

included in the Fluid Milk Promotion Order have been approved 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.

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

Milk, Fluid milk products, Promotion.

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

Dated: November 20, 1995.

Shirley R. Watkins,

Acting Assistant Secretary Marketing and Regulatory Programs.

[FR Doc. 95-28769 Filed 11-24-95; 8:45 am]

BILLING CODE 3410-02-P

#### 7 CFR Part 1208

[FV-95-702PR]

#### Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order—Postponement of Payment of Assessments

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule specifies general rules and regulations to be established under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order (Order). The Order is authorized under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993. This rule would implement a provision of the Order concerning the postponement of the payment of assessments. This action would create a form and establish procedures for qualified handlers to request the postponement of the payment of up to six months of assessments to the National PromoFlor Council. In addition, in accordance with the Paperwork Reduction Act of 1995, this proposed rule specifies the public reporting burden for the collection of information for requesting a postponement of payment of assessments.

**DATES:** Comments must be received by January 26, 1996.

**ADDRESSES:** Interested persons are invited to submit written comments concerning the proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular

business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register. Also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address.

**FOR FURTHER INFORMATION CONTACT:**

Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2535-S, Washington, DC 20090-6456, telephone (202) 720-9916.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 (Pub. L. 103-190), (7 U.S.C. 6801 *et seq.*) hereinafter referred to as the Act.

This proposed rule has been issued in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. 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 8 of the Act, a person subject to the order may file a petition with the Secretary stating that the order or any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

#### Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Only those wholesale handlers, retail distribution centers, producers, and importers who have annual sales of \$750,000 or more of cut flowers and greens and who sell those products to exempt handlers, retailers, or consumers are considered qualified handlers and assessed under the Order. There are approximately 900 wholesaler handlers, 150 importers, and 200 domestic producers who are qualified handlers.

The majority of these qualified handlers would be classified as small businesses. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5 million. Statistics reported by the National Agricultural Statistics Service show that 1994 sales at wholesale of domestic cut flowers and greens total approximately \$559.6 million while the value of imports during 1994 was approximately \$382 million. The leading States in the United States producing cut flowers and greens, by wholesale value, are California, which produces approximately 59 percent of the domestic crop, followed by Florida, Colorado, and Hawaii. Major countries exporting cut flowers and greens into the United States, by value, are Columbia, which accounts for approximately 60 percent, followed by The Netherlands, Mexico, and Costa Rica.

The Administrator of the AMS has determined that this rule would not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

While this proposed rule would impose certain recordkeeping requirements on qualified handlers that request a postponement of the payment of assessments, most of the information required under the proposed rule could be compiled from records currently maintained. Thus, any added burden resulting from increased recordkeeping would not be significant when compared to the benefits that should accrue to such businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), a form to request the postponement of the payment, "Application for Postponement of Payment of PromoFlor Assessment", has been submitted to OMB for approval.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .25 hours per response for each qualified handler requesting a postponement of payment of assessment.

*Respondents:* Qualified handlers as defined in the Act.

*Estimated Number of Respondents:* 5.  
*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1.25 hours.

Copies of this information collection can be obtained from Sonia N. Jimenez at (202) 720-9916 or at the address listed above.

#### Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a national cut flowers and greens promotion and consumer information program. The program is funded by an assessment of 1/2 percent of gross sales of cut flowers and greens which is levied on qualified handlers.

This proposed rule would provide rules and regulations needed to implement provisions of the Order. Section 1208.55 of the Order provides for postponement of collections (7 CFR 108.55; 59 FR 67139). That section provides that the Council may grant a postponement of the payment of an assessment for any qualified handler that establishes that it is financially unable to make the payment.

Section 1208.100 of this rule would provide that the definitions for this subpart are the same as those prescribed in §§ 1208.1 through 1208.24 of the Order.

Section 1208.150 would provide for the postponement of the payment of assessments under certain circumstances. The Order provides for the postponement of the payment of assessments by a qualified handler if the payment of such assessment is determined to be a financial burden for the handler. Section 1208.55 of the Order states that "The Council may grant a postponement of an assessment under this subpart for any qualified handler that establishes that it is financially unable to make the payment \* \* \*" In addition, the Order establishes that the Council shall develop forms and procedures for a qualified handler to request and for the Council to grant the postponement of the payment of assessments.

The Council met on September 11, 1995, and determined that, in order for a request for the postponement of assessments to be granted, the requester should comply with the following: (1) Submit a written opinion from a Certified Public Accountant stating that the handler making the request is insolvent or will be unable to continue to operate if the handler is required to pay the assessment when due and (2) submit copies of the last three years'

federal tax returns. These two requirements are needed to verify that the qualified handler is financially unable to make the payment of the assessments due and that the postponement of payment, if granted, complies with the requirements set forth in the Order. In addition, the requester should submit to the Council a form "Application for Postponement of Payment of PromoFlor Assessments." This collection of information would be authorized under OMB number 0581-0093 and would have an expiration date of January 31, 1997.

The period for which the postponement of the payment of the assessments is requested may not exceed six (6) months. Within that period of six (6) months, the qualified handler would be exempt from paying assessments beginning with the month for which the request for postponement is filed with the Council and for no more than six (6) months. The handler must provide a reason for the request as well as detailed information concerning the handler's name, address, telephone and fax numbers, the month(s) for which the request is made, the percent of the outstanding debt to be paid by month after the postponement of payment is granted, and the starting date for the payment. Furthermore, an authorized individual must sign and return the form to the Council's office.

Any late payment would make the agreement null and all assessments due would need to be paid in their entirety at that time. In addition, the Council agrees to forgo any late fee charges and interest for the duration of the agreement.

The request must be made no later than 30 days after the assessments were due. In addition, after the postponement period has concluded, the requester must pay the percentage of the outstanding debt agreed to be paid by month and the assessments due for the current month. Assessments due after the postponement of payment is completed would not be postponed unless an extension of time for payment is granted. If an extension of time is requested, new documentation must be provided for the Council to determine whether to grant the extension of time for the postponement of the payment of assessments. The same procedures used for the initial request must be used to grant an extension.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter. All responses regarding the information collection will be

summarized and included in the request for OMB approval.

#### List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements—Cut flowers, Cut greens, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1208 is proposed to be amended as follows:

#### **PART 1208—FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION ORDER**

1. The authority citation for 7 CFR Part 1208 continues to read as follows:

Authority: 7 U.S.C. 6801 et seq.

2. In Part 1208 a new subpart B is added to read as follows:

#### **Subpart B—Rules and Regulations**

##### Definitions

##### Sec.

1208.100 Terms defined.

##### Assessments

1208.150 Procedures for postponement of assessments.

#### **Subpart B—Rules and Regulations**

##### Definitions

##### **§ 1208.100 Terms defined.**

Unless otherwise defined in this subpart, definitions or terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order.

##### Assessments

##### **§ 1208.150 Procedures for postponement of collections.**

(a) For a request for postponement of the payment of assessments to be granted the qualified handler must comply with the following: Submit a written opinion from a Certified Public Accountant stating that the handler making the request is insolvent or will be unable to continue to operate if the handler is required to pay the assessments when due and submit copies of the last three years' federal tax returns. The request must be in writing no later than 30 days after the assessments for which the postponed payment is requested are due. The period for which the postponement of the payment of assessments is requested may not exceed six (6) months. The written request must specify:

(1) A reason for the request;

(2) Detailed information concerning the qualified handler's name, address, and telephone and fax numbers;

(3) The month(s) for which the request is made;

(4) Total assessments due;

(5) The percent of the outstanding debt to be paid each month after the postponement of payment is granted; and

(6) The starting date for the payment of assessments due.

(b) At the end of the postponement period, the qualified handler must pay the percentage of assessments due specified per month and the current month assessment due. If an extension of time is requested, new documentation must be provided for the Council to determine whether to grant the extension. The same procedures used for the initial request will be used to grant any extension.

Dated: November 20, 1995.

Robert C. Kenny,

Director, Fruit and Vegetable Division.

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## Animal and Plant Health Inspection Service

### 9 CFR Part 113

[Docket No. 93-128-1]

#### Viruses, Serums, Toxins, and Analogous Products; Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Standard Requirement for Encephalomyelitis Vaccine, Eastern and Western, Killed Virus, by specifying requirements for killed Venezuelan equine encephalomyelitis vaccines and revising the standard potency test for eastern and western encephalomyelitis vaccines. The effect of the proposed amendment would be to require the use of Vero 76 cells in the test to evaluate the potency of Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus, and to establish minimum antibody titers which must be elicited by each of the indicated fractions, as determined by a plaque reduction, serum neutralization assay in which Vero 76 cells are used.

**DATES:** Consideration will be given only to comments received on or before January 26, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to

Docket No. 93-128-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 93-128-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead (202)-690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737-1237, (301) 734-8245.

#### SUPPLEMENTARY INFORMATION:

##### Background

In accordance with the regulations contained in 9 CFR part 113, standard requirements are prescribed for the preparation of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service to help ensure that veterinary biological products are pure, safe, potent, and efficacious.

The standard requirement for Encephalomyelitis Vaccine, Eastern and Western, Killed Virus, in § 113.207, specifies minimum potency requirements for such products. A serial of Eastern and Western equine encephalomyelitis vaccine must induce at least minimum antibody titers in guinea pigs specific for each fraction. The current standard requirement states that titers are to be determined in a plaque reduction, serum neutralization test but does not specify the cell type to be employed in the test. Primary duck embryo fibroblasts (DEF) were once considered the cells of choice; however, difficulties in producing acceptable DEF cultures are often encountered and results obtained with such cultures are not always consistent. These problems are not seen with cells of the Vero (African green monkey kidney) 76 cell line.

This proposed rule would revise the standard requirement in § 113.207 to require that cells of the Vero 76 cell line be used in encephalomyelitis vaccine potency tests. It would also revise the standard requirement by changing the minimum specific antibody titers from 1:4 to 1:40 for Eastern equine encephalomyelitis virus (EEV) and 1:32 to 1:40 for Western EEV. Extensive correlation work performed by the

National Veterinary Services Laboratories (NVSL) indicates these new minimum specific antibody titers as measured using Vero 76 cells are equivalent to those currently specified in the standard requirement as measured with DEF.

In addition, the proposed rule would revise the standard requirement to establish standard test requirements for Encephalomyelitis Vaccine, Venezuelan, Killed Virus, and set 1:4 as the minimum specific antibody titer such vaccines must obtain to pass the potency test. The Agency has determined that a product that induces an anti-Venezuelan equine encephalomyelitis virus titer (as measured using Vero 76 cells) in guinea pigs of 1:4 or greater should protect horses against disease caused by that virus.

This proposed rule would establish uniform test requirements for all killed vaccines for the prevention of Venezuelan equine encephalomyelitis and would revise the current potency test to make it more reliable and consistent. Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would revise the standard requirement in § 113.207 for Encephalomyelitis Vaccine, Eastern and Western, Killed Virus, by specifying a different cell type for use in the potency test assay and specifying different minimum specific antibody titers that must be achieved for a satisfactory test. In addition, the proposed rule would revise the standard requirement so that it would also apply to Encephalomyelitis Vaccine, Venezuelan, Killed Virus. The Agency believes the titers given in the standard requirement are adequately correlated with claimed efficacy and that they would be readily obtained by all relevant vaccines currently licensed. We do not expect any increase in cost to the biologics manufacturers affected by this proposed rule. The changes should actually decrease costs for most impacted manufacturers, since fewer repeat tests will be needed and obtaining Vero 76 cells should prove less expensive than procuring primary DEF.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not