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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AH56

2005 Dairy Disaster Assistance Payment Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a change made by a final rule published October 31, 2006 amending the regulations for the 2005 Dairy Disaster Assistance Payment Program (DDAP–II). A correction is needed because the final rule of October 31 incorrectly numbered the sections of the new subpart E that was added to 7 CFR part 1430.

DATES: *Effective Date:* October 31, 2006.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Regulatory Review Group, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0572, 1400 Independence Ave., SW., Washington, DC 20250–0572. Telephone: (202) 205–5851; e-mail: *Tom.Witzig@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule corrects the final rule published in the **Federal Register** on October 31, 2006 (71 FR 63668) that amended the regulations governing the 2005 Dairy Disaster Assistance Payment Program (DDAP–II) of the Commodity Credit Corporation (CCC). The final rule added a new subpart E, 2005 Dairy Disaster Assistance Program (DDAP–II). The sections of the new subpart were erroneously numbered as §§ 1430.300 through 1430.315. This document corrects the section numbers to be sections 1430.600 through 1430.615.

List of Subjects in 7 CFR Part 1430

Dairy, Disaster assistance, Reporting and recordkeeping requirements.

■ Accordingly, for this reason, 7 CFR part 1430 is amended as follows:

PART 1430—DAIRY PRODUCTS

■ 1. The authority citation for part 1430 continues to read as follows:

Authority: 7 U.S.C. 7981 and 7982; 15 U.S.C. 714b and 714c; Sec. 3014 of Pub. L. 109–234, 16 U.S.C. 3801 note, 120 Stat. 474.

■ 2. In subpart E, re-designate §§ 1430.300 through 1430.314 as §§ 1430.600 through 1430.614, respectively.

§ 1430.602 [Amended]

■ 3. In newly designated § 1430.602, in the definition of *base month*, revise the reference for ''§ 1430.304'' to read ''§ 1430.604''.

§ 1430.603 [Amended]

■ 4. In newly designated § 1430.603(b), revise the reference for ''§ 1430.302'' to read ''§ 1460.602''.

§ 1430.605 [Amended]

■ 5. In newly designated § 1430.605(a), revise the reference for ''§ 1430.306 to read ''§ 1430.606''.

§ 1430.606 [Amended]

■ 6. In newly designated § 1430.606:
■ A. In paragraph (a), revise the references to ''§ 1430.302'', ''1430.304(g)'' (two places), and ''§ 1430.305'' to read ''§ 1430.602'', ''§ 1430.604(g)'', and ''§ 1430.605'', respectively;
■ B. In paragraph (d), revise the reference to ''§ 1430.305'' to read ''§ 1430.605'';
■ C. In paragraph (e)(2), revise the reference to ''§ 1430.305'' to read ''§ 1430.605''; and
■ D. In paragraph (g), revise the reference to ''§ 1420.305'' to read ''§ 1430.605'';

§ 1430.607 [Amended]

■ 7. In newly designated § 1430.607:
■ A. In paragraph (a) introductory text, revise the reference to ''§ 1430.306'' to read ''§ 1430.606''; and
■ B. In paragraph (c), revise the reference to ''§ 1430.306'' to read ''§ 1430.606''.

§ 1430.609 [Amended]

■ 8. In newly designated § 1430.609, revise the references to ''§ 1430.307'' and ''§ 1430.308'' to read ''§ 1430.607'' and ''§ 1430.608'', respectively.

Signed in Washington, DC, on November 2, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–18800 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AD06

Penalty for Failure To Timely Pay Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is adopting its final rule amending its regulations concerning penalties for failure to timely pay assessments. The final rule adopts changes made by the Federal Deposit Insurance Reform Act of 2005 (''Reform Act''), which amended provisions of the Federal Deposit Insurance Act (''FDI Act''). The statute generally provides that an insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty of not more than 1 percent of the assessment due for each day the violation continues. The statute includes an exception if the failure to pay results from a dispute with the FDIC over the amount of the assessment and the institution deposits satisfactory security with the FDIC. The statute includes a provision covering assessment amounts of less than $10,000, which authorizes penalties up to $100 per day. Finally, the statute accords the FDIC discretion to

compromise, modify or remit any penalty imposed on a finding that good cause prevented timely payment. The final rule amends the FDIC's former rule concerning late assessment penalties, in conformity with these provisions of the Reform Act.

DATES: This final rule will become effective on January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Donna M. Saulnier, Senior Assessment Policy Specialist, DOF, (703) 562–6167; or William V. Farrell, Manager, Assessments Section, DOF, (703) 562–6168; or Christopher Bellotto, Counsel, Legal Division, (202) 898–3801; or Stephen T. Weisweaver, Attorney, Legal Division, (202) 898–6976.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2104 (c) of the Reform Act amends section 18(h) of the FDI Act, 12 U.S.C. 1828(h) (2000).[1] As described in its proposal, 71 FR 40938 (July 19, 2006), the FDIC added the present rule concerning late assessment penalties when it amended 12 CFR 308.132 pursuant to the Debt Collection Improvement Act of 1996 (''DCIA'').[2] *See* 61 FR 57987 (Nov. 12, 1996).[3] Accordingly, the FDIC increased the late assessment penalty amount from a maximum of $100, as originally established in section 18(h) of the FDI Act, to a maximum of $110 for each day the violation continues. *Id.*[4] This final rule amends the FDIC's late assessment penalty rule, 12 CFR 308.132(c)(3)(v), to reflect the changes made by section 2104(c) of the Reform Act. Section 2104(c) of the Reform Act changes the late assessment penalty from not more than $100 per day to not more than 1 percent of any assessment owed, per day that the violation continues, if the amount owed is $10,000 or more at the time the institution fails or refuses to pay the assessment. If the institution owes less than $10,000 at the time the institution fails or refuses to pay the assessment, then the amendment authorizes penalties up to $100 for each day that the violation continues. The Reform Act also provides for an exception if the failure to pay results from a dispute with the FDIC over the amount of the assessment and the institution deposits satisfactory security with the FDIC.

II. Comments Received

On July 19, 2006, the FDIC published in the **Federal Register** a notice of proposed rulemaking and request for comment, which reflected the proposed amendments to the late assessment penalties rule, 12 CFR 308.132(c)(3)(v). *See* 71 FR 40938. The FDIC received one substantive comment, which was from a trade association. It acknowledged the former late assessment penalty provisions were outdated and supported the FDIC's proposal. Therefore, the FDIC is adopting the proposed amendments to 12 CFR 308.132(c)(3)(v) with no changes in its final rule.

The trade association specifically supported the statutory provision that allows the FDIC to compromise, modify, or remit any penalty upon a determination that good cause prevented the timely payment of an assessment. It noted that natural disasters, such as Hurricane Katrina that struck the Gulf Coast in August of 2005, can affect numerous institutions' ability to pay assessments in a timely manner. The FDIC recognizes that situations may arise where a depository institution's failure to pay may be due to matters outside the control of the institution therefore establishing good cause for a failure to pay in a timely manner. After according an affected institution an opportunity to request a good cause determination, and when applicable because the FDIC and the institution are unable to resolve the matter, the FDIC will impose the penalty in the same manner as civil money penalties issued pursuant to section 8(i) of the FDI Act, 12 U.S.C. 1818(i) (2000).

III. Description of the Final Rule

Section 132(c)(3)(v) of part 308 is being amended by conforming it to the changes made by section 2104(c) of the Reform Act. The late assessment penalty is changed from a maximum of $110 per day (as previously adjusted under the Inflation Adjustment Act, *supra* note 2) to not more than 1 percent of the assessment owed, if the institution owes an assessment of $10,000 or more at the time the institution refuses or fails to pay any assessment.[5] Additionally, if the amount the institution fails or refuses to pay is less than $10,000, the rule authorizes penalties of up to $100 for each day that the violation continues. Finally, section 132(c)(3)(v) incorporates the statutory exception when the failure to pay results from a dispute with the FDIC over the amount of the assessment and the institution deposits satisfactory security with the FDIC. Section 132(c)(3)(v) also recognizes the FDIC's discretion to compromise, modify, or remit any penalty that the FDIC may assess upon a finding that good cause prevented the timely payment of an assessment.

IV. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The proposed rule requested comments on how the rule might be changed to reflect the requirements of GLBA. No GLBA comments were received.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that each Federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment. *See* 5 U.S.C. 603, 604, 605 (2000). The proposed rule stated that the late assessment penalty rule adopts statutory language enacted by Congress in the Reform Act. Therefore the rule would not create any additional economic impact because the only economic impact would result from the language of the statute. No comments were received concerning the proposal's RFA certification.

Additional factual bases exist for certifying that this final rule will not have a significant economic impact on a substantial number of small depository institutions, which are defined as having $165 million or less in assets. This final rule will not have an economic impact on a substantial number of small depository institutions because the assessments for a number of these institutions will remain below the $10,000 threshold limiting penalties to not more than $100 per day. Thus, the statutory changes adopted by this rule

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[1] *See* Federal Deposit Insurance Reform Act of 2005, section 2104(c), Public Law 109–171, 120 Stat. 9, 13.

[2] Public Law 104–134, 110 Stat. 1321–358, 373, amending section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (''Inflation Adjustment Act''), 28 U.S.C. 2461 (2000).

[3] The DCIA required the head of each Federal Agency to enact rules adjusting each Civil Money Penalty (''CMP''), under the agency's jurisdiction, by a rate of inflation prescribed in the DCIA.

[4] Section 2104(c) of the Reform Act effectively returns the late assessment penalty on assessments of less than $10,000 to the original amount of up to $100. The Inflation Adjustment Act, *supra* note 2, may require a readjustment of this amount in 2008.

[5] The FDIC can also initiate a termination of insurance proceeding, pursuant to section 8(a) of the FDI ACT, 12 U.S.C. 1818(a) (2000), when an institution withholds portions of its insurance assessments. *Doolin Security Savings Bank* v. *FDIC*, 53 F.3d 1395, 1408 (4th Cir. 1995).

will not change the penalty amount that can be imposed on these institutions. In cases where a small depository institution's assessment exceeds $10,000, the economic impact of this final rule is limited to 1% of the assessment amount for each day of delinquency. For example, a bank with $165 million in assets subject to a 5 basis point assessment would incur a daily penalty of less than $200 for every day that its quarterly assessment payment was late. Additionally, over the last two years, less than 1% of the approximately 5,521 small depository institutions invoiced for deposit insurance premiums and FICO assessments each year failed to timely pay their assessment. Therefore, this final rule will not have a significant economic impact on a substantial number of small depository institutions.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the final rule.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Rules and Policies on Families

The FDIC has determined that the final rule does not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

E. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties.

■ For the reasons set forth in the preamble, the FDIC hereby amends subpart H of 12 CFR 308 as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3 and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

■ 2. Revise paragraph (c)(3)(v) of section 308.132 as follows:

§ 308.132 Assessment of penalties.

* * * * *

(c) * * *

(3) * * *

(v) *Civil money penalties assessed pursuant to section 18(h) of the FDI Act for failure to timely pay assessment.*

(A) *In General.*—Subject to paragraph (c)(3)(v)(C) of this section, any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(B) *Exception In Case Of Dispute.*—Paragraph (A) of this section shall not apply if—

(*1*) The failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(*2*) The insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(C) *Special Rule For Small Assessment Amounts.*—If the amount of the assessment which an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (A) of this section shall not exceed $100 for each day that such violation continues.

(D) *Authority To Modify Or Remit Penalty.*—The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (c)(3)(v)(A) of this section upon a finding that good cause prevented the timely payment of an assessment.

* * * * *

Dated at Washington, DC, this 2nd day of November 2006.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–18804 Filed 11–8–06; 8:45 am]

BILLING CODE 6714–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 101 and 123

RIN 3245–AF42

Administration and Disaster Loan Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Direct final rule; correction.

SUMMARY: On October 31, 2006, SBA published in the **Federal Register** a direct final rule to amend SBA regulations to reflect the new structure of the Office of Disaster Assistance following an office reorganization (71 FR 63674). In the preamble to the regulation, SBA stated in the DATES section that this rule is effective November 30, 2006 without further action, unless adverse comment is received on or before the effective date. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**. SBA is correcting the DATES caption for this direct final rule to clarify the timeframe for public comment, and to allow sufficient time for SBA to withdraw the rule if any significant adverse comments are received.

DATES: Effective November 9, 2006.

FOR FURTHER INFORMATION CONTACT: James E. Rivera, Deputy Associate Administrator for Disaster Assistance, 409 3rd Street, SW., Washington, DC 20416; (202) 205–6734; fax (202) 205–7728; or e-mail *James.Rivera@sba.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. E6–18246 appearing on page 63674 in the **Federal Register** on Tuesday, October 31, 2006, the following correction is made:

On page 63674, in the third column the DATES heading is corrected to read as follows:

DATES: This rule is effective December 15, 2006 without further action, unless significant adverse comment is received by November 30, 2006. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

(Authority: 15 U.S.C. 634)