

participate in Committee deliberations on all issues. Like all Committee meetings, the April 16, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Southeastern potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

An interim final rule concerning this action was published in the **Federal Register** on June 17, 1998, (63 FR 32966). Copies of that rule were also mailed or sent via facsimile to all Southeastern potato handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on July 17, 1998, and no comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 953 is amended as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

Accordingly, the interim final rule amending 7 CFR part 953 which was published at 63 FR 32966 on June 17, 1998, is adopted as a final rule without change.

Dated: August 26, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit & Vegetable Programs.

[FR Doc. 98-23516 Filed 9-1-98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[DA-98-04]

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 (Order). The amendments, requested by the National Fluid Milk Processor Promotion Board (Board), which administers the Order, modify the membership status and term of office of Board members. This rule also amends order language pertaining to committees and intellectual property rights (patents, copyrights, inventions, and publications). The amendments are necessary to maintain Board membership continuity and should allow the Board to operate in a more effective and efficient manner.

EFFECTIVE DATE: September 3, 1998.

FOR FURTHER INFORMATION CONTACT: David R. Jamison, Chief, USDA/AMS/Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, SW, Stop 0233, Room 2734 South Building, Washington, DC 20250-0233, (202) 720-6909, e-mail address David_Jamison@usda.gov.

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 Order. Most of the parties subject to the Order are considered small entities.

The Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 USC 6401-6417). This rule will modify certain provisions of the Order concerning membership on the Board, the term of office for Board members, the establishment of working committees, and joint ownership of intellectual property rights. These amendments were requested by the Board. The Board believes that the amendments are necessary to maintain Board membership continuity and that the changes should allow the Board to operate in a more effective and efficient manner.

The amendments will allow a fluid milk processor to have two members on the Board. Currently, the Order provides that a fluid milk processor can be represented on the Board by not more than one member. This amendment should help maintain Board continuity and provide a consistent pool of processor representatives. The amendments also will allow Board members whose fluid milk processor company affiliation has changed to serve on the Board for a period of up to 60 days or until a successor is appointed, whichever is sooner, provided that the eligibility requirements of the Order are still met. This amendment should help in the reduction of Board vacancies and foster continuity in Board activities and membership.

The rule also will allow Board members who fill vacancies with a term of 18 months or less to serve two consecutive full 3-year terms. Currently, the Order provides that except for the initial staggered appointments, Board members could only serve two consecutive terms. Greater continuity on the Board will result from this amendment.

The rule also will permit the Board to establish working committees of persons other than Board members; this change will assist the Board with activities through access to information, knowledge, and expertise that otherwise might not be available.

Finally, the amendments also will modify the intellectual property provisions of the Order to specifically provide for and allow joint ownership of intellectual property, i.e., patents, copyrights, inventions, and publications, that is developed using joint funds. This change recognizes that significant project funding may come from contracting parties other than the Board.

These amendments to Order provisions will not add any burden to regulated parties because they relate to provisions concerning membership on the Board, the establishment of working committees, and joint ownership for patents, copyrights, inventions, and publications. The amendments will not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with the rule.

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

Prior document in this proceeding: Invitation to Submit Comments on Proposed Amendments to the Order: Issued May 18, 1998; published May 22, 1998 (63 FR 28292).

Executive Order 12866 and the Paperwork Reduction Act

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

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 authorizes the 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 the 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 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 background information sheets that were assigned OMB No. 0505-0001.

Statement of Consideration

This final rule amends certain provisions of the Order which relate to Board membership and term of office, establishment of working committees, and joint ownership for intellectual property.

The amendments allow a fluid milk processor to have two members on the Board. Currently, the Order provides that a fluid milk processor can be represented on the Board by not more than one member. The Board in its

recommendation for rulemaking noted that it is more difficult to maintain the single member representation; that processors are larger in size and operate in several geographic areas; and that, to maintain continuity and provide a consistent pool of processor representatives, a change in Order provisions is needed to allow more than one representative on the Board.

The amendments also will allow Board members whose fluid milk processor company affiliation has changed to serve on the Board for a period of up to 60 days or until a successor is appointed, whichever is sooner, provided the eligibility requirements of the Order are still met. Currently, except in those instances where a Board member changes fluid milk processor affiliation and is eligible to serve on the Board in another capacity during the same term, a Board member whose processor affiliation has changed cannot continue to serve on the Board.

The amendments also will allow Board members who fill vacancies with a term of 18 months or less to serve two additional 3-year terms. Currently, the Order states that, except for the initial staggered Board appointments of 1-or 2-year terms, Board members may only serve two consecutive terms. Thus, any time served with the initial term is considered a complete term.

The amendments also permit the Board to establish working committees of persons other than Board members to assist the Board with activities. Currently, committees and subcommittees are selected from Board members. This change provides information, knowledge, and expertise that otherwise might not be available.

Finally, the amendments also will modify the section on patents, copyrights, inventions, and publications by allowing jointly developed intellectual property to be jointly owned. Currently, the Order does not specifically provide for such joint ownership.

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. Seven comments were received, representing five proprietary handlers, one cooperative association, and the Board. Comments generally favored the proposed changes, though several comments voiced opposition to allowing two Board members from one fluid milk processor. Proposed changes and a summary of comments received on those proposed changes follow:

1. *Allow fluid milk processors to have two members on the National Fluid Milk Processor Promotion Board.* Three comments, from The Kroger Co. (Kroger), Super Store Industries (SSI), and the Board, were in support of the proposed language. These commenters contend that this amendment would better able the Board to formulate and initiate programs and more efficiently perform its duties and obligations, especially with structural changes that have and are anticipated to continue in the dairy industry.

Four comments, from Peeler Jersey Farms, Inc. (Peeler), The Stop and Shop Supermarket Company (Stop and Shop), Tillamook County Creamery Association, and Sunshine Dairy Foods Inc. (Sunshine), were in opposition to this proposed change. These commenters stated that adopting the proposed language (1) would further centralize power and control of assessments, perhaps skewing actions to favor multiple-representative processors; and (2) is unnecessary because an adequate number of fluid milk processors exists, as well as enough interest to staff a 20-member board on a six-year rotating basis. These commenters contended that the process could be dominated by fewer processors which might, in turn, discourage participation, input, and innovation from small processors.

The Order provides for a 20-member Board with 15 members representing geographic regions and five at-large members, at least three of whom are to be fluid milk processors and at least one member from the general public. To the extent practicable, members representing geographic regions should represent processing operations of differing sizes. This continuing provision recognizes the need for diversity of Board membership, both geographically and size-wise.

As the fluid processing sector has experienced changes and will continue to undergo consolidation of processors, it is appropriate to allow fluid processors to have two members on the Board. As the industry has consolidated to have processors that are larger in size and that operate in several geographic areas, the Board has experienced difficulty in maintaining full-Board strength with representation limited to one per processor. To maintain continuity, help in the reduction of Board vacancies, and provide a consistent pool of processor representatives, a change in the Order provisions is appropriate to allow two Board members from one processor.

The Order directs the Secretary to appoint Board members on the basis of

representation discussed above (20 members representing 15 geographic regions plus five at-large members). Through the appointment process, the Secretary has and will continue to maintain control over the Board's composition, including the number of multi-member processors.

2. *Allow Board members whose affiliation has changed to serve on the Board up to 60 days or until successor is approved, whichever is sooner.* Four comments, from Kroger, SSI, Stop and Shop, and Sunshine, were in support of the proposed language for reasons of Board continuity and full strength. One comment, from the Board, suggested extending the 60-day limitation to six months. The Board contended that the appointment process can take six or more months, and a six-month limitation on member carry-over would be more realistic than 60 days.

Vacancies of Board members whose terms have not expired may be filled either by the Secretary appointing qualified members from the most recent list of nominations for the specific region or by Board nominations. With these two alternatives, it is feasible that Board vacancies could be filled in 60 days or less. Extending the time limit serves little purpose in bringing on new Board members in a timely fashion, but allowing a two month "grace period" should foster better continuity in Board activities and membership than under current provisions.

3. *Allow Board members who fill vacancies with a term of 18 months or less to serve two consecutive full 3-year terms.* Five comments, from Kroger, SSI, Stop and Shop, Sunshine, and the Board, were in support of the proposed language. The comments stated that this change would contribute to greater continuity and orderly process for the Board.

This amendment is appropriate to implement as it will allow for greater continuity of membership.

4. *Allow Board to establish working committees of persons other than Board members to assist Board with activities by providing information, knowledge, and expertise that otherwise might not be available.* Five comments, from Kroger, SSI, Stop and Shop, Sunshine, and the Board, were in support of the proposed language. Knowledge and expertise from people other than Board members can be utilized more effectively with this change in the order provisions.

5. *Modify the intellectual property provisions of the Order to specifically provide for and allow joint ownership of intellectual property (patents, copyrights, inventories, publications)*

that is developed using joint funds. Five comments, from Kroger, SSI, Stop and Shop, Sunshine, and the Board, were in support of the proposed language. The comments stated that this provision allows the Board greater flexibility concerning joint ownership of intellectual property. By amending this provision, this greater flexibility will be permitted.

In addition to opposing all proposed changes, Peeler proposed two additional amendments to the Order. Neither proposal is relevant to the other amendments being implemented in this action, and no opportunity has been provided for interested parties to comment on the two Peeler proposals. Therefore, the proposals are not addressed here.

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 provide the Board flexibility to more effectively administer the Order with respect to membership status and term of office of Board members and to clarify Order provisions with respect to working committees and joint ownership of intellectual property. These proposed amendments should be effective before the Secretary of the United States Department of Agriculture makes appointments to fill positions on the Board. These positions should be filled as soon as possible. Thus, the rule will allow the Board to fill seats in a timely manner.

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 § 1160.200, paragraph (a) is revised to read as follows:

§ 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Promotion Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the

extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than two members. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for a fluid milk processor or its successor fluid milk processor shall disqualify that member for membership on the Board except that such member shall continue to serve on the Board for a period of up to 60 days following the disqualification or until the appointment of a successor Board member to such position, whichever is sooner, provided that such person continues to meet the criteria for serving on the Board as a processor representative.

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

§ 1160.201 Term of office.

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(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. Should a non-board member be appointed to fill a vacancy on the Board with a term of 18 months or less remaining, the appointee shall be entitled to serve two consecutive 3-year terms following the term of the vacant position to which the person was appointed.

4. In § 1160.208, paragraph (g) is revised to read as follows:

§ 1160.208 Powers of the Board.

* * * * *

(g) To select committees and subcommittees, to adopt bylaws, and to adopt such rules for the conduct of its business as it may deem advisable; the Board may establish working committees of persons other than Board members;

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5. In § 1160.505, the text is designated paragraph (a) and a new paragraph (b) is added to read as follows:

§ 1160.505 Patents, copyrights, inventions and publications.

* * * * *

(b) Should patents, copyrights, inventions, and publications be developed through the use of funds collected by the Board under this subpart, and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, and publications shall be determined by the agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention, and publication in a manner consistent with paragraph (a) of this section.

Dated: August 26, 1998.

Michael V. Dunn,

Assistant Secretary, Marketing & Regulatory Programs.

[FR Doc. 98-23517 Filed 9-1-98; 8:45 am]

BILLING CODE 3410-02-P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

Small Business Size Regulations and Government Contracting Assistance Regulations; Very Small Business Concern

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule amends the regulations pertaining to the Small Business Administration's (SBA) size and government contracting programs to incorporate the Very Small Business Set-Aside Pilot Program. It also defines what a "very small business concern" is for purposes of the SBA's small business set-aside program. Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103-403) authorized the SBA Administrator to establish and carry out a pilot program for very small business concerns. The Act defines a very small business concern as one that has 15 or fewer employees together with average annual receipts that do not exceed \$1 million. The Act established September 30, 1998, as the expiration date for this pilot.

DATES: This rule is effective on September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Corinne Sisneros, Office of Government Contracting, at (202) 205-7624.

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 1997 (62 FR 2979), SBA published a proposed rule in the **Federal Register** to amend parts 121 and

125 of title 13 of the Code of Federal Regulations (CFR) in order to establish a pilot program for very small business (VSB) concerns. (See Pub. L. 103-403, Section 304.) The purpose of this pilot program is to improve access to Federal Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain procurements for competition among such VSB concerns. VSB concerns under this program that receive a VSB set-aside contract will also be eligible for loan application support and assistance under the prequalification component of the program. This pilot program will expire on September 30, 2000, unless further extended through legislation. See section 508 of Pub. L. 105-135, 111 Stat. 2606.

II. Summary and Analysis of Comments and SBA's Response

SBA received 11 timely comments to the January 21, 1997, proposed rule. These comments addressed several issues, each of which is discussed below.

Several commenters sought clarification as to how requirements under this program would be identified. Some commenters also requested that SBA clarify what is meant by "advertise" and provide guidance on synopsis and information dissemination requirements. SBA has not made any changes to the final rule in response to these comments. Procedures are already in place to address these issues regarding other set asides, which would cover this program as well. In addition to using SBA's existing automated reference system, procuring activities can rely on SBA district office personnel and procurement center representatives (PCRs) to identify VSB concerns likely to compete on a requirement. A procuring activity may elect to issue a "VSB sources sought" notice in the Commerce Business Daily. However, this rule does not require display or synopsis requirements in excess of those currently in the Federal Acquisition Regulation (FAR).

One commenter suggested establishing a web page, organized by region, of all VSBs and their applicable standard industrial classification (SIC) codes so that procurement offices could check to see if there were capable VSB vendors for a given requirement. A change to the proposed regulatory language is not needed to implement this recommendation. As such, SBA did not change the rule in response to this comment, but does plan to initiate a web site on the Government Contracting Home Page (www.sba.gov/GC) to list

VSB concerns (and their applicable SIC codes) that are interested in participating in this pilot program. Buying activities will be able to review the SBA web site to search for compatible VSB concerns. Their efforts should not, however, be limited to the SBA web site. Procuring activities should also try to identify VSB sources through media pursuant to FAR 5.101 as well as their agency-specific regulations and policies.

One commenter requested clarification regarding the types of procurement requirements that will be available through and the procuring activities that will be involved in the VSB program. Under the proposed rule, only those VSB concerns whose headquarters are located within the geographical area serviced by a designated SBA district office where the procurement is offered would be eligible for award. Upon further deliberation, SBA has changed the application of the VSB program for service and construction procurements. Under the final rule, any procurement requirement between \$2,500 and \$50,000 may be set aside for VSB concerns. A contracting officer must set aside for VSB concerns any such service or construction requirement that will be performed within the geographical boundaries served by a designated SBA district office if there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. In the case of a procurement for supplies or manufactured items, a contracting officer must set aside any such requirement for VSBs if the buying activity is located within the geographical area served by a designated SBA district and there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. SBA has made the distinction between service or construction requirements and requirements for supplies or manufactured items because of the size of VSB concerns and their limited ability to perform contracts outside of the geographic area where they are located. For a service or construction requirement, the place of performance is what is critical to a VSB, not the location of the buying activity. This is particularly true where more and more requirements are being procured on a consolidated basis by a number of buying activities, which are