

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising paragraph (d)(1) to read as follows:

§ 966.323 Handling regulations

(d) *Exemption.* (1) *For types.* The following types of tomatoes are exempt from the regulations in this part: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top, and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes. Specialty packed red ripe tomatoes, yellow meated tomatoes, and single layer and two layer place packed tomatoes are exempt from the container net weight requirements specified in paragraph (a)(3)(i) of this section, but must meet the other requirements of this section.

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Dated: October 22, 1996.

Sharon Bomer Lauritsen,
Acting Director, Fruit and Vegetable Division.
[FR Doc. 96–27724 Filed 10–28–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1079

[DA–96–11]

Milk in the Iowa Marketing Area; Revision of Pool Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document reinstates certain provisions of the Iowa Federal milk order indefinitely for the months of September through November, beginning with October 1996 milk deliveries, and revises other provisions for the months of December 1996 through March 1997. This action increases the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order. The applicable percentage will be increased by 5 percentage points, from 30 percent to 35 percent, for the months of September through November; and by 10 percentage points, from 20 percent to 30 percent, for the months of December 1996 through March 1997. The revision is being made

in response to a request by a distributing plant that is regulated under the order. This action is necessary to assure an adequate supply of milk for fluid use.

EFFECTIVE DATES:

1. Amendment number 1 is effective October 1, 1996.

2. Amendment number 2 is effective October 1, 1996, and applies October 1, 1996, through November 30, 1996, and for the September through November period thereafter.

3. Amendment number 3 is effective December 1, 1996, through March 31, 1997.

4. Amendment number 4 is effective April 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Constance M. Brenner, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Revision of Rule: Issued August 26, 1996; published September 4, 1996 (61 FR 46571).

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and request a modification of an order or an exemption from the order. A handler is afforded the opportunity for a hearing on the petition. After a 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 handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This document reinstates the pool supply plant shipping percentage of 35 percent under the Iowa order for the

period October 1 through November 30, 1996, and the September through November period thereafter. A reduction from 35 to 30 percent was issued in 1990 (55 FR 41504, published October 12, 1990) effective October 12, 1990, for an indefinite period. This action increases the percentage by reinstating the original percentage of 35, thus eliminating the prior 1990 action. The proposed rule for this action (61 FR 46571, published September 4, 1996) incorrectly stated that the current percentage for the months of September through November was 35 and would have been increased to 45.

The current issue of the Code of Federal Regulations (CFR) shows the percentage requirements to be 35 percent for September through November and 20 percent for December through August because a temporary change (e.g., 35 percent to 30 percent) is not printed in the CFR.

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 and has certified that this rule will not have a significant economic impact on a substantial number of 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 farms. 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.

The supply plant shipping percentage provisions are being increased in the order to assure an adequate supply of milk for the fluid market. It is expected that producers and their handlers who share in the benefits of the higher-valued fluid uses of the market through their participation in a marketwide pool should be required to help supply milk to fluid milk distributing plants when additional supplies are needed. As a result of this expectation, order

provisions based on testimony and data presented at a public hearing in which all interested parties were encouraged to participate were promulgated and approved by at least two-thirds of the dairy farmers whose milk was pooled under the Iowa order.

The Iowa order provides that the pool supply plant shipping percentages in the order may be increased or reduced by the Director of the Dairy Division, Agricultural Marketing Service, to assure that an adequate supply of milk will be made available to distributing plants, or to avoid excessive costs of hauling and handling milk that may be moved to distributing plants only to pool plentiful supplies of producer milk.

For the month of July 1996, 2,995 dairy farmers were producers under the Iowa milk order. Of these, all but 23 would be considered small businesses, having under 326,000 pounds of production for the month. Of the dairy farmers in the small business category, 2,389 produced under 100,000 pounds of milk, 533 produced between 100,000 and 200,000, and 50 produced between 200,000 and 326,000 pounds of milk during July 1996.

The reports filed on behalf of the slightly more than 20 milk handlers pooled, or regulated, under the Iowa order in July 1996 were filed for individual establishments that, for the most part, would meet the SBA definition of a small business, having less than 500 employees. However, most of these establishments are part of larger businesses that operate multiple plants and meet the definition of large entities on that basis.

This revision will increase the percentage of milk receipts that handlers are required to move to fluid milk distributing plants. Some handlers may choose to move increased volumes of their milk supplies from manufacturing uses to fluid use in order to assure that all of their producer milk supplies will be able to share in the benefits of the marketwide pool. Other handlers may elect to not pool some of their producer milk supplies rather than ship more milk to distributing plants. Still others may already be moving as much as they will be required to move under increased percentages and will be unaffected by the revision.

If the shipping percentages are not increased, the distributing plant operator requesting the revisions, a large entity based on its multiple plant operations, may not be able to obtain an adequate supply of milk at a competitive price to meet its needs. The handlers from whom the distributing plant handler would be most likely to

receive increased shipments are also, for the most part, large entities.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1079.7(b)(1) of the Iowa order.

Notice of proposed rulemaking was published in the Federal Register (61 FR 46571) concerning a proposed increase in the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order. The revisions were proposed to be effective for the months of September 1, 1996, through March 31, 1997. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views, and arguments by September 11, 1996.

Two comments supporting and one opposing the proposed revision were received.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentage set forth in § 1079.7(b) of the Iowa Federal milk order should be increased by 5 percentage points, from 30 percent to 35 percent for the months of September through November, effective October 1, 1996, and should be increased by 10 percentage points, from 20 percent to 30 percent, for the months of December through March.

An increase of 10 percentage points to the supply plant shipping percentages for the months of September 1996 through March 1997 was proposed by Anderson-Erickson Dairy Company (A-E), a proprietary distributing plant that is regulated under the order. The handler contends that the increase in the shipping standard is necessary to bring forth an adequate supply of fluid milk for fluid use.

According to A-E, the handler has been and is willing to pay the announced market price for milk, which includes over-order premiums. A-E states that the higher-valued uses of fluid milk are not being shared in the pool. Thus, fluid milk is not being made available to A-E at a market price which can retain A-E's competitiveness. The handler's comments state that the federal order for Iowa has at least temporarily ceased performing its statutorily-mandated functions because it is not equalizing payments to producers and simultaneously is not assuring the delivery of fluid milk to fluid handlers. In the absence of

increased shipping percentages, A-E urged the Secretary immediately to suspend (or terminate) the pricing provisions of the Iowa order until such time as the pricing actually results in uniform prices to producers and in the delivery of fluid milk to fluid plants. Comments received from Hy-Vee Food Stores, Inc., of West Des Moines, Iowa, support A-E's request for an increase in the percentage of a pool supply plant's receipts to be shipped to fluid milk plants.

Beatrice Cheese, Inc., is a proprietary manufacturer of dairy products in Fredericksburg, Iowa, that markets milk for eight small cooperatives located in Northeast Iowa and Southeast Minnesota. Beatrice also has its own supply of milk from nonmember producers. Beatrice Cheese, Inc., strongly opposes the shipping percentage increases proposed by A-E Dairy. Beatrice claims to have supplied A-E, on a monthly basis, with what Beatrice estimates to be about fifty percent of A-E's needs. Beatrice also supplies milk to pool distributing plants regulated under another Federal order at a level they claim meets or exceeds current order supply plant shipping percentages. Beatrice contends that they are supplying the pool distributing plants in the marketing area with more than a fair share of the milk pooled by Beatrice. According to Beatrice, if additional supplies were available to be shipped to A-E without creating a financial burden on Beatrice, Beatrice would be fulfilling A-E's needs, but these additional supplies are not available. Based on recent Class I use percentages, Beatrice contends that if the 45 percent shipping requirement were adopted, excessive milk supplies could be required to be shipped to bottlers, necessitating uneconomic shipments back to other milk users. Beatrice states that the proposed shipping requirements would put unjust financial pressures on Beatrice, creating a competitive disadvantage for its dairy farmers. Since January 1996, Beatrice claims, it has incurred a substantial financial loss due to current shipping requirements, given the absence of hauling credits under Order 79. Beatrice states that it may be necessary for pool distributing plants to go outside their normal procurement avenues to purchase the extra milk they require at current market prices, without using the Federal Order system to force shipments.

Market data show that the Class I percentage of milk pooled in the Iowa marketing area since March 1996 has been significantly higher than for the same periods in several preceding years.

For the months of June through August 1996, the percentage of pool milk used in Class I has increased over the average of the same months of 1993–95 by an average of 10.5 percentage points. The average increase has grown from 9.3 percentage points for June 1996 compared with June 1993–95, to 12.7 for August 1996 over August 1993–95. Although some of the increase in the Class I utilization percentage undoubtedly reflects the effect of customarily-pooled milk that was not pooled because of Class III and Class III–A pricing differences, these numbers still indicate that the supply of milk available to the fluid market has declined in recent months. This revision to increase the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order is necessary to attract an adequate supply of milk for fluid use due to the increasing percentage of milk used in Class I.

Although the proposed revision published September 4, 1996 (61 FR 46571) discussed the possibility of increasing the applicable percentage from 35 percent to 45 percent for the months of September through November 1996, the effective shipping percentage for that period previously had been lowered to 30 percent on October 12, 1990 (55 FR 41504). According to market data, however, it appears that a reinstatement of the 35-percent shipping percentage would be appropriate to bring forth an adequate supply of milk for fluid use. Such a percentage is also within the 10-percent revision limitation provided for within the order while the proposed 45 percent level would be greater than that allowable under the 10 percentage point increase limitation (§ 1079.7(b)(1)). Furthermore, the market data indicates that a 40 percent standard would provide an excess of Class I milk. Finally, the market data indicates that the need for increased Class I milk supplies will continue beyond November 1996 and so it is appropriate to increase the supply plant shipping percentages for December 1996 through March 1997.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of October and November, and for December 1996 through March 1997.

(b) This revision does not require of persons affected substantial or extensive

preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this revision.

Two comments supporting and one opposing the proposed revision were received.

Therefore, good cause exists for making this revision effective less than 30 days from the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1079, is amended as follows:

PART 1079—MILK IN THE IOWA MARKETING AREA

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

Authority: 7 U.S.C. 601–674.

§ 1079.7 [Amended in Part]

2. In § 1079.7(b), the introductory text is amended by revising the words “30 percent” to read “35 percent,” effective October 1, 1996. This amendment applies as of October 1, 1996, through November 30, 1996, and for the months of September through November thereafter.

3. In § 1079.7(b), the introductory text is amended by revising the words “20 percent” to read “30 percent,” effective December 1, 1996, through March 31, 1997.

4. In § 1079.7(b), the introductory text is amended by revising the words “30 percent” to read “20 percent,” effective April 1, 1997.

Dated: October 23, 1996.

Richard M. McKee,
Director, Dairy Division.

[FR Doc. 96–27723 Filed 10–28–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–82–AD; Amendment 39–9637; AD 96–11–12]

RIN 2120–AA64

Airworthiness Directives; Beech Aircraft Corporation Model C90A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 96–11–12 concerning Beech Aircraft Corporation (Beech) Model C90A airplanes, which was published in the Federal Register on May 29, 1996 (61 FR 104). That publication incorrectly references two different effective dates for this AD. The AD currently requires two effective dates, June 24, 1996 and July 24, 1996. The intent of the AD is to require only one effective date. The Final Rule AD did not specify which effective date is required. This action corrects the AD to reflect this change.

EFFECTIVE DATE: July 24, 1996.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey E. Nero, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4137; facsimile (316) 9446–4407.

SUPPLEMENTARY INFORMATION: On May 22, 1996, the Federal Aviation Administration (FAA) issued AD 96–11–12, Amendment 39–9637 (61 FR 104, May 29, 1996), which applies to Beech Model C90A airplanes. This AD requires two effective dates (June 24, 1996 and July 24, 1996) and should only reflect one effective date for this AD.

Need for the Correction

The AD incorrectly references the wrong effective date at the end of the AD.

Correction of Publication

Accordingly, the publication of May 29, 1996 (61 FR 104) of Amendment 39–9637; AD 96–11–12, which was the subject of FR Doc. 96–13273, is corrected as follows:

§ 39.13 [Corrected]

On page 26781, in the third column, paragraph (e), line 2, replace “effective on June 24, 1996.” with “effective on July 24, 1996.”

Action is taken herein to clarify this requirement of AD 96–11–12 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date is changed to July 24, 1996.