

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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: Invitation To Submit Comments on Proposed Amendments to the Fluid Milk Promotion Order

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

**ACTION:** Proposed rule.

**SUMMARY:** This document invites comments on a proposed amendment to the Fluid Milk Promotion Order (Order). The proposed amendment, requested by the National Fluid Milk Processor Promotion Board (Board), which administers the Order, would reduce the burden of late-payment charges applied to processors who underreport the amount of assessments which they owe to the Board, provided that the processor has not made more than two reporting errors in the prior 12 months. This amendment would reduce the burden of late-payment charges on processors who underpay assessments due to unintentional errors or miscalculations. The Board believes the late-payment charge is a necessary provision of the Order to encourage payment by all processors subject to the assessment and helps ensure the receipt of assessments owed to the Board. However, the Board also believes that there are instances when unintentional errors and miscalculations occur, and in such cases, the late-payment charge could be viewed as excessive. All other provisions of the Order would remain unchanged.

**DATES:** Comments must be submitted on or before February 27, 2008.

**ADDRESSES:** Comments on this proposed rule should be identified with the docket number AMS-DA-07-0156; DA-05-07. Commenters should identify the date and page number of the issue of the

Proposed Rule. Interested persons may comment on this proposed rule using any of the following procedures:

- **Mail:** Comments may be submitted by mail to Whitney A. Rick, Chief, Promotion and Research Branch, Dairy Programs, AMS, USDA, 1400 Independence Ave., SW., Room 2958-S, Stop 0233, Washington, DC 20250-0233.

- **Internet:** [www.regulations.gov](http://www.regulations.gov). All comments to this proposed rule, submitted by the above procedures will be available for viewing at: [www.regulations.gov](http://www.regulations.gov), or at USDA, AMS, Dairy Programs, Promotion and Research Branch, Room 2958-S, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday, (except on official Federal holidays). Persons wanting to view comments in Room 2958-S are requested to make an appointment in advance by calling (202) 720-6909.

#### FOR FURTHER INFORMATION CONTACT:

Whitney A. Rick, Chief, Promotion and Research Branch, Dairy Programs, AMS, USDA, 1400 Independence Ave., SW., Room 2958-S, Stop 0233, Washington, DC 20250-0233. Phone: (202) 720-6909. E-mail: [Whitney.Rick@usda.gov](mailto:Whitney.Rick@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Fluid Milk Promotion Order is issued under the Fluid Milk Promotion Act as amended [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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. If adopted, this rule would 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 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 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 proposed 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 as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. As of June 2007, there were approximately 100 fluid milk processors subject to the provisions of the Order. Most of these processors are considered 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.

#### Background and Proposed Changes

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 section 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 section 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 section 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 section 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.

The Board has proposed an amendment to section 1160.213 of the Order so that processors who mistakenly underreport their pounds of fluid milk processed and marketed commercially (excluding direct delivery to the residence of a consumer) will not be required to pay late-fee charges on additional assessments owed the 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 section 1160.214 of the Order. This amendment would reduce the burden of late-payment charges in instances of assessment miscalculations.

The Board believes the late-payment charge is a necessary provision of the Order to encourage payment by all processors subject to the assessment and

helps ensure receipt of assessments owed to the Board. However, the Board believes that the late-payment charge could be viewed as excessive when applied to processors in instances of unintentional errors and miscalculations. The proposed amendment to the Order would not add any additional burden to the regulated parties because it relates only to provisions concerning adjustment of accounts.

In fact, the proposed rule would amend the Order to reduce the burden of late-fee charges applied to processors who underreport due to unintentional errors and miscalculations.

A thirty day comment period is provided for interested persons to comment on this proposed action. All comments received by February 27, 2008 will be considered. A thirty day period for public comment is deemed appropriate in order to implement the proposed changes, if adopted, as soon as possible.

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

Fluid milk, Milk, Promotion.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1160 be 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 twelve-month period, late-payment charges assessed pursuant to Section 1160.214 shall not begin to accrue until the day following such date. For all additional erroneous reports submitted by a processor during the twelve-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: January 18, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–1433 Filed 1–25–08; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE286; Notice No. 23–08–03–SC]

#### Special Conditions: Embraer S.A., Model EMB–500, Airspeed Indicating System 23.1323(e)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for the Embraer Model EMB–500 airplane. This airplane will have a novel or unusual design feature(s) associated with airspeed system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Comments must be received on or before February 27, 2008.

**ADDRESSES:** Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, 901 Locust, Room 506, Kansas City, Missouri 64106. You may deliver two copies to the Small Airplane Directorate at the above address. Mark your comments: Docket No. CE286. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** J. Lowell Foster, Small Airplane Directorate Standards Office, ACE–111, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Kansas City, MO 64106; telephone (816) 329–4125; facsimile (816) 329–4090.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special