

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, and 1094

[Docket No. AO-388-A15 and AO-366-A44; DA-03-11]

Atlanta, GA

February 23 – 27, ²⁰⁰⁴~~2003~~

Milk in the Appalachian and Southeast Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders.

Testimony of The Kroger Co. in support of Proposal No. 4

To expand the proposed Southeast marketing area to include two unregulated counties and two unregulated cities in the State of Virginia and include current Appalachian marketing area pool plant order language.

Good day.

My name is John Hitchell. I am employed by The Kroger Co., Dairy Group/Manufacturing Division, as the General Manager of Raw Milk Procurement and Regulation. I am located in Cincinnati, Ohio.

The Kroger Co. owns and operates Winchester Farms Dairy in Winchester, Kentucky and Westover Dairy in Lynchburg, Virginia that are pool distributing plants on Federal Milk Marketing Order #5.

In addition, The Kroger Co. owns and operates Heritage Farms Dairy in Murfreesboro, Tennessee and Centennial Farms Dairy in Atlanta, GA that are pool distributing plants on Federal Milk Marketing Order #7.

I am appearing today to first state our support of a merger between Federal Milk Order #5 and #7.

Second I am appearing to give specific testimony in support of The Kroger Co.'s Proposal #4 that requests the proposed Southeast order be expanded to include two currently unregulated counties and two currently unregulated cities located in the State of Virginia.

In addition, Proposal #4 seeks to include the current Appalachian marketing area pool plant order language in proposal #1.

Westover Dairy, Lynchburg, Virginia, is a § 1005.7(a) pool distributing plant qualified as a pool plant on the Appalachian Federal Order #5. During the month, 50 percent or more of the fluid milk products physically received at such plant are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area. Herein lies the issue at hand.

Before January 2000, Westover Dairy, Lynchburg, Virginia, was a fully regulated pool distributing plant pooled on the Carolina Federal Order since the promulgation of the order. Total route disposition percentage in the Carolina Federal Order which would qualify a plant as a pool distributing plant was not less than 15 percent of its total route disposition. When the Appalachian Marketing Area was created in January 2000, which included the former Carolina Marketing Area, the total route disposition in the marketing area percentage increased from 15 percent to 25 percent.

This major change has created an undue hardship on Westover Dairy from being able to increase its route disposition in the unregulated marketing area of which it is physically located and areas outside of Federal Order #5. In order for the plant to maintain its qualifying pool status on Federal Order #5, its growth potential is limited to the Appalachian Marketing Area.

In 2002 and 2003 Westover has been forced to review the breakdown of its Class I sales on a weekly basis to maintain its status as a pool distributing plant on Order #5. In 2002 Class I distribution in Order #5 represented 27.6% of the plants Class I sales. Sales in Order #5 in 2003 averaged 25.95 of the plant's Class I sales. This represented the largest % of sales in a Federal Order area by Westover. However, during the same time period sales in the unregulated area of the State of Virginia represented 43% of Westover's Class I distribution.

At times Westover has been forced to relinquish sales that they have historically serviced in areas outside of Order #5 in order to remain a pool distributing plant on Order #5. This situation has made it very difficult for Westover to be a reliable supplier of Class I milk to these customers and damages their ability to maintain this business.

If the regulatory environment of Westover Dairy changes from its current status, the plant would suffer a severe financial hardship and find it difficult to compete in the markets it now services. Limiting the growth potential of a pool distributing plant is not and should not be a function of the Federal Order Program.

In our proposal we request the expansion of the proposed Southeast Order with the addition of Campbell and Pittsylvania County and the cities of Lynchburg and Danville in Virginia.

The addition of these counties will physically place Westover Dairy within the proposed Southeast Market Area. Our proposal is designed to affect only Westover Dairy. The addition of these counties and cities to proposed Southeast order would add Class I sales to the plant within the order. This will increase the percentage of Westover's Class I sales within the order and help to maintain their status as a pool distributing plant in the proposed Southeast order.

In addition to our proposal The Kroger Co. supports proposal #3 by the Southern Marketing Agency. Proposal #3 expands the proposed order with additional counties and cities in Virginia. The addition of this area to the proposed order will significantly increase Westover's percentage of Class I sales within the proposed order.

The Kroger Co. is requesting in proposal #4 that the current Appalachian market area pool plant order language be included in the Southeast order.

Winchester Farms Dairy, Winchester, Kentucky, is a § 1005.7(a) pool plant qualified as a pool distributing plant on the Appalachian Federal Order. Winchester has been a pool distributing plant on Order #5 and, previous to order consolidation, on Order #46 since 1988. Prior to 1988 Winchester had been a pool distributing plant on Order #33 since the plant began operation in 1982.

At that time the plant was placed in an uncompetitive position to attract a milk supply since it was located in a Federal order with a significantly higher utilization than the order under which it was regulated. The Department recognized this situation and convened a hearing on June 30 - July 1, 1987, to receive testimony to revise the pool distributing plant language in Order #46 and Order #33 in order to allow Winchester Farms to become a pool distributing plant on Order #46. Based on the record of the hearing, the department issued a decision that resulted in Winchester Farms becoming a pool distributing on Order # 46 in 1988.

Today, the situation is the same as it was in 1987. Winchester Farms would be located in the proposed Southeast order while a majority of its sales are in Federal Order #33. It is imperative that Winchester remains a pool plant in the proposed Southeast order. If the plant's regulatory status were changed as a result of this hearing, it would be impossible to operate the plant at its current capacity and remain a pool distributing plant in the proposed order. In order to continue to service our current customers and provide dairy farmers the market and financial returns they have enjoyed at Winchester Farms since 1988 the plant must remain a pool distributing plant in the proposed order.

The adoption of Proposal #3 and #4 will increase the percentage of Westover's Class I sales to a level that should insure it's status as a pool distributing plant in the proposed Southeast order. This will allow the plant to pursue business opportunities in the areas outside of the proposed Southeast order the plant currently services. The plant will be allowed to provide dairy farmers with a competitive market without jeopardizing its status as a pool distributing plant.

The adoption of the Appalachian marketing area pool plant order language will allow Winchester Farms Dairy to continue it's status as a pool distributing plant in the proposed Southeast Order. This will assure Winchester to continue to service it's current customer base and provide dairy farmers with a competitive market.

Therefore, The Kroger Co. requests the Secretary promulgate the Southeast Order that includes proposal #3 and #4.

The Kroger Co. thanks the Secretary for granting this hearing and providing the opportunity to testify.