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]

BILLING CODE 3410–02–P

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

burgeoning caseload by increasing its size from 5 to 12 members in 1995 and by recently authorizing the addition of three additional permanent Board Members, bringing the total to 15 Board Members. Significant staff increases have accompanied the expansion of the Board.

To meet its overriding objective of providing fairness in adjudicating appeals, the Board must achieve four goals. It must: (1) Provide authoritative guidance and uniformity through high quality appellate decisions; (2) decide all incoming cases in a timely and fair manner; (3) assure the correctness of the results in individual cases; and (4) eliminate the backlog of cases.

To accomplish these goals under current conditions, the Board must limit its three-Member panel, quasi-judicial decision-making process to those cases where there is a realistic chance that review by a three-Member panel will change the result below. Accordingly, the proposed rule would add a new provision, 8 CFR 3.1(a)(5), giving the Board authority; by action of a single permanent Board Member, to affirm the result below without an opinion where: (1) The result reached in the decision under review was correct; (2) any errors in the decision under review were harmless or nonmaterial; and (3) either (a) the issue on appeal is squarely controlled by existing Board of federal court precedent and does not involve the application of such precedent to a novel fact situation; or (b) the factual and legal questions raised on appeal are so insubstantial that three-Member review is not warranted.

An affirmance without opinion would be issued only if no legal or factual basis for reversal of the decision below is apparent. If an appellant makes a substantial argument for reversal, the case would not be appropriate for affirmance without opinion. At the same time, an affirmance without opinion would relate only to the *result* below; it would not necessarily imply that the Board approved or adopted all the reasoning of the decision below, or that there were no harmless or nonmaterial errors in the decision below. The decision below would be the final administrative decision for judicial review purposes.

If the single permanent Board Member finds the case appropriate for affirmance without opinion, that Board Member will sign a simple order to that effect, without additional explanation or reasoning. If the Board finds affirmance without opinion inappropriate, the case will be assigned to a three-Member panel for review and decision. Thus, an affirmance without opinion is a determination that the result reached below is correct and that the case does not warrant three-Member review. The three-Member panel also will have authority to affirm without opinion, where it determines such disposition is appropriate. This new procedure will enable the Board Members to concentrate their time and efforts on those cases in which there is a chance that the result below was incorrect, as well as on cases involving new or significant legal issues.

Proposed 8 CFR 3.1(a)(5) would also give the Chairman authority to designate certain categories of cases as suitable for affirmance without opinion by a single permanent Board Member or by a three-Member panel. These categories may include, but are not limited to, the following: (1) Cases challenging findings of fact where the findings below are not against the weight of the evidence; (2) cases controlled by precedents of the Board, the controlling United States Court of Appeals, or the United States Supreme Court where there is no basis for overruling or distinguishing the precedent; (3) cases seeking discretionary relief for which the appellant clearly appears to be statutorily ineligible; (4) cases challenging discretionary decisions where it does not appear that the decision-maker has applied the wrong criteria or deviated from precedents of the Board or the controlling law from the United States Court of Appeals or the United States Supreme Court; and (5) cases challenging only procedural rulings or deficiencies that do not appear to be material to the outcome of the case.

The rules also authorizes the Chairman to designate, and change as the Chairman deems appropriate, who from among the permanent Board Members is authorized to affirm cases without opinion.

The proposed rule also amends the regulation regarding motions to reconsider to state that a motion to reconsider based solely on the argument that the case should have been heard by a three-Member panel, or otherwise should not have been summarily affirmed without a full opinion, is barred. This is set forth at 8 CFR 3.2(b)(3). Otherwise, the standard motions to reconsider and/or reopen would be allowed, but would be subject to all the regular requirements and restrictions regarding motions, including the time and number limitations.

In addition to providing for a new procedure for affirmance without opinion by a single Board Member, the proposed rule also provides that a single Board Member or the Chief Attorney Examiner may adjudicate certain motions or other procedural or ministerial appeals. Presently, the regulations allow a single Board Member or the Chief Attorney Examiner to adjudicate unopposed motions or motions to withdraw an appeal. *See* 8 CFR 3.1(a). The proposed rule designates additional categories of cases as suitable for disposition by a single Board Member or the Chief Attorney Examiner. Unlike the procedure described above for single Board Member affirmance without opinion, these dispositions will not generally be affirming a result below. Rather, in these cases, a single fact easily identified in the record of proceedings dictates the result directly through a statute, a regulation, or a controlling precedent, with little or no discretion required. Dispositions under this procedure are separate and distinct from affirmances without opinions.

Under the proposed rule, the additional instances in which a single Board Member or the Chief Attorney Examiner may adjudicate a matter under section 3.1(a)(1) are: (1) a Service motion to remand an appeal from the denial of a visa petition where the Regional service Center Director requests that the matter be remanded to the Service for further consideration of the appellant's arguments or evidence raised on appeal; (2) a case in which remand is required because of a defective or missing transcript; and (3) other procedural or ministerial adjudications as provided by the Chairman (for example, to dismiss an appeal as moot where the alien has since become a lawful permanent resident).

The proposed rule also amends the regulation regarding summary dismissals of appeals, presently set forth at 8 CFR 3.1(d)(1–a). The revised rule, redesignated as section 3.1(d)(2), adds to the existing rule other types of cases appropriate for summary dismissal, specifies that a single Board Member or Chief Attorney Examiner has the authority to dispose of such cases, and authorizes the Chairman to designate who from among the Board Members and Chief Attorney Examiner may exercise this authority Summary dismissal is also a procedure separate and distinct from affirmance without opinion.

In addition to the existing grounds for summary dismissal, this rule adds dismissals for lack of jurisdiction including (1) cases in which the appeal or motion does not fall within the Board's jurisdiction; (2) cases in which jurisdiction over a motion lies with the

Immigration Judge rather than with the Board; (3) untimely appeals and motions; and (4) cases in which it is clear that the right of appeal was affirmatively waived.

The complexity of the language of this streamlining rule clearly indicates the need for a complete reorganization of Part 3 of 8 CFR. The Executive Office for Immigration Review is presently working on such a reorganization. This proposed rule is being published in advance of that reorganization because of the urgent need to implement the streamlining procedures without delay.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this proposed rule affects only individuals in immigration proceedings before the Executive Office for Immigration Review whose appeals are decided by the Board of Immigration Appeals. Therefore, this proposed rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This proposed rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly has not been submitted to OMB for review.

Executive Order 12612

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 12612, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

Executive Order 12988

The proposed rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of Untied States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

Accordingly, part 3 of chapter 1 of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100.

2. Section 3.1 is amended by:

a. Adding two sentences at the end of paragraph (a)(1);

b. Adding a new paragraph (a)(7);

c. Redesignating paragraphs (d)(1–a), (2), and (3) as paragraphs (d)(2), (3), and (4), respectively;

d. Removing the word ''or'' at the end of newly designated paragraph (d)(2)(i)(E);

e. Further redesignating paragraph (d)(2)(i)(F) as paragraph (d)(2)(i)(H);

f. Adding new paragraphs (d)(2)(i)(F) and (G);

g. Redesignating paragraph (d)(2)(ii) as paragraph (d)(2)(iii); and by

h. Adding a new paragraph (d)(2)(ii), to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* * * * In addition, a single Board Member or the Chief Attorney Examiner may exercise such authority in the following instances: a Service motion to remand an appeal from the denial of a visa petition where the Regional Service Center Director requests that the matter be remanded to the Service for further consideration of the appellant's arguments or evidence raised on appeal; a case where remand is required because of a defective or missing transcript; and other procedural or ministerial adjudications as provided by the Chairman. A motion to reconsider or to reopen a decision that was rendered by a single Board Member or the Chief Attorney Examiner may be adjudicated by that Board Member or by the Chief Attorney Examiner.

* * * * *

(5) *Affirmance without opinion.* (i) A single permanent Board Member may affirm, without opinion, any decision in which the Board Member concludes that there is no legal or factual basis for reversal of the decision by the Service or the Immigration Judge. The Chairman may designate, from time to time, the Board Members who are authorized to exercise the authority to affirm cases without opinion. The Chairman may designate certain categories of cases as suitable for review pursuant to this paragraph.

(ii) The single Board Member to whom a case is assigned may affirm the decision of the Service or the Immigration Judge, without opinion, if the Board Member determines that the result reached in the decision under review was correct; and any errors in the decision under review were harmless or nonmaterial; and

(A) The issue on appeal is squarely controlled by existing Board or federal court precedent and does not involve the application of such precedent to a novel fact situation; or

(B) The factual and legal questions raised on appeal are so insubstantial that three-Member review is not warranted.

(iii) If the Board Member determines that the decision should be affirmed without opinion, the Board shall issue an order that states, ''The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination.'' An order affirming without opinion shall not include further explanation or reasoning. An order affirming without opinion approves the result reached in the decision below; it does not necessarily imply approval of all of the reasoning of that decision, but does signify the Board's conclusion that the errors alleged to have been made below, if any, were harmless or nonmaterial.

(iv) If the Board Member determines that the decision is not appropriate for

affirmance without opinion, the case will be assigned to a three-Member panel for review and decision. The panel to which the case is assigned also has the authority to determine that a case should be affirmed without opinion.

* * * * *

(d) *Powers of the Board*—(1) * * *

(2) *Summary dismissal of appeals.* (i) *Standards.* * * *

(F) The appeal does not fall within the Board's jurisdiction, or lies with the Immigration Judge rather than the Board;

(G) The appeal is untimely, or it is clear on the record that the right of appeal was affirmatively waived; or

(H) * * *

(ii) *Action by the Board.* The Chairman may provide for the exercise of the appropriate authority of the Board to dismiss an appeal pursuant to paragraph (d)(2) of this section by a three-Member panel, or by a single Board Member or the Chief Attorney Examiner. The Chairman may determine who from among the Board Members or the Chief Attorney Examiner is authorized to exercise the authority under this paragraph and the designation may be changed by the Chairman as he deems appropriate. Except as provided in this part for review by the Board en banc or by the Attorney General, or for consideration of motions to reconsider or reopen, an order dismissing any appeal pursuant to paragraph (d)(2) shall constitute the final decision of the Board. If the single Board Member or the Chief Attorney Examiner to whom the case is assigned determines that the case is not appropriate for summary dismissal, the case will be assigned for review and decision pursuant to paragraph (a) of this section.

* * * * *

3. Section 3.2 is amended by adding a new paragraph (b)(3) to read as follows:

§ 3.2 Reopening or reconsideration before the Board of Immigration Appeals

* * * * *

(b) * * *

(3) A motion to reconsider based solely on the argument that the case should not have been affirmed without opinion by a single Board Member, or by a three-Member panel, is barred.

* * * * *

Dated: September 8, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–24571 Filed 9–11–98; 8:45 am]

BILLING CODE 4410–30–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG02

Elimination of Reporting Requirement and 30-Day Hold in Loading Spent Fuel After Preoperational Testing of Independent Spent Fuel Storage or Monitored Retrievable Storage Installations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to eliminate the requirement that a report of the preoperational testing of an independent spent fuel storage installation or monitored retrievable storage installation be submitted to the NRC at least 30 days before the receipt of spent fuel or high-level radioactive waste. Experience has shown that the NRC staff does not need the report or the holding period because the NRC staff is on site and evaluates preoperational testing as it occurs. This amendment will eliminate an unnecessary regulatory impact on licensees.

DATES: The comment period expires November 30, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6195, e-mail geg1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Part 72 requires that the Safety Analysis Report (SAR) accompanying an application for a site-specific license (§ 72.24(g)) and the application for the approval of a spent fuel storage cask (§ 72.236(l)) contain information on the performance of preoperational testing by the site-specific licensee or the general licensee, respectively. The licensee is required to complete the preoperational testing program described in the applicable SAR before spent fuel is loaded into an independent spent fuel storage installation (ISFSI) or before spent fuel or high-level radioactive waste (HLW) is loaded into a monitored retrievable storage installation (MRS).

10 CFR 72.82(e) requires licensees to submit to the NRC a report of the preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel or HLW for loading into an ISFSI or MRS. However, the licensee is not required to submit test procedures, but only a report of the test results. A copy of this report is subsequently placed in the NRC Public Document Room (PDR). The purpose of the 30-day period is to establish a hold point to allow NRC to review a new licensee's preparations and, if necessary, exercise its regulatory authority before spent fuel is received at an ISFSI or spent fuel and HLW at an MRS. The licensee is not required to obtain NRC approval of the report before commencing loading operations.

Discussion

The requirement for a preoperational test report and 30-day hold period was added to the part 72 regulations governing licensing requirements for ISFSIs and an MRS at the time they became effective on November 28, 1980 (45 FR 74693), and before the NRC staff had any practical experience in licensing such facilities. However, in the intervening period, the Commission's practice has been for NRC staff to maintain an extensive oversight presence during the preoperational testing phase of ISFSIs, reviewing the acceptance criteria, preoperational test, and test results as they occur. Thus, NRC staff has had immediate access to the licensee's procedures and test results and has not needed either a preoperational test report or a 30-day hold period in order to complete its