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 1079

[DA–98–07]

Milk in the Iowa Marketing Area; Termination of Proceeding on Proposed Temporary Revision of Pool Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed temporary revision of rule.

SUMMARY: This action terminates a proceeding that was initiated to consider a proposal to reduce temporarily the pooling standards for supply plants regulated by the Iowa Federal milk order. The proposal, which would reduce the shipping requirement for the months of September through November 1998 from 35 percent to 25 percent, was made by the operator of a pool supply plant. A fluid milk handler and a cooperative association representing a substantial number of the producers on the market submitted views and arguments opposing the temporary revision. In addition, the fluid milk handler suggested that the shipping requirements be increased by 5 percentage points for the same period. The Department has concluded that it will not temporarily reduce the shipping requirement for supply plants as proposed.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 720–2357, e-mail address: connie____brenner@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision: Issued July 21, 1998; published July 27, 1998 (63 FR 40068).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This proceeding was initiated by a notice of rulemaking published in the **Federal Register** on July 27, 1998 (63 FR 40068) concerning a proposed relaxation in the shipping requirement for pool supply plants for the months of September through November 1998. Interested parties were afforded 30 days in which to comment on the proposal by submitting written data, views, or arguments. Comments were received from three interested parties.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler'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.

For the month of March 1998, 3,768 dairy farmers were producers under the Iowa Order. Of these, all but 68 would be considered small businesses, having under 326,000 pounds of production for the month. Of the dairy farmers in the small business category, 2,682 produced under 100,000 pounds of milk, 876 produced between 100,000 and 200,000, and 142 produced between 200,000 and 326,000 pounds during March 1998.

Generally, the reports filed on behalf of the slightly more than 20 milk plants pooled, or regulated, under the Iowa Order in March 1998 were filed for establishments that would meet the SBA definition of a small business on an individual basis, having less than 500 employees. However, all but four of the milk handlers represented in the market are part of larger businesses that operate multiple plants at which their collective size exceeds the SBA definition of a small business entity.

Interested parties were invited to submit comments on the probable regulatory and informational impact of the proposed temporary revision on small entities, or to suggest modifications of the proposal for the purpose of tailoring their applicability to small businesses. No comments addressing the potential impact of the proposed action on small entities were received.

The reduction of the required supply plant shipping percentage for the months of September through November 1998 was proposed to allow the milk of producers traditionally associated with the Iowa market to continue to be pooled and priced under the order. A temporary revision was intended to lessen the likelihood that more milk shipments to pool plants might be required under the order than are actually needed to supply the fluid milk needs of the market, resulting in savings in hauling costs for handlers and producers.

However, based upon comments received, there are indications that the temporary revision could make it more difficult for handlers to obtain supplies of milk needed to supply the fluid needs of the market. It is not clear that the current supply plant shipping percentage will cause uneconomic shipments of milk. The Department has concluded that it will not temporarily reduce the shipping requirement for supply plants as proposed.

Statement of Consideration

This document terminates the proceeding initiated to temporarily reduce the pool supply plant shipping standards of the Iowa Federal milk order. Beatrice Cheese, Inc. (Beatrice), which operates a supply plant regulated under the Iowa milk order, requested a temporary reduction in the supply plant shipping requirement of 10 percentage points. Beatrice stated that a decrease was warranted due to a surplus of raw milk supplies available for fluid use over the needs of the fluid milk plants regulated under the Iowa order. Beatrice stated that if the pool supply shipping percentages remain unchanged, Beatrice would be forced to move milk

uneconomically or unfairly depool some milk produced by Iowa dairymen, denying them participation in the Order 79 pool.

Another proprietary cheese plant operator submitted comments supporting the proposed temporary revision, citing conditions requiring uneconomic shipments of milk or the need to depool milk to meet order requirements in 1996 when the shipping percentage was also at 35 percent.

Comments filed on behalf of Anderson-Erickson Dairy Company of Des Moines, Iowa (Anderson-Erickson), opposed the proposed temporary revision on the basis that, although there appears to be a sufficient supply of milk in the marketing area, that supply is not being made available as needed by fluid processing plants. Anderson-Erickson stated that it had requested additional fluid milk supplies from Beatrice for the fall season of traditionally high Class I use and been refused. Anderson-Erickson stated that the dairy has diligently pursued a substitute milk supply by contacting other sources of milk in and around Iowa. While its efforts succeeded to some extent in supplementing Anderson-Erickson's milk supply, the fluid milk handler stated that it would still fall short of its raw milk needs by nearly 2.5 million pounds per month beginning September 1998.

Anderson-Erickson requested that, since milk supplies appear to be limited for fluid use, USDA consider increasing the Iowa pool supply plant shipping percentage for the months of September through November 1998 by 5 percentage points instead of reducing them by 10 percentage points.

Associated Milk Producers, Inc., North Central AMPI (AMPI), filed a comment stating that current marketing conditions make it extremely difficult to determine Class I needs relative to available milk supply in the market. However, the cooperative association stated that its customer, Anderson-Erickson, is requesting more milk than it was a year earlier. The cooperative concluded that a reduction in shipping requirements does not appear to be appropriate at present.

There are no indications that milk supplies in the Iowa marketing area are any more plentiful for the fall months of 1998 than they were for the same months of 1997. As noted in the AMPI comment, current pricing relationships, the pooling of some milk supplies under other orders, and the failure of handlers to pool their full milk supplies make it very difficult to form any definitive conclusions about the supply and demand of producer milk for fluid use. However, the difficulty of a fluid milk handler in assuring an adequate supply of milk for its bottling needs, even with the procurement of additional sources, would indicate that the percentage shipping standards required for pooling should not be reduced. It is not clear that the current supply plant shipping percentage will cause uneconomic shipments of milk.

In view of the above circumstances, it is concluded that the supply plant shipping requirement should not be revised for the months of September through November 1998. Accordingly, the proceeding begun on this matter on July 21, 1998, is hereby terminated.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on September 8, 1998.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 98–24534 Filed 9–11–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 3

[EOIR No. 122P; AG Order No. 2177–98]

RIN 1125–AA22

Board of Immigration Appeals: Streamlining

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a streamlined appellate review procedure for the Board of Immigration Appeals. The proposed rule is in response to the enormous and unprecedented increase in the number of appeals being filed with the Board. The rule recognizes that in a significant number of the cases the Board decides, the result reached by the adjudicator below is correct and will not be changed on appeal. In these cases, a single permanent Board Member will be given authority to review the record and affirm the result reached below without issuing an opinion in the case. This procedure will promote fairness by enabling the Board to render decisions in a more timely manner, while allowing it to concentrate its resources primarily on those cases in which the decision below may be incorrect, or where a new or significant legal or procedural issue is presented. In addition, the proposed rule provides that a single Board Member or the Chief Attorney Examiner may adjudicate certain additional types of cases, motions, or other procedural or ministerial appeals, where the result is clearly dictated by the statute, regulations, or precedential decisions.

DATES: Written comments must be submitted on or before November 13, 1998.

ADDRESSES: Please submit written comments to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305–0470.

FOR FURTHER INFORMATION CONTACT: Margaret Philbin, (703) 305–0470.

SUPPLEMENTARY INFORMATION: The mission of the Board of Immigration Appeals is to provide fair and timely immigration adjudications and authoritative guidance and uniformity in the interpretation of the immigration laws. The rapidly growing number of appeals being filed with the Board has severely challenged the Board's ability to accomplish its mission and requires that new case management techniques be established and employed.

In 1984, the Board received fewer than 3,000 cases. In 1994, it received more than 14,000 cases. In 1997, in excess of 25,000 new appeals were filed. There is no reason to believe that the number of appeals filed is likely to decrease in the foreseeable future, especially as the number of Immigration Judges continues to increase.

At the same time that the number of appeals filed has increased, the need for the Board to provide guidance and uniformity to the Immigration Judges, the Immigration and Naturalization Service, affected individuals, the immigration bar, and the general public has grown. The Board now reviews the decisions of over 200 Immigration Judges, whereas there were 69 Judges in 1990 and 86 Judges in 1994. The frequent and significant changes in the complex immigration laws over the last several years, including a major overhaul of those laws in September 1996, also highlight the continued need for the Board's authoritative guidance in the immigration area, as does the fact that the recent legislation drastically reduced the alien's right to judicial review.

The Attorney General has made efforts to aid the Board in handling its