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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[DA-96-09]

Fluid Milk Promotion Order; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends certain provisions of the Fluid Milk Promotion Order. The amendments, requested by the National Fluid Milk Processor Promotion Board, which administers the Order, modify the term limits and membership status of Board members. This rule also amends certain order language in conformance with the 1996 Federal Agriculture Improvement and Reform Act. In conformance with the President's Regulatory Reform Initiative, this rule revises or removes order language that has become obsolete.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Eugene Krueger, Head, Promotion and Research Staff, USDA/AMS/Dairy Division, Room 2734, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6909.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those employing less than 500 employees. There are approximately 250 fluid milk processors subject to the provisions of the Fluid Milk Promotion Order. Most of the parties subject to the Order are considered small entities.

This rule will modify the term of office and membership provisions of the

Fluid Milk Promotion Order. The amendments will allow a National Fluid Milk Processor Promotion Board member who changes fluid milk processor affiliations during his or her term to be eligible to serve on the Board in another capacity during that same term. The amendments will also modify the term of Board members to allow any member appointed during the initial period to serve a term of one or two years to be eligible for reappointment for two additional three-year terms. The amendments also provide that a Board member's appointment to another seat or position on the Board will be considered a consecutive term. The amendments should clarify the Order with respect to membership status and term limits of Board members.

This rule will also amend order language in conformance with the 1996 Federal Agriculture Improvement and Reform Act. The definition of research will be changed to conform with the definition in the Act and the Order will be revised to reflect changes in the 1996 Act concerning the required volume of milk that must be represented by those fluid milk processors who may request a referendum to suspend or terminate the Order and who favor the referendum question to suspend or terminate the Order. The rule will also revise the Order to specify the duties of the referendum agent regarding a referendum to adjust the rate of assessment. Further, the rule will revise or remove obsolete or unnecessary order language in conformance with the President's Regulatory Reform Initiative.

Accordingly, pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

Prior document in this proceeding: *Invitation to Submit Comments to Proposed Amendments to the Order*: Issued August 30, 1996; published September 6, 1996 (61 FR 47093).

The Department is issuing this rule in conformance with Executive Order 12866.

This 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 Fluid Milk Promotion Act of 1990, as amended, authorizes the Fluid Milk Promotion Order. 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 a Fluid Milk Promotion Order may file with the 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. A person subject to an order 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.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Fluid Milk Promotion Order have been approved previously by the Office of Management and Budget (OMB) and were assigned OMB No. 0581-0093, except for Board members' nominee information sheets that were assigned OMB No. 0505-0001.

Statement of Consideration

This final rule amends certain provisions of the Fluid Milk Promotion Order. Certain amendments will modify the term limits and the membership status provisions of the Order. The amendments allow a National Fluid Milk Processor Promotion Board member who changes fluid milk processor affiliations during his or her term to be eligible to serve on the Board in another capacity during that same term. Under current order provisions, a Board member who changes fluid milk processor affiliations during his or her term is ineligible to serve on the Board in any capacity.

The amendments will also modify the term of Board members to allow any member appointed during the initial period to serve a term of one or two years to be eligible for reappointment

for two additional three-year terms. The amendments also provide that a Board member's appointment to another seat or position on the Board will be considered a consecutive term. Currently, the Order states that Board members shall serve no more than two consecutive terms. Therefore, a Board member appointed to serve an initial term of one or two years is eligible to be reappointed to serve only one additional three-year term. Under these order provisions, some Board members will serve an initial term of less than three years because of the staggering of terms. The Board contends that the amendments will clarify the Order with respect to membership status and term limits of its members.

This document also amends the Fluid Milk Promotion Order to conform with legislated changes made by the recently enacted 1996 Federal Agriculture Improvement and Reform Act (P.L. 104-127). Section 146 of the Act amends sections 1999C(6), 1999N(b)(2), 1999O(c), and 1999O(a) of the Fluid Milk Promotion Act of 1990, as amended, thereby necessitating changes to the Fluid Milk Promotion Order. The following sections of the Order are amended on this basis:

1. In § 1160.112, Research is redefined in conformance with the Act.

2. In § 1160.501, paragraphs (a) and (b)(2) are amended in conformance with the Act in order to specify the volume of milk that must be represented by those fluid milk processors who may request a referendum to suspend or terminate the Order and to specify the required volume of milk, necessary for suspension or termination, that must be represented by those fluid milk processors voting in the referendum.

3. In § 1160.604, paragraph (a) is amended to identify order language applicable only to the duties of the referendum agent concerning a referendum to adjust the rate of assessment.

4. Section 1160.605 is amended in conformance with the Act in order to specify the volume of milk that must be represented by those fluid milk processors who may request a referendum to suspend or terminate the Order.

The President's Regulatory Reform Initiative, among other things, directs agencies to remove obsolete and unnecessary language and to find less burdensome ways to achieve regulatory goals. Changes are in conformance with the initiative. These amendments to the Order and regulations will revise or remove order language that was needed to implement the order but is no longer needed. This language is obsolete and

unnecessary because it relates to the initial fiscal period and the previously conducted initial continuation referendum. Provisions of the following sections of the Order are amended on this basis:

1. § 1160.108 Fluid milk processor.
2. § 1160.113 Fiscal period.
3. § 1160.116 Initial referendum.
4. § 1160.209 Duties of the Board.
5. § 1160.211 Assessments.
6. § 1160.501 Continuation referenda.
7. § 1160.605 Date of the referendum.

Notice of proposed rulemaking was given to interested parties and they were afforded an opportunity to file written data, views, or arguments concerning this proposed rule. One comment supporting, one opposing, and one of modified support to the proposed amendments were received. However, the notice of proposed rulemaking contained proposed amendments to section 605 (i.e., date of the referendum) of the Order that were not in conformance with the legislative changes of the 1996 Federal Agriculture Improvement and Reform Act.

The notice proposed to amend section 605 to specify the volume of milk that must be represented by those fluid milk processors who may request a referendum to suspend or terminate the Order, or adjust the assessment rate. However, the statutory changes concern suspending or terminating the Order and do not involve changing language regarding adjusting the rate of assessment. Therefore, the proposed language in section 605 is revised in this final rule in conformance with the Act to specify the volume of milk that must be represented by those fluid milk processors who may request a referendum to suspend or terminate the Order. The current order language in this section which pertains to adjusting the rate of assessment is unchanged. Further, a conforming change is made to section 604(a) (i.e., duties of the referendum agent) to identify the order language applicable only for a referendum to adjust the rate of assessment.

The National Fluid Milk Processor Promotion Board submitted comments reiterating its support for the amendments to modify order provisions regarding term limits and membership status of Board members. The Board also expressed support for the other amendments to amend the Order in conformance with the Act, and to revise or remove obsolete language. The Board urged the immediate implementation of the amendments because it relies on several provisions that the amendments will clarify.

Homestead Dairies, Inc. (Homestead), filed comments in opposition to proposed term limits for Board members. Homestead recommended that the Order be amended to allow Board members to hold seats for no more than three consecutive years, as opposed to the Board's proposal which would allow a Board member to serve an initial term of one or two years and two additional three-year terms. Homestead stated that its recommendation would provide other processors an opportunity to serve on the Board on a more regular basis.

Homestead's proposed amendment, which would modify the term limits of Board members, should not be adopted. The amended order will provide the Board more continuity because members will be eligible to serve at least two full three-year terms as opposed to three consecutive one-year terms. Additionally, the Order will still provide other processors an opportunity to be appointed to serve on the Board on a regular basis.

Peeler Jersey Farms, Inc. (Peeler), a regional proprietary processor, filed a comment letter in support of term limits for Board members but suggested modifications. Peeler recommended that Board members should be required to remain off of the Board for a period of time before being eligible for re-election. Peeler also suggested that restrictions regarding fluid milk processor affiliation should be placed on Board members to allow proprietary processors representation.

The recommendations by Peeler regarding modifying the term of office provisions and membership status provisions should not be adopted. The Order provides that the National Fluid Milk Processor Promotion Board shall consist of 15 members representing geographic regions and five at-large members. The Order states that to the extent possible members representing geographical regions shall represent fluid milk processing operations of differing sizes and that no fluid milk processors shall be represented by more than one member.

The Order does not provide that Board members remain off the Board a specified time period before being eligible to be reappointed to serve in the same capacity. However, the Order provides that the Secretary shall announce 180 days prior to the expiration date of Board member' terms that such terms are expiring and solicit nominations for such positions from individual fluid milk processors and other interested parties, including eligible organizations. Therefore, all fluid milk processors are provided

adequate notice of available seats on the Board and are eligible to be nominated for such positions. Moreover, as stated above, the amendments regarding term limits will provide the Board continuity between terms to more effectively administer the Order.

Homestead and Peeler proposed other changes to the Order. However, the proposed changes are not relevant to this proceeding and will be addressed through another process.

It is appropriate to make this final rule effective one day after the date of publication in the Federal Register. Issuance of this rule is necessary to clarify order provisions with respect to term limits and membership status of Board members, and provide the Board flexibility to more effectively administer the order. These proposed amendments must be effective before nominations can be submitted to the Secretary of the United States Department of Agriculture to fill vacant positions on the Board. These positions should be filled as soon as possible. The rule also amends certain order provisions in conformance with the 1996 Federal Agriculture Improvement and Reform Act, and revises or removes order language that has become obsolete in conformance with the President's Regulatory Reform Initiative. Thus, the rule will allow the Board to fill vacant seats in a timely manner and ensure that the order will function properly.

Therefore, good cause exists for making this rule effective less than 30 days from the date of publication in the Federal Register. The proposed amendments to the order are made final in this action.

List of Subjects in 7 CFR Part 1160

Fluid milk products, 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. In § 1160.108, paragraph (a) is revised to read as follows:

§ 1160.108 Fluid milk processor.

(a) *Fluid milk processor* means any person who processes and markets commercially fluid milk products in consumer-type packages in the United States, except that the term fluid milk processor shall not include in each of the respective fiscal periods those persons who process and market not more than 500,000 pounds of such fluid

milk products during the representative month, which shall be the first month of the fiscal period; *Provided, however*, that for the fiscal period following the initial fiscal period, the representative month shall be September 1995.

* * * * *

3. Section 1160.112 is revised to read as follows:

§ 1160.112 Research.

Research means market research to support advertising and promotion efforts, including educational activities, research directed to product characteristics, and product development, including new products or improved technology in production, manufacturing or processing of milk and the products of milk.

4. Section 1160.113 is revised to read as follows:

§ 1160.113 Fiscal period.

Fiscal period means the initial period of up to 30 months that this subpart is effective. Thereafter, the fiscal period shall be such annual period as the Board may determine, except that the Board may provide for a lesser or greater period as it may find appropriate for the period immediately after the initial fiscal period to assure continuity of fiscal periods until the beginning of the first annual fiscal period.

§ 1160.116 [Removed and Reserved]

5. Section 1160.116 is removed and reserved.

§ 1160.200 [Amended]

6. In § 1160.200, the last sentence of paragraph (a) is amended by adding the words "in the position previously held by such member" after the words "membership on the Board".

7. In § 1160.201, paragraph (b) is revised to read as follows:

§ 1160.201 Term of office.

* * * * *

(b) No member shall serve more than two consecutive terms, except that any member who is appointed to serve for an initial term of one or two years shall be eligible to be reappointed for two three-year terms. Appointment to another position on the Board is considered a consecutive term.

§ 1160.209 Duties of the Board.

8. In § 1160.209, paragraph (b) is revised to read as follows:

* * * * *

(b) To prepare and submit to the Secretary for approval a budget for each fiscal period of the anticipated expenses and disbursements in the administration of this subpart, including a description

of and the probable costs of consumer education, promotion and research projects;

* * * * *

9. In § 1160.211, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 1160.211 Assessments.

(a) (1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of \$.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processor. Producer-handlers required to pay assessments under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under § 1160.108, shall also pay the assessment under this subpart. No assessments are required on fluid milk products exported from the United States. The Secretary shall have the authority to receive assessments on behalf of the Board.

(2) The Secretary shall announce the establishment of the assessment each month in the Class I price announcement in each milk marketing area by adding it to the Class I price for the following month. In the event the assessment is suspended for a given month, the Secretary shall inform all fluid milk processors of the suspension in the Class I price announcement for that month. The Secretary shall also inform fluid milk processors marketing fluid milk in areas not subject to milk marketing orders administered by the Secretary of the establishment or suspension of the assessment.

* * * * *

10. Section 1160.501 is amended by removing paragraph (a), redesignating paragraphs (b) through (d) as paragraphs (a) through (c), removing the cross reference "1160.501(c)" in newly designated paragraph (c) and adding in its place "1160.501(b)", and revising newly designated paragraphs (a) and (b)(2) to read as follows:

§ 1160.501 Continuation referenda.

(a) The Secretary at any time may conduct a referendum among those persons who the Secretary determines were fluid milk processors during a representative period, as determined by the Secretary, on whether to suspend or terminate the order. The Secretary shall hold such a referendum at the request of the Board or of any group of such processors that marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed in the United States by fluid milk

processors voting in the preceding referendum.

(b) * * *

(1) * * *

(2) By fluid milk processors voting in the referendum that marketed during a representative period, as determined by the Secretary, 40 percent or more of the volume of fluid milk products marketed in the United States by fluid milk processors voting in the referendum.

11. In § 1160.604, paragraph (a) is amended by adding the phrase "For the purpose of adjusting the rate of assessment," at the beginning to the sentence.

12. Section 1160.605 is revised to read as follows:

§ 1160.605 Scheduling of referendum.

A referendum shall be held:

(a) Whenever prescribed by the order;
(b) For the purpose of adjusting the rate of assessment:

(1) At the direction of the Secretary;
or

(2) Upon request of the Board or upon request of any group of fluid milk processors that marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by all processors of fluid milk in the United States during that period; or

(c) For the purpose of suspending or terminating the order:

(1) At the direction of the Secretary;
or

(2) Upon request of the Board or upon request of any group of fluid milk processors that marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the preceding referendum.

Dated: January 21, 1997.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 97-2042 Filed 1-27-97; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150-AF60

Duplication Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its

regulations by revising the charges for copying records publicly available at the NRC Public Document Room in Washington, DC. The amendment is necessary to reflect the change in copying charge resulting from the Commission's award of a new contract for the copying of records.

EFFECTIVE DATE: January 28, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas E. Smith, Public Document Room, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 202-634-3366.

SUPPLEMENTARY INFORMATION: The NRC maintains a Public Document Room (PDR) at 2120 L Street, NW (Lower Level), Washington, DC. The PDR contains an extensive collection of publicly available technical and administrative records that the NRC receives or generates. Requests by the public for the duplication of records at the PDR have traditionally been accommodated by a duplicating service contractor selected by the NRC. The schedule of duplication charges to the public was established in the duplicating service contract. The revised fee schedule reflects the changes in copying charges to the public that have resulted from the awarding of the new contract for the duplication of records at the PDR.

Because this is an amendment dealing with agency practice and procedure, the notice provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). In addition, the PDR users were notified on November 14, 1996, that the new contract was being awarded and that the new prices would go into effect on November 14, 1996. The amendment is effective upon publication in the Federal Register. Good cause exists to dispense the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with agency procedures.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an

environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150-0127.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The Nuclear Regulatory Commission is amending its regulations governing the rates charged for copying records at the NRC Public Document Room due to the signing of a new contract for the copying of records. This rule has no significant impact on health, safety or the environment. There is no substantial cost to licensees, the NRC or other Federal agencies.

Backfit Analysis

The NRC has determined that the Backfit Rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule, because these amendments of regulations do not involve any provisions which would impose backfits as defined in 10 CFR 50.109 (a)(1).

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99-570. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.35, paragraphs (a)(1), (a)(2), and (a)(3) are revised to read as follows: