1160 continues to read as follows:

**Authority:** 7 U.S.C. 6401-6417.

■ 2. Section 1160.213 is revised to read as follows:

#### § 1160.213 Adjustment of accounts.

Whenever the Board or the Secretary determines through an audit of a processor's reports, records, books or accounts or through some other means that additional money is due the Board or to such processor from the Board, the Board shall notify that person of the amount due or overpaid. If the processor owes money to the Board, it shall remit that amount by the next date for remitting assessments as provided in § 1160.211. For the first two erroneous reports submitted by a processor in the preceding 12-month period, late-payment charges assessed pursuant to § 1160.214 shall not begin to accrue until the day following such date. For all additional erroneous reports submitted by a processor during the 12-month period, late-payment charges shall accrue from the date the payment was due. If the processor has overpaid, that amount shall be credited to its account and applied against amounts due in succeeding months.

Dated: May 15, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Parts 1212 and 1240

[Docket No. AMS-FV-06-0176; FV-03-704-FR]

**RIN 0581-AC37**

#### Establishment of Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order and Suspension of Assessments Under the Honey Research, Promotion, and Consumer Information Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Packers Order). The Packers Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). Under the Packers Order, first handlers and importers will pay an assessment of \$0.01 per pound on honey and honey products. First handlers and importers of less than 250,000 pounds of honey and honey products annually will be exempt from the assessment. The assessments will be remitted to the Honey Packers and Importers Board (Board) to conduct a generic program of promotion, research, consumer education, and industry information to maintain and expand markets for honey and honey products. A referendum was conducted among honey first handlers and importers between April 2 and April 16, 2008. Seventy-eight percent of those covered under the Packers Order—representing ninety-two percent of the volume of those voting in the referendum—favored implementation of the program. This rule also suspends the requirement of the existing Honey Research, Promotion, and Consumer Information Order (Current Order) and regulations authorized under the Honey Research, Promotion, and Consumer Information Act (Honey Act) that honey producers and importers pay to the National Honey Board (Current Board) an assessment in the amount of \$0.01 per pound on honey and honey