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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 900

[Doc. No. AMS-DA-07-0069; DA-08-04]

#### **Amendment of General Regulations for Federal Milk Marketing Agreements and Marketing Orders; Addition of Supplemental Rules of Practice for Amendatory Formal Rulemaking Proceedings**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the general regulations for Federal milk marketing agreements and marketing orders by establishing supplemental rules of practice for amendatory formal rulemaking proceedings in accordance with section 1504 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill). This rule provides for supplemental guidelines, timeframes and procedures for amending Federal milk marketing agreements and orders; authorizes the use of informal rulemaking (5 U.S.C. 553) to amend such agreements and orders; and establishes provisions that permit the Department of Agriculture (USDA) to impose assessments on pooled milk under a Federal milk marketing agreement or order to fund expedited amendatory formal rulemaking. Such assessments would supplement appropriated funds for the procurement of services required by USDA to perform rulemaking functions. Section 1504 of the 2008 Farm Bill also applies to amendments to the fruit, vegetable and nut marketing agreements and orders. The supplemental rules of practice for fruit, vegetable and nut marketing agreements and orders are addressed in a separate rulemaking document.

**DATES:** *Effective Date:* August 20, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

William Richmond, Dairy Marketing Specialist, (303) 691-1949, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2971-A, 1400 Independence Avenue, SW., Washington, DC 20250-0231. [William.Richmond@usda.gov](mailto:William.Richmond@usda.gov)

**SUPPLEMENTARY INFORMATION:** This final rule is issued under the general regulations for Federal marketing agreements and orders (7 CFR part 900), effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Act provides authority for Federal marketing agreement and order programs for milk. Federal milk marketing orders contain certain provisions that classify milk in accordance with the purpose for which it is used, and establish a method for setting minimum prices for each such use classification which all handlers pay; and provisions providing for the payment of uniform prices to producers and associations of producers.

#### **Background**

Currently, the provisions of 556 and 557 of Title 5 of the United States Code (formal rulemaking; 5 U.S.C. 556-557) are followed for promulgating, as well as amending Federal marketing agreements and orders. Section 557 requires that the rulemaking proceeding, including agency decisions, be conducted on the record.

Following the provisions of 5 U.S.C. 556-557 and part 900 of the general regulations, which includes the rules of practice for formal rulemaking, a request for a hearing on the proposal to promulgate or amend an agreement or order is sent to the Administrator of the Agricultural Marketing Service (AMS). AMS reviews the request and supporting documents, as well as any alternative proposals from interested parties and, if appropriate, a notice of public hearing is issued and published in the **Federal Register**. In some instances, when appropriate, a pre-hearing information session is conducted prior to issuance of a notice of hearing.

A USDA Administrative Law Judge (ALJ) presides at a public hearing and a record is compiled of the testimony of proponents, opponents, and other

interested persons. Proposed findings and conclusions, and written arguments or briefs may be filed with USDA after the hearing.

A recommended decision, with opportunity to file exceptions is issued and a Secretary's (final) decision follows. In accordance with the Act, a referendum is conducted among individual producers or a poll of cooperative associations of producers and, if so approved, a marketing order or amendment to the order is made effective by final rule in the **Federal Register**.

Since implementation of the provisions of 7 U.S.C. 7253 concerning the consolidation and reform of the Federal milk marketing orders (65 FR 82840), Dairy Programs, AMS, has initiated a number of measures to improve the timelines and effectiveness of the formal rulemaking process for the amendment of Federal milk marketing orders, whether at the national or individual order level.

For example, as previously mentioned, pre-hearing information sessions have been conducted by Dairy Programs, AMS, in response to proposals submitted by interested persons to amend Federal milk marketing orders. Provision for such pre-hearing information sessions is included in the 2008 Farm Bill. Also, in emergency situations, Dairy Programs, AMS, has omitted a recommended decision or engaged in expedited formal rulemaking, which includes the issuance of a tentative final decision, with opportunity to file exceptions, issuance of an interim final rule, a final decision, and subsequently a final rule. Producer referendums or cooperative pollings are conducted, as appropriate.

Section 608c(17) of the Act provides that the provisions for promulgating a marketing agreement or order are also applicable to amendments to agreements and orders. As such, amendments to the current 10 Federal milk marketing orders are subject to the provisions of this section of the Act.

#### **The 2008 Farm Bill and Supplemental Rules of Practice To Amend Marketing Agreements and Orders**

Section 1504 of the 2008 Farm Bill (H.R. 6124, Pub. L. 110-246) makes changes to section 8c(17) of the Act, which, in turn, requires the addition of supplemental rules of practice to 7 CFR part 900. For amendments to Federal

milk marketing agreements and orders, the supplemental rules of practice: Establish guidelines for submitting a proposal to amend a provision of a Federal milk marketing agreement or order; establish procedures following the receipt of a proposal to amend a Federal milk marketing agreement or order, including the opportunity to hold a pre-hearing information session; require a person who submits a proposal to make exhibits and/or written testimony, if prepared as an exhibit, available to USDA officials before the start of hearing on his or her day of appearance at the hearing; establish timeframes for requesting the preparation of USDA data prior to a hearing; define time periods during which interested persons may file post-hearing briefs and corrections to the hearing transcript; establish publication deadlines for recommended decisions and tentative final decisions; define the time period during which interested parties may file exceptions to recommended decisions; establish publication deadlines for final decisions; establish electronic submission standards for post-hearing briefs and transcript corrections; authorize the use of informal rulemaking procedures to amend Federal milk marketing agreements and orders in certain instances; and authorize USDA to impose an assessment on pooled milk to improve or expedite rulemaking proceedings.

Sections 900.1 through 900.18 of the general regulations of part 900 set forth the rules of practice and procedure governing proceedings to formulate marketing agreements and orders. As stated previously, the Act provides that provisions for promulgating marketing agreements and orders are also applicable to amendments to agreements and orders. This final rule amends part 900 by adding supplemental rules of practice regarding amendments to Federal milk marketing agreements and orders to conform to the 2008 Farm Bill. This rule will add new sections 900.20 through 900.33.

A new § 900.20 is added to include standard language to a new subpart stating that words in the singular form will be deemed to import the plural, and vice versa, as the case may demand.

A new § 900.21 is added to set forth that the definitions in the Act and in § 900.2 of this part apply to these supplemental rules of practice.

#### **Proposal Submission Requirements**

A new § 900.22 is added to specify submission requirements for proposals to amend Federal milk marketing agreements and orders. The proposal

submission requirements in the supplemental rules of practice will assist the dairy industry in preparation of its proposals for a public hearing.

Therefore, any proposal to amend a milk marketing agreement or order received by USDA must include detailed explanations of the following:

1. Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?

2. What is the purpose of the proposal?

3. Describe the current Federal order requirements or industry practices relative to the proposal.

4. Describe the expected impact on the industry, including on producers and handlers, and on consumers. Explain/Quantify.

5. What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612)? Explain/Quantify.

6. How would adoption of the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary? Explain/Quantify.

7. Would a pre-hearing information session be helpful to explain the proposal?

#### **USDA Procedures Following Receipt of a Proposal**

A new § 900.23 is added to specify timeframes for actions taken after the receipt of a proposal for an amendment hearing regarding a milk marketing agreement or order. Currently, the rules of practice do not include such timeframes. This final rule adopts provisions that require the following: Within 30 days of the receipt of proposal to amend a provision of a Federal milk marketing order, USDA shall either: (1) Issue a notice providing an action plan and expected timeframes for the different steps in the formal rulemaking process for completion of the hearing not more than 120 days after the date of the issuance of the notice; (2) request additional information from the person submitting the proposal to be used in deciding whether a hearing will be held. If the information requested is not received within a specified timeframe, the request shall be denied; or (3) deny the request. Notice of an action plan will be made on the Dairy Programs, AMS Web site and through program releases to interested persons.

#### **Pre-Hearing Information Sessions**

A new § 900.24 is added to provide that a pre-hearing information session may be held after a proposal to amend an agreement or order is submitted to

USDA. Currently, the rules of practice do not provide procedures for such sessions. A pre-hearing information session will give interested parties the opportunity to learn about a proposal that has been submitted and how the proposal will accomplish its intent. The objective of the session is to clarify the intent and effect of a proposed amendment. The session will not be recorded or become part of an official hearing record, and will not be subject to ex-parte rules in 7 CFR 900.16, thereby allowing government officials to openly discuss proposals.

Participation in the session is encouraged for persons who have submitted proposals to ensure that they are understood by USDA. The session will enable participants to better prepare testimony and evidence, thereby supporting or opposing proposals that may be included in a hearing notice.

USDA will determine on a case-by-case basis whether a session will be beneficial to the process. A person submitting a proposal may request a session when submitting a proposal for formal rulemaking. USDA's decision to hold a session does not guarantee a hearing will occur or that any specific proposal will be included in a hearing notice.

The pre-hearing information session will be conducted by USDA representatives. Each person submitting a proposal will have an opportunity to present and explain his or her proposal, ask procedural questions regarding the proposal, and request the preparation of USDA data for use at a possible hearing. Only USDA representatives will ask questions to clarify the information presented by the person submitting the proposal. Other parties may submit questions to be asked of the person who submitted the proposal for consideration by USDA before or during the session.

The session is intended to provide for the open discussion of proposals. In most situations, the session should be completed within one day. All proposals and comments received in response to a specific request for additional proposals will be available to the public via the Dairy Programs, AMS Web site prior to the information session. USDA may provide background information regarding certain topics.

After the close of an information session, the person submitting a proposal will have up to 3 calendar days to modify or withdraw his or her proposal prior to the publication of a notice of hearing.

The Department will consider the information presented at the session to

assist in determining the necessity of a hearing and consistency of a proposal with the Act. If a hearing is to be held, a hearing notice will be published in the **Federal Register**. If it is determined that a proposal does not warrant a hearing, the person who submitted the proposal will be so notified.

#### **Advance Submission of Testimony**

A new § 900.25 is added to provide requirements for written testimony submitted as an exhibit at an amendatory Federal milk marketing rulemaking hearing. These requirements only apply to the person who submits a proposal being considered at the amendatory hearing.

Currently, witnesses at hearings regarding proposed new or amended marketing agreements or orders are not required to supply written testimony prior to testifying. However, any documentation supplied during the hearing must be submitted in quadruplicate when prepared as an exhibit under current section 900.8(d)(4). Written testimony and exhibits received prior to or at the time of the testimony are useful for USDA participants whose role includes gathering sufficient information to make a determination as to the merits of the proposal.

This rule will require that a person proposing an amendment to a Federal milk marketing agreement or order under § 900.3 of this part, when participating as a witness, to make his or her testimony, if prepared as an exhibit, and any other exhibits, available to USDA officials before the start of the hearing on the person's day of appearance. Based upon prior formal rulemaking experience, individual dairy farmers should not be subject to this requirement.

This requirement should encourage the timely preparation of written statements and hearing exhibits by hearing participants, and reduce the length of hearings. Advance submission of testimony from a person submitting a proposal will help to ensure more concise and cogent hearing records.

#### **Requesting USDA Data for Use at a Hearing**

A new § 900.26 is added to provide requirements for USDA data requests to be used at an amendatory Federal milk marketing hearing. The current rules of practice do not provide timeframes for such requests. USDA officials seek to provide in a timely fashion requested data to hearing participants for use at a hearing and as such the timeframes established are considered reasonable.

Accordingly, under these supplemental rules of practice, requests to USDA, including Market Administrator personnel, for data to be used or presented at an amendatory hearing must be received at least 10 days before the beginning of the hearing. If an amendatory hearing is announced with less than 10 days before the start of the hearing, requests for data need to be submitted within 2 days following the publication of the notice of hearing in the **Federal Register**.

#### **Deadline for Filing Post-Hearing Briefs and Corrections to Transcript**

A new § 900.27 is added to provide deadlines for filing briefs and corrections to the transcript after a hearing is completed on an amendment to a Federal milk marketing agreement or order. The 2008 Farm Bill provided that a post-hearing brief may be filed not later than 60 days after the date of an amendatory hearing. The current rules of practice at § 900.9(b) provide that the ALJ presiding at a hearing shall announce a reasonable period of time within which interested persons may file findings and conclusions, and written arguments or briefs. At § 900.10, the rules of practice provide that as soon as possible after the hearing, the ALJ shall transmit a certified copy of the transcript with appropriate corrections to the hearing clerk. The certified copy of the transcript, in turn, may be used by interested persons to file proposed findings and conclusions, and written arguments or briefs. At the hearing, the ALJ announces a reasonable period of time for interested persons to provide proposed corrections to the transcript. In view of the above, the supplemental rules of practice include a deadline for such corrections.

Accordingly, this final rule requires submission of corrections to the transcript by a date determined at the hearing not to exceed 30 calendar days after an amendatory hearing transcript is available. Further, post-hearing briefs must be filed by a date determined at the hearing not to exceed 60 days after the end of the amendatory hearing.

These deadlines provide for reasonable periods of time that will assist in improving timeliness of the rulemaking process.

#### **Deadline for Issuance of Recommended Decisions and Tentative Final Decisions**

A new § 900.28 is added to provide deadlines for issuing a recommended decision or, when applicable, a tentative final decision. The 2008 Farm Bill provides that a recommended decision in an amendatory proceeding shall be issued not later than 90 days after the

deadline for submission of post-hearing briefs. Accordingly, this final rule requires that USDA must issue a recommended decision or tentative final decision for a proposed amendment to a Federal milk marketing agreement or order no later than 90 days after the deadline for submission of post-hearing briefs.

#### **Deadline for Filing Exceptions to Recommended Decisions**

Taking into account the deadlines established in § 900.28 and § 900.30, a new § 900.29 is added to provide a deadline for filing exceptions to a recommended decision. This final rule requires that all exceptions be filed with the hearing clerk no later than 60 days after publication of a recommended decision in the **Federal Register**, unless otherwise specified in the recommended decision. This standard will help to provide for more timely publication of final decisions. Since an interim final rule is issued when a tentative final decision is used, rather than a recommended decision, no similar deadline is provided for exceptions to a tentative final decision.

#### **Deadline for Issuance of a Secretary's (Final) Decisions**

A new § 900.30 is added to provide a deadline for issuance of a Secretary's (final) decision. The 2008 Farm Bill provides that a final decision for a proposed amendment to a Federal milk marketing agreement or order shall be issued not later than 60 days after the deadline for submission of comments and exceptions to the recommended decision. Since an interim final rule has been issued prior to issuance of a final rule when a tentative final decision is used, no similar deadline is issued for a final decision in this instance.

#### **Electronic Document Submission Standards**

A new § 900.31 is added to provide for the submission of electronic documents in proceedings to amend marketing agreements and orders. The current rules of practice in part 900 require that four copies of all documents related to proposed new and amended marketing agreements and orders be filed with the hearing clerk. With new technologies currently available, most documents in these proceedings are also filed electronically with AMS. The 2008 Farm Bill requires that electronic submission standards be established. Therefore, § 900.31 sets forth that, when possible, all documents filed with the hearing clerk shall also be submitted electronically as specified by Dairy Programs, AMS and reference the

docket number of the proceeding. This provision sets forth that instructions for electronic filing will be provided in the notice of action plan referred to in § 900.23 of this subpart, the amendatory hearing, and in each **Federal Register** publication regarding the amendatory proceeding.

#### Informal Rulemaking

A new § 900.32 is added to allow the use of informal rulemaking procedures (5 U.S.C. 553) to amend Federal milk marketing agreements and orders that do not directly affect milk prices. Prior to the 2008 Farm Bill, the Act required that all proposals to promulgate a new or amend a current marketing agreement or order were to be conducted through formal rulemaking under §§ 556 and 557 of Title 5 of the United States Code. However, the 2008 Farm Bill modified the authority whereby amendments to marketing agreements and orders can be conducted. It provides that authority under § 553 of the United States Code covering informal rulemaking procedures can be an option for amending a Federal milk marketing agreement or order if that amendment does not directly affect milk prices.

Currently, informal rulemaking procedures are used to establish implementing regulations authorized by marketing agreements and orders. The timeframe for completion of informal rulemaking actions is usually about 90 days, as opposed to formal rulemaking that, because of the procedural requirements including the holding a public hearing and producer referenda, generally has a longer timeframe.

In accordance with the 2008 Farm Bill, § 900.32 will allow the option of using informal rulemaking to amend Federal milk marketing agreements and orders if a proposal does not directly affect milk prices. In considering whether informal rulemaking will be used to amend a Federal milk marketing agreement or order, USDA will consider: the nature and complexity of the proposal, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

#### Industry Assessments

The 2008 Farm Bill provides for industry assessments. A new § 900.33 is added to allow USDA to assess handlers for costs associated with an amendatory formal rulemaking proceeding to amend a Federal milk marketing agreement or order, if it is determined necessary to improve or expedite the rulemaking proceeding. Currently, administrative costs associated with formal rulemaking are paid for by AMS. These costs include hiring a court reporter, a

hearing examiner, legal counsel, and associated travel costs. Some of these costs could increase if it was determined necessary to improve or expedite the proceeding. For example, court reporting costs could increase in order to receive the transcripts at an earlier date than normal.

Section 900.33 states that if USDA determines it is necessary to improve or expedite an amendment proceeding, USDA may impose an assessment on pooled milk to supplement appropriated funds for the procurement of such services including but not limited to court reporters, hearing examiners, legal counsel, hearing venue and associated travel for USDA officials. Only the milk pooled in the particular marketing area that stands to be affected by proposals heard at the amendatory hearing may be assessed. The assessments will be subject to the provisions of § 1000.85 (7 CFR 1000.85) concerning assessments for order administration. The additional industry assessment shall not exceed \$.005 per hundredweight of milk for any given month.

#### Final Action

In accordance with the 2008 Farm Bill, this final rule establishes supplemental rules of practice regarding amendments to Federal milk marketing agreements and orders.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Subtitle F of Title I of the 2008 Farm Bill provides that the promulgation of these regulations shall be made without regard to the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Statement of Policy of the Secretary of Agriculture, effective July 24, 1971 (36 FR 13804), and the notice and comment provisions of section 553 of Title 5, United States Code.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988, and for this same reason the notice of proposed rulemaking and opportunity for comment are also not required, as this rule may be effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). Finally, this rule is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA). Therefore, this

rule is exempt from the requirements of the RFA.

It is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 900

Administrative practice and procedures, Federal milk marketing agreements and orders, Marketing agreements.

■ For the reasons set forth in the preamble, 7 CFR part 900 is amended by adding a new subpart consisting of §§ 900.20 through 900.33 to read as follows:

#### PART 900—GENERAL REGULATIONS

##### Subpart—Supplemental Rules of Practice Governing Proceedings To Amend Federal Milk Marketing Agreements and Marketing Orders

Sec.

- 900.20 Words in the singular form.
- 900.21 Definitions.
- 900.22 Proposal submission requirements.
- 900.23 Procedures following receipt of proposal.
- 900.24 Pre-hearing information sessions.
- 900.25 Advance submission of testimony.
- 900.26 Requesting USDA data for use at a hearing.
- 900.27 Deadline for filing post-hearing briefs and corrections to transcript.
- 900.28 Deadline for issuance of recommended decisions or tentative final decisions.
- 900.29 Deadline for filing exceptions to recommended decisions.
- 900.30 Deadline for issuance of Secretary's (final) decisions.
- 900.31 Electronic document submission standards.
- 900.32 Informal rulemaking.
- 900.33 Industry assessments.

**Authority:** 7 U.S.C. 608c(17) and 610.

##### Subpart—Supplemental Rules of Practice Governing Proceedings To Amend Federal Milk Marketing Agreements and Marketing Orders

###### § 900.20 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

###### § 900.21 Definitions.

As used in this subpart, the terms as defined in the Act and in § 900.2 of this part shall apply.

###### § 900.22 Proposal submission requirements.

When a person other than the Secretary makes a proposal to amend a Federal milk marketing agreement or order under § 900.3 of this part, the

proposal shall address the following, to the extent applicable:

(a) Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?

(b) What is the purpose of the proposal?

(c) Describe the current Federal order requirements or industry practices relative to the proposal.

(d) Describe the expected impact on the industry, including on producers and handlers, and on consumers. Explain/Quantify.

(e) What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612)? Explain/Quantify.

(f) How would adoption of the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary? Explain/Quantify.

(g) Would a pre-hearing information session be helpful to explain the proposal?

**§ 900.23 Procedures following receipt of a proposal.**

Within 30 days of receipt of a proposal to amend a Federal milk marketing agreement order under § 900.3 of this part, USDA shall either: Issue a notice providing an action plan and expected timeframes for the different steps in the formal rulemaking process for completion of the hearing not more than 120 days after the date of the issuance of the notice; request additional information from the person submitting the proposal to be used in deciding whether a hearing will be held. If the information requested is not received within a specified timeframe, the request shall be denied; or deny the request. Notice of the action plan will be made on the Dairy Programs, AMS Web site and through program releases to interested persons.

**§ 900.24 Pre-hearing information sessions.**

A pre-hearing information session may be held by the Secretary in response to any proposals received under § 900.3 of this part. Any person proposing an amendment to a Federal milk marketing agreement or order may request that a pre-hearing information session be held. A person submitting a proposal shall have up to 3 calendar days to modify or withdraw his or her proposal prior to the publication of a notice of hearing.

**§ 900.25 Advance submission of testimony.**

Any person proposing an amendment to a Federal milk marketing agreement

or order under § 900.3 of this part, when participating as a witness, shall make copies of his or her testimony, if prepared as an exhibit, and any other exhibits available to USDA officials before the start of the hearing on the person's day of appearance. Individual dairy farmers shall not be subject to this requirement.

**§ 900.26 Requesting USDA data for use at an amendatory hearing.**

Requests for preparation of USDA data to be used at a Federal milk marketing agreement or order amendatory proceeding must be received by USDA at least 10 days before the beginning of the hearing. If an amendatory hearing is announced with less than 10 days before the start of the hearing, requests for data must be submitted within 2 days following publication of the notice of hearing in the **Federal Register**.

**§ 900.27 Deadline for filing post-hearing briefs and corrections to transcript.**

(a) Under § 900.10 of this part, the period of time for interested persons to file corrections to the transcript of testimony at a Federal milk marketing agreement or order amendatory proceeding shall be no more than 30 days after the hearing record is available.

(b) Under § 900.9(b) of this part, the period of time after the completion of a Federal milk marketing agreement or order amendatory hearing for interested persons to file proposed findings and conclusions, and written arguments or briefs, shall be no more than 60 days after completion of the amendatory hearing.

**§ 900.28 Deadline for issuance of recommended decisions or tentative final decisions.**

In a Federal milk marketing agreement or order amendatory proceeding, USDA shall issue a recommended decision under § 900.12 or, when applicable, a tentative final decision, not later than 90 days after the deadline for submission of proposed findings and conclusions, and written arguments or briefs.

**§ 900.29 Deadline for filing exceptions to recommended decisions.**

In a Federal milk marketing agreement or order amendatory proceeding, exceptions to a recommended decision under § 900.12 shall be filed with the hearing clerk not later than 60 days after publication of the recommended decision in the **Federal Register**, unless otherwise specified in that decision.

**§ 900.30 Deadline for issuance of Secretary's (final) decisions.**

A Secretary's (final) decision under § 900.13a to a proposed amendment on marketing agreement or order shall be issued not later than 60 days after the deadline for submission of exceptions to the recommended decision.

**§ 900.31 Electronic submission of hearing documents.**

To the extent practicable, all documents filed with the hearing clerk in a proceeding to amend a Federal milk marketing agreement or order shall also be submitted electronically to the Dairy Programs, Agricultural Marketing Service, USDA. All documents should reference the docket number of the proceeding. Instructions for electronic filing will be provided in the notice of action plan referred to in § 900.23 of this subpart, at the amendatory hearing, and in each **Federal Register** publication regarding the amendatory proceeding.

**§ 900.32 Informal rulemaking.**

USDA may elect to use informal rulemaking procedures under 553 of Title 5, United States Code, to amend Federal milk marketing agreements and orders, other than provisions that directly affect milk prices. In making this determination, consideration shall be given to:

(a) The nature and complexity of the proposal;

(b) The potential regulatory and economic impacts on affected entities; and

(c) Any other relevant matters.

**§ 900.33 Industry assessments.**

If the Secretary determines it is necessary to improve or expedite an amendatory formal rulemaking proceeding to amend a Federal milk marketing agreement or order, USDA may impose an assessment on pooled milk to supplement appropriated funds for the procurement of such services, including but not limited to, court reporters, hearing examiners, legal counsel, hearing venue and associated travel for USDA officials. Only the milk pooled in the particular marketing area that stands to be affected by proposals heard at the amendatory proceeding may be assessed. The assessments shall be subject to the provisions of § 1000.85 (7 CFR 1000.85) concerning assessments for order administration, including the provision that assessments shall not exceed \$.005 per hundredweight of milk for any given month.

Dated: August 13, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8-19134 Filed 8-19-08; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA-2008-0666; Airspace Docket No. 08-AGL-6]

**Removal of Class E Airspace; Chicago, IL**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action removes the Class E4 Airspace at Chicago, IL as there is no longer a Standard Instrument Approach Procedure (SIAP) for Chicago Aurora Municipal Airport requiring Class E4 airspace.

**DATES:** *Effective Dates:* 0901 UTC, November 20, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Gary A. Mallett, Operations Support Group, Central Service Center, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193-0530; telephone (817) 222-4949.

**SUPPLEMENTARY INFORMATION:**

**History**

The VOR-A Approach Procedure was cancelled removing the Class E4 airspace requirement at Chicago Aurora Municipal Airport in Chicago, IL. This rule will become effective on the date specified in the **DATES** section. Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of Chicago Aurora Municipal Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class E airspace designations for airspace areas extending upward from the surface of the Earth are published in Paragraph 6004 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E designation listed in this document will be removed from publication subsequently in the Order.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E4 airspace at Chicago Aurora Municipal Airport, Chicago, IL. 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, is noncontroversial and unlikely to result in adverse or negative comments. It, therefore, (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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at Chicago Aurora Municipal Airport, Chicago, IL.

**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—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for 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.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

*Paragraph 6004 Class E Airspace Areas Extending Upward From the Surface of the Earth.*

\* \* \* \* \*

**AGL IL E4 Chicago, Aurora Municipal Airport [Remove]**

\* \* \* \* \*

Issued in Fort Worth, TX on: August 6, 2008.

**Donald R. Smith,**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 73**

[Docket No. FAA-2008-0628; Airspace Docket No. 07-ASW-15]

**RIN 2120-AA66**

**Revision of Restricted Area 5107A; White Sands Missile Range, NM**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises Restricted Area 5107A (R-5107A), White Sands Missile Range, NM, by subdividing the area to reduce the size of R-5107A, and establish R-5107K. Together, R-5107A and R-5107K will occupy the same vertical, but slightly smaller lateral area than the existing R-5107A. The FAA is taking this action in response to a request from the United States (U.S.) Army to divide the existing R-5107A into two restricted areas, R-5107A and R-5107K. This action will fulfill Department of Defense training requirements while freeing unused airspace for use by nonparticipating civil aircraft. Additionally, this action will allow the U.S. Army to activate only that portion of the airspace necessary to contain their operations.

**DATES:** *Effective Date:* 0901 UTC, September 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kelly Neubecker, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence