

served upon the petitioner or the program by mail or in person. Written exceptions to the findings may be filed within 10 days after service thereof.

(v) After due consideration of all the facts and the exceptions, if any, the Director of the Dairy Division shall issue a final decision setting forth the action to be taken and the basis for such action.

[49 FR 11816, Mar. 28, 1984, as amended at 56 FR 8258, Feb. 28, 1991; 76 FR 14791, Mar. 18, 2011]

**§ 1150.154 Influencing governmental action.**

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

**§ 1150.155 Adjustment of accounts.**

(a) Whenever the Board or the Department determines through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board in accordance with 1150.152(a), such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in §1150.152(a). Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

(b) Any importer of dairy products against whose imports an assessment has been collected under §1150.152(b) who believes that such assessment or any portion of such assessment was made on milk solids of U.S. origin or milk solids other than cow's milk may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment for milk solids from milk produced from the U.S. or milk solids other than cow's milk solids. The Secretary will instruct the Board to send such reimbursement to the importer.

[76 FR 14791, Mar. 18, 2011]

**§ 1150.156 Charges and penalties.**

(a) *Late-payment charge.* Any unpaid assessments due to the Board pursuant to §1150.152 shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(1) For the purpose of this section, any assessment pursuant to §1150.152(a) that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(2) For the purpose of this section, any assessment not collected by CBP at the time entry summary documents are filed by the importer is considered to be past due. If CBP does not collect an assessment from an importer, the importer shall be responsible for paying the assessment and any late charges to the Secretary in the form of a negotiable instrument made payable to "USDA." The payment shall be mailed to a location designated by the Secretary or sent in an electronic form approved by the Secretary.

(b) *Penalties.* Any person who willfully violates any provision of this subpart shall be assessed a civil penalty by the Secretary of not more than the amount specified in §3.91(b)(1)(xx) of this title for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by this subpart, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States. The remedies provided in this section shall be in addition to, and not exclusive of,

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other remedies that may be available by law or in equity.

[49 FR 11816, Mar. 28, 1984, as amended at 70 FR 29579, May 24, 2005; 76 FR 14791, Mar. 18, 2011]

### § 1150.157 Assessment exemption.

(a) A producer described in § 1150.152(a)(1) and (a)(2) who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for exemption under this section, a producer pursuant to § 1150.152 (a)(1) and (a)(2) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If a producer described in § 1150.152(a)(1) and (a)(2) complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer described in paragraph (c) of this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the Board on behalf of the producer pursuant to § 1150.152(a).

(f) The person responsible for remitting assessments to the Board pursuant to § 1150.152(a) shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board pursuant to § 1150.172(a).

(g) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic dairy products—on a form provided by the Board—at any time initially and annually thereafter as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation.

(h) The exemption will apply not later than the last day of the month following the Certificate of Exemption issuance date.

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.