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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1011, and 1046

[Docket No. AO-388-A8 et al.; DA-94-12]

Milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the pooling standards of the Tennessee Valley and Carolina orders; modifies the marketing areas of the Tennessee Valley and Louisville-Lexington-Evansville orders; changes the location adjustment under the Carolina order for plants located in the Middle Atlantic marketing area; and changes the base-paying months under the Carolina order. The amendments are based upon industry proposals considered at a public hearing held on January 4, 1995. Each amended order was approved by more than two-thirds of the producers voting in the specified marketing area.

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

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 amended order will promote more orderly marketing of milk by producers and regulated handlers.

This final rule has been reviewed under Executive Order 12778, 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 provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted 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.

Prior documents in this proceeding:
Notice of Hearing: Issued November 21, 1994; published November 25, 1994 (59 FR 60574).

Recommended Decision: Issued August 17, 1995; published August 24, 1994 (60 FR 43986).

Final Decision: Issued December 4, 1995; published December 18, 1995 (60 FR 65023).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing

agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas. The minimum prices specified in the orders, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk which is marketed within the aforesaid marketing areas to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended; and

(3) The issuance of the order amending the orders is favored by at least two-thirds of the producers who during August 1995 were engaged in the production of milk for sale in the aforesaid marketing areas.

List of Subjects in 7 CFR Part 1005, 1011, 1046

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR parts 1005, 1011, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

2. In § 1005.7, the reference “(d)” in the introductory text is revised to read “(e)”, in paragraph (b) the words “Director of the Dairy Division” and “Director” are revised to “market administrator” wherever they appear, paragraph (d) is redesignated as paragraph (e) and revised, and a new paragraph (d) is added to read as follows:

§ 1005.7 Pool plant.

* * * * *

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

(e) The term “pool plant” shall not apply to the following plants:

- (1) A producer-handler plant;
- (2) A governmental agency plant;
- (3) A plant with route disposition in this marketing area that is located within the marketing area of another Federal order and that is fully regulated under such order;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area but which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(5) A plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.

§ 1005.32 [Amended]

3. In § 1005.32(a), the words “March through June” are revised to read “February through May” wherever they appear.

4. In § 1005.53, paragraph (a)(6) is redesignated as paragraph (a)(7) and revised, and a new paragraph (a)(6) is added to read as follows:

§ 1005.53 Plant location adjustments for handlers.

* * * * *

(a) * * *

(6) For a plant located within the Middle Atlantic Federal Order Marketing Area (Part 1004), the adjustment shall be computed by subtracting the base zone Class I price specified in § 1005.50(a) from the Class I price applicable at such plant under the Middle Atlantic Federal Order; and

(7) For a plant located outside the areas specified in paragraphs (a)(1) through (a)(6) of this section, the adjustment shall be a minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina, or Charlotte or Greensboro, North Carolina.

§ 1005.61 [Amended]

5. In § 1005.61 paragraphs (a) introductory text and (a)(5), the words “July through February” are revised to read “June through January” and in paragraph (b) introductory text the words “March through June” are revised to read “February through May”.

§§ 1005.90 and 1005.91 [Amended]

6. In §§ 1005.90 and 1005.91, the words “March through June” are revised to read “February through May” wherever they appear.

§ 1005.93 [Amended]

7. In § 1005.93 paragraph (b), the words “March through June” are revised to read “February through May” wherever they appear, the words “February 1” are revised to read “January 1”, and in paragraph (e) introductory text the words “March 1” are revised to read “February 1”.

§ 1005.94 [Amended]

8. In § 1005.94, the words “February 1” are revised to read “January 1”.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

9. Section 1011.2 is amended by revising paragraph (b) to read as follows:

§ 1011.2 Tennessee Valley Marketing Area.

* * * * *

(b) In Kentucky, the counties of Bell, Breathitt, Clay, Harlan, Jackson, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, and Whitley.

* * * * *

10. In § 1011.7, the reference “(d)” in the introductory text is revised to read “(e)”, paragraph (b) is revised, paragraph (d) is redesignated as paragraph (e) and revised, and a new paragraph (d) is added to read as follows:

§ 1011.7 Pool plant.

* * * * *

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to plants described in paragraph (a) of this section subject to the following additional conditions:

(1) During the months of August through November, January and February, such shipments must equal not less than 60 percent (40 percent during the months of December and March through July) of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month at such plant from handlers described in § 1011.9(c) and (d) and from dairy farmers, including milk that is diverted from the plant pursuant to § 1011.13 but excluding milk diverted to the plant;

(2) The operator of a plant described in this paragraph may include milk diverted from the plant to plants described in paragraph (a) of this section for up to one-half of the shipments required pursuant to this paragraph;

(3) A plant which meets the shipping requirements specified in this paragraph during the months of July through February shall be a pool plant during the following months of March through June unless the milk received at the plant does not continue to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (b)(4) of this section, or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated a nonpool plant for such month and for each subsequent month through June during which it would not otherwise qualify as a pool plant; and

(4) The shipping requirements described in paragraph (b)(1) and (b)(3) of this section may be increased or decreased up to 10 percentage points by the market administrator if he or she

finds that revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either at his or her own initiative or at the request of interested persons. If the investigation shows that a revision may be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

* * * * *

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

(e) The term "pool plant" shall not apply to the following plants:

- (1) A producer-handler plant;
- (2) A governmental agency plant;
- (3) A plant with route disposition in this marketing area that is located within the marketing area of another Federal order and that is fully regulated under such order;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area but which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(5) A plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.

(5) A plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.

§ 1011.13 [Amended]

11. In § 1011.13 paragraph (e)(3), the words "Director of the Dairy Division" and "Director" are revised to read "market administrator" wherever they appear.

12. Section 1011.52(a)(3) is revised to read as follows:

§ 1011.52 Plant location adjustments for handlers.

(a) * * *

(3) For such milk which is physically received at a plant located within the Kentucky counties of Bell, Breathitt, Clay, Harlan, Jackson, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, and

Whitley, the Class I price shall be decreased by 32 cents; and

* * * * *

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

§ 1046.2 [Amended]

13. In § 1046.2, in the list of Kentucky counties, the word "Pulaski" is removed.

Dated: January 2, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96-324 Filed 1-16-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-AGL-14]

Amendment of Class E Airspace; Britton, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Britton, SD. A nondirectional radio beacon (NDB) or Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 13 has been revised for the Britton Municipal Airport. The intended effect of this action is to provide controlled airspace extending upward from 700 feet above ground level (AGL) and 1200 feet AGL for aircraft executing the approach.

EFFECTIVE DATE: 0901 UTC, April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Eleanor J. Williams, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On October 30, 1995, the FAA proposed to amend part 71 of the Federal Aviation regulations (14 CFR part 71) by modifying the Class E airspace area at Britton, SD (60 FR 55226). The proposal was to add controlled airspace to accommodate the revised NDB or GPS SIAP.

Interested parties were invited to participate in this rulemaking proceeding by submitting written

comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth, are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Britton, SD, by providing additional controlled airspace for aircraft executing the NDB or GPS Runway 13 SIAP at Britton Municipal Airport. Controlled airspace extending upward from 700 feet AGL and 1200 feet AGL is needed for aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.