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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA-95-15]

Dairy Promotion Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Dairy Promotion and Research Order to modify the term expiration date of National Dairy Board members, effective December 1, 1995. The National Dairy Promotion and Research Board feels this action is necessary to enable it to operate more effectively.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Silvio Capponi, Jr., Deputy Director, USDA/AMS/Dairy Division, Room 2953, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-4664.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Invitation to Submit Comments on Proposed Amendment to the Order: Issued June 1, 1995; published June 7, 1995 (60 FR 30013).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amendment modifies the term expiration date of National Dairy Board members and will not have an economic effect on any entity engaged in the dairy industry.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Dairy and Tobacco Adjustment Act of 1983 provides in section 121(a) that nothing in the Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

The Dairy and Tobacco Adjustment Act of 1983 provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 118(a) of the Act, any person subject to an order issued under the Act may file with the Secretary a petition stating that any such order or any provisions of the order or obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A petitioner is afforded the opportunity for a hearing on the petition. After the 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 carries on 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.

Notice of the proposed amendment to the order was published in the Federal Register on June 7, 1995 (60 FR 30013), concerning the change in the term expiration date for National Dairy Board members. Interested persons were afforded an opportunity to file written data, views and arguments by July 7, 1995. One comment was received.

Statement of Consideration

Section 1150.132(b) of the Dairy Promotion and Research Order currently provides that each member of the National Dairy Board shall serve until April 30 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed. The amendment modifies the term expiration date of Board members from April 30 to October 31.

The National Dairy Promotion and Research Board, which administers the order, originally proposed that the term expiration date of Board members be

changed from April 30 to November 30. However, the Board modified its proposed term expiration date to October 31 in a comment letter submitted in response to the proposed amendment.

The Board anticipates that its annual meeting will be held at the end of November. It contends that the modification will enable Board members whose terms are expiring to conclude the program year and allow the terms of new Board members to begin prior to the election of officers at its annual meeting.

The modified amendment request should be granted. The amendment will take effect December 1, 1995, to allow current Board members whose terms would expire on April 30, 1996, to serve until October 31, 1996. Thus, the amendment will allow the Board to operate more effectively to conclude yearly business in a timely manner.

List of Subjects in 7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1150, is amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: Pub. Law 98-180, 97 Stat 1128.

2. Section 1150.132(b) is revised to read as follows:

§ 1150.132 Term of Office.

* * * * *

(b) Each member of the Board shall serve until October 31 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed.

* * * * *

Dated: October 4, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95-25334 Filed 10-12-95; 8:45 am]

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