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March 21, 2006

Via Email (Joyce.Dawson@usda.gov) and US Mail
Joyce A. Dawson, Hearing Clerk
United States Department of Agriculture
Room 1081, South Building
1400 Independence Avenue, S.W.
Washington, D.C. 20250-9200

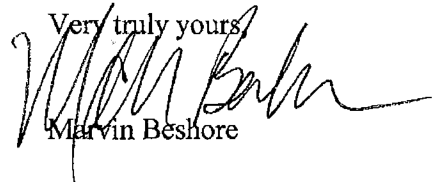
Re: Milk in the Southeast and Appalachian Marketing Areas
Docket Nos.: AO-388-A17, AO-366-A46, DA-05-06

Dear Ms. Dawson:

Enclosed are four copies of the Brief submitted on behalf of Dairy Farmers of America, Inc., ("DFA") for the above captioned matter.

If you have any questions, please do not hesitate to call. Thank you for your cooperation.

Very truly yours,



Marvin Beshore

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BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE

In the Matter of	:	
	:	**Docket Nos.:**
Milk in the Southeast and Appalachian	:	**AO-388-A17**
	:	**AO-366-A46**
Marketing Areas	:	**DA-05-06**

Brief for:

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I. INTRODUCTION

This brief is filed on behalf of Dairy Farmers of America, Inc.; and supported by Arkansas Dairy Cooperative Association; Dairymen's Marketing Cooperative, Inc.; Lone Star Milk Producers, Inc.; and Maryland & Virginia Milk Producers Cooperative Association, Inc., collectively the proponents of Proposals 1, 2, and 3 in this hearing (in this brief these cooperatives will sometimes be referred to as "Proponents"). Each of the proponents markets member milk on either one or both of the Appalachian or the Southeast Federal Milk Marketing Orders. Together the cooperative proponents market in excess of 80 percent of the producer milk pooled on the Appalachian and Southeast Orders.

This hearing was requested to address the urgent need for enhanced transportation credits in federal milk Orders 5 and 7 which regulate the marketing of milk in the Appalachian and Southeast Marketing Areas. Both inter-order and intra-order transportation credits are needed to make marketing of milk for Class I uses more orderly and equitable for the benefit of producers, handlers, and consumers in this growing region of the country.

The record of this three day hearing, held January 10 to 12, 2006, documents the (1) extraordinary movements of milk required to meet the Class I needs of these markets, both from within and outside the marketing areas; (2) the huge increases in transportation expense and the volatility of transportation costs related to diesel fuel prices in particular; (3) the disorder that is inherent in un-shared transportation expenses for Class I uses; and (4) the finely tuned proposals put forth by these proponents for addressing these marketing issues.

This brief will attempt to summarize the record evidence of the structural market conditions which Proponents face and which Proposals 1, 2, and 3 address; describe the operation of the proposals and how they address the marketing challenges; and comment upon the concerns or opposition which have been raised about the proposals, including the amendments embodied in Proposals 4 and 5 which we oppose. But first, to put this hearing and these proposals in context, we will review the use of transportation credits in these and other orders in the federal order system.

II. HISTORY AND LEGAL BACKGROUND OF TRANSPORTATION CREDITS

Prior to 1986, the AMAA did not authorize transportation credits in milk marketing orders as the court in Smyser v. Block 760 F.2d 514 (3d. Cir. 1985), held. To remedy that gap in statutory authority, the Congress adopted what is now § 8c(5)(J) of the Act, 7 USC 608c(5)(J), in §133 of the Food Security Act of December 23, 1985. That section authorizes milk order provisions:

> (J) Providing for the payment, from the total sums payable by all handlers for milk (irrespective of the use classification of such milk) and before computing uniform prices under paragraph (A) and making adjustments in payments under paragraph (C), to handlers that are cooperative marketing associations described in paragraph (F) and to handlers with respect to which adjustments in payments are made under paragraph (C), for services of marketwide benefit, including but not limited to - (i) providing facilities to furnish additional supplies of milk needed by handlers and to handle and dispose of milk supplies in excess of quantities needed by handlers; (ii) handling on specific days quantities of milk that exceed the quantities needed by handlers; and (iii) **transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification** or for providing a market outlet for milk of any use classification. (Emphasis supplied)

Shortly after this authority was provided, a hearing was held in the Chicago Regional area, Order 30, to consider such provisions for that marketing area. Those provisions, which remain in place today, are instructive with respect to the Department's contemporaneous implementation of the purposes of transportation credits as marketwide services. See 52 Fed. Reg. 38235 (October 15, 1987)(Emergency partial decision)(Exhibit A, attached).

Order 30 was a market with a large supply of milk but alleged difficulty in attracting milk to the Class I markets. Class 1 utilization in the order was less than twenty (20) percent. The dominant cooperative federation had an over order pricing program which provided for the pooling of milk delivered to Class I. The superpool federation struggled, however, with the inequities of the sharing of costs among handlers and producers which were built into the market place because of the inadequacies of location adjustments and the movement of milk across the milk shed in ways which the order did not provide for. Therefore, the cooperative federation proposed a system of transportation credits for Class I milk which would add to the rate allowed under the order and complement the location adjustments in the order as well as provide for transportation payments from the pool for milk movements to Class I plants which were against the grid of prices in the order and therefore did not receive any compensation from the pool. In adopting these proposals, the Secretary made a number of important observations:

> The current order has location adjustment provisions that recognize a portion of the costs of transporting milk. Through the operation of marketwide pooling, that portion of the hauling costs covered by the location adjustments is shared by all producers. However, as noted earlier in this decision, the location adjustment provisions no longer adequately reflect current hauling costs. Thus, handlers who pay for transporting for milk between plants incur a greater cost than is recognized by the order. Those handlers who incur such additional hauling costs have higher costs than other handlers who do not receive milk from other plants. Moreover, the additional hauling costs, which are not reflected in

> the order's blend prices, are not shared by all the producers who enjoy the blend prices that result from marketwide pooling. However, as indicated earlier, full recognition of hauling costs in the location adjustment provisions is not a practicable means of dealing with this problem. (52 Fed. Reg. At 38241)

The decision then went on to make the following comments:

> The transportation credits provided herein will promote orderly marketing through provisions that are fully consistent with the intent and purposes of the Act. The operation of the credits will improve equity among competing fluid milk handlers by reimbursing a portion of the additional costs incurred when such handlers must reach out to other plants to obtain milk for Class I uses. On the other hand, the costs of such reimbursement will be spread out among all of the market's producers. Thus, all producers who share in the benefits of the higher returns of the fluid market through marketwide pooling will share also the costs of servicing the fluid milk sector of the market on a more equitable basis. (52 Fed. Reg. At 38241)

Thus, the Order 30 transportation credits were adopted to: (1) compensate for existing location credits within the order which were out of date; (2) provide incentives under the order for milk movements which were not reflected in the location adjustment provisions of the orders; and (3) promote equity among ***both handlers and producers*** in the provision of milk for Class I purposes.

In 1996 the Department responded to a crisis in obtaining supplemental milk for the southeastern orders, Orders 5, 7, 11 and 46, by adopting the set of transportation credits for supplemental milk which have continued to this date with limited amendments. See 61 Fed. Reg. 37628 (July 19, 1996)(Exhibit B, attached); 62 Fed. Reg. 27525 (May 20, 1997). The Secretary, in that proceeding, again applied the authority of § 608c(5) (J) of the Act to assist in the movement of milk for Class I purposes, this time in the chronically deficit southeastern United State marketplace. Adopting the proposed transportation credits and establishing the

transportation credit balancing funds under the Orders, the Secretary found that it was necessary to provide an orderly and equitable means for obtaining supplemental milk for these deficit markets through the federal order system. The credits were funded primarily with the uniform assessment on Class I milk in the Orders, settled through a transportation credit balancing fund, administered by the Market Administrator. The rate of compensation of the handlers importing the supplemental milk used the mileage calculated from a base point near the shipping producer's location and the plant of delivery point with a rate of reimbursement based upon actual hauling cost data in the record. The transportation credit provisions adopted in 1996 were modified in limited ways in 1997 and incorporated in the current Southeastern and Appalachian Orders by the Secretary during the Federal Order reform process in 1998 and 1999.

The conditions found and applied by the Secretary in these prior decisions are reflected in the current hearing record and support the adoption of the updating of the supplemental milk transportation credits and the adoption of an intra-Order transportation credit system in the southeastern United States, Orders 5 and 7.

III. MARKETING CONDITIONS IN ORDERS 5 AND 7

A. The structural deficit for Class I Supplies.

The Southeastern United States markets, Order 5 and 7, have a chronic and structural deficit of supply for Class I needs. This regional deficit has been recognized over the years by the Department and is the basis for the current transportation credit balancing fund program. What this record demonstrates is that this structural deficit has continued to increase over time. The magnitude of this regional structure supply deficit is the basis for the need to update the provisions of the transportation credit balancing funds in Orders 5 and 7.

There are several measures which document the existence of the structural supply deficit and its magnitude and nature. We should first look, as the Department did in 1996, to the low production and population trends in twelve southeastern states. When the current transportation credit balancing fund was initiated in 1996, the Department noted the increasing population trend accompanied by the declining regional production, and cited those trends as key premises for the need to facilitate the orderly acquisition of supplemental milk. See Exhibit A attached. (61 Fed. Reg at 37632 (July 18, 1996)). In 1996, the Department projected population and production trends through 2005 (and beyond) and used those trends to address, and redress, the supply and demand imbalance in the southeast. What we now know is that the realities of 2005 are even worse than were projected in 1996.

Exhibit D, attached is a table of the current milk production and population as of 2005 in the twelve southeastern United States. In 2005, the population was higher than projected in 1996; while milk production was lower than projected in 1996. As a result, as this record plainly reflects, the supplemental milk regulations adopted in 1996 (and revised in 1997) which served the industry well for a number of years are grossly inadequate today.

In 1996, the Department projected that the population in the twelve southeastern states would be 70.471 million in 2005. In fact, according to the Bureau of Census, the twelve State population total for 2005 is 74,103,000, 5% more than projected in 1996. On the production side, the NASS figures for 2005 production in the 12 southeastern states shows 10.75 billion pounds of production in 2005, 7.35% less than the 11.60 billion projected in 1996. The regional supply demand imbalance continues to get worse, requiring huge volumes of supplemental milk to meet the needs of the consuming public.

The increasing volumes of supplemental milk are documented on Hearing Exhibit 34 prepared by the Market Administrator. From July 2000 through November 2005, the pounds of supplemental milk volumes on which transportation credits have been claimed increased constantly. Comparing month to month from 2000 to 2005: In July 2000 there were claims on 31.7 million pounds; in July 2005, there were 107.7 million pounds; for August 2000 the claims were for 64.8 million; for August 2005, for 137.8 million; for September 2000, 78.3 million; for September 2005, 117.8 million; for October 2000, 75.7 million; for October 2005, 127.9 million; for November 2000, 66.9 million; for November 2005, 98.1 million. The distances milk traveled varied from 578 to 627 monthly average miles in 2000; in 2005 the monthly averages had increased to a range of 682 to 755. More milk for more miles requires more funding for the supplemental supplies.

Furthermore, the monthly cost of supplemental supplies has increased by an additional factor because of the increases in transport costs for milk. An estimate of the total monthly costs for supplemental milk in Order 7 over the periods since 2000 can be made using the Market Administrator's Exhibit of pounds on which credits were claimed; applying the marketwide average Class I utilization of 65% (which represents the portion of deliveries on which credits apply); and using the average cost per loaded mile documented by Mr. Sims. The result is that in 2005, the gross cost of transporting supplemental milk to Order 7 was 2 to 3 times as expensive (using the months of July through November for which there is complete record evidence).

The additional cost of hauling supplemental milk when supported by the essentially fixed amount of funds available in the transportation credit balancing fund is shown in the declining support by the fund for the costs over time on Exhibit D.

The volumes of deliveries required for supplemental supplies in the southeast can also be gleaned from the pooling data in the Orders. October 2005 in Order 7 is a good example. In that month the market's total needs for Class I were 437.9 million pounds. The total in-area production equaled only 273.8 million pounds. See Exhibit 13C. In other words, gross in-area production was only 62.5% of total Class I needs and 70% of the volume of producer milk used in Class I. When the total need of distributing plants for milk (86.5% Class I) is considered (to say nothing of seasonal and daily balancing needs), the extraordinary deficit of local supply for Class I needs is plainly evident. The Order 5 comparable figures are only a bit less grim.

In summary, the local production deficit for Class I in the southeast is huge and growing. The gap has increased over the years more than the Department projected. As a consequence the need for transportation credits to provide for the orderly and equitable acquisition of supplemental milk for the markets is greater than ever.

B. The structural mismatch of supply and demand within the southeast marketing areas.

Just as there is a regional structural deficit of total production for Class I, within the marketing areas of Orders 5 and 7, there is a structural mismatch of supply and demand by location. The result is that just as milk needs to be imported from out of the area to meet in-area Class I demands, within the marketing area itself, milk must be moved substantial distances from point of production to point of demand in order to meet the Class I needs of the distributing plants in the Order. There are several sets of data within the record which document this structural working condition.

Exhibit 22 prepared by Dave Darr of DFA depicts the relationship of milk production within the region to the demand point of distributing plants. In Exhibit 22, Mr. Darr color-coded the distributing plants in the region on the basis of the relationship of their needs to the volume of all milk production in adjoining counties. Of the 42 distributing plants in the region, only 6 have potentially available to them more than 200% of their needs. An additional 8 plants have potentially available between 100% and 200% of needs in nearby counties. Fully 2/3 of the plants, a total of 28, have less than their total needs available nearby. The greatest majority, fully one-half of the plants in the region have less than 50% of the milk which they require located in nearby counties. This clearly means that milk must travel substantial distances to supply the needs of most distributing plants in the region. However, it also shows that a small handful of plants will be able to be fully supplied with inexpensive local deliveries.

What this supply and demand mismatch means for deliveries of producer milk within the marketing areas is revealed in the Market Administrators' information provided in Exhibit 13A for Order 7 and Exhibit 7, pages 1 and 4 for Order 5. These Exhibits, which show the results of applying Proposal 2 for April and October 2005 in Orders 5 and 7, revealed how far milk must travel within these markets to reach the Class I demand points.

Taking Order 5 first, the Market Administrator determined that in April and October 2005, the weighted average miles beyond the nearest distributing plant which milk subject to credit would travel was 44 miles in April 2005, and 41 miles in October 2005 (Exhibit 7, page 4). Those distances represent about an additional $.20 per hundred weight of hauling expense for producers supplying these plants. In other words, the producers in the Order who were able to deliver to the nearest plant had one hauling cost; while the producers who delivered to more distant plants had, on average, an additional hauling expense of $.20 per hundred weight. The

numbers of producers in these two classes are instructive. Exhibit 7, page 1 shows that in April 162.0 million pounds of milk would have claimed a transportation credit with the 44 extra miles traveled. But we know that the pounds of milk which carried an additional hauling expense would have been substantially greater than that because only 86.5% of the milk delivered to distributing plants would be subject to credit. Therefore, in April 2005 a minimum of 195.5 million pounds of milk was delivered to plants which were beyond the producers' closest distributing plant. In April 2005 there was 338.9 million pounds of in-area production in Orders 5 and 7. Therefore, 57.7 % of the in-area milk was delivered to plants an average of 44 miles beyond the nearest plant of the producer. The figures for October 2005 are quite similar: 284 million pounds of milk produced in area in Order 5 and October 2005. By our calculations, the pounds delivered to distributing plants which were subject to credit were 131.5 million Class I and 158.9 million total or 56% of the milk in the Order. In other words, 56% of the milk incurred an average of $.20 per hundredweight additional hauling cost versus the 44% of milk that was deliverable to its nearest distributing plant.

The data in Order 7 are similar, but even starker in the inequity revealed. In April 2005, 284.5 million pounds of milk was delivered and would have been subject to the proposal to credits. The total in-area production in April 2005 was 353.1 million pounds (Exhibit 13C); fully 80% of the milk in area was delivered beyond the nearest distributing plant. These deliveries were at an average of 49.62 (Exhibit 13A) with, in essence, no assistance from the location adjustments of the Order. The result is that 80% of the producers in the Order have hauling expense on average $.22 per hundred weight more than the 20% of producers who are able to deliver to the nearest distributing plant in the Order.

The figures for October 2005 in Order 7 are similar: 229.5 million pounds of the 273.8 million total in-area production was delivered for credit. That is 84% of the milk and Order.

As the Secretary has previously stated: "the additional hauling costs, which are not reflected in the Orders' blend prices, are not shared by all the producers who enjoy the blend price that results from marketwide pooling." (See Exhibit A: 52 Fed. Reg. at 38241 (October 15, 1987)) These Orders, because of the mismatch within the geographical area of supply and demand, have a built in two class system among producers: those advantaged producers who are able to deliver to a nearby distributing plants; and the majority of producers who must deliver their milk a longer distance to a demand point at a substantial price disadvantage.

The Secretary must address these two structural issues of the regional supply deficit and the in-area geographical supply and demand in this proceeding.

IV. THE PROPOSALS TO ADDRESS CURRENT MARKETING CONDITIONS AND TESTIMONY IN SUPPORT OF THOSE PROPOSALS

Proponents have presented three proposals for addressing the current disorderly marketing conditions in Orders 5 and 7. We will summarize those proposals and the testimony of the witnesses who appeared in support.

Proposal 1 would (1) increase the maximum rate of assessment for the transportation credit balancing fund in Order 5 to a maximum of $.15 per hundred weight; (2) increase the maximum assessment in the transportation credit balancing fund for Order 7 by $.10 to a maximum of $.20 per hundred weight.

Proposal 3 would amend the mileage reimbursement factor utilized in transportation credit payment provisions of Orders 5 and 7, updating the mileage rate and including a diesel fuel cost adjuster.

Proposal 2 would add intra-order transportation credit provisions to both Order 5 and Order 7. It would establish a maximum $.10 per hundred weight of Class I milk rate in Order 5 to fund this transportation credit fund. It would establish a maximum rate of $.15 per hundred weight of Class I milk rate in Order 7 to fund the intra order transportation credit fund.

The Proponents' supportive testimony for the proposals was presented by Jeff Sims, and by six dairy farmers. Mr. Sims' detailed analysis of the industry conditions and the operation of the proposals was set out in Exhibits 24 and 25, and in the lengthy cross-examination in which he was able to address questions raised by his testimony. We will not restate that testimony here. However, we do want to highlight the dairy farmer testimony because this hearing is fundamentally about the income of these farmers and their families. The costs of supplying milk for Class I in this region, whether by acquisition from supplemental sources, or via long distance deliveries within the area, ultimately are borne by these dairy farmers. If the Orders do not provide a mechanism which assures sharing of costs among all producers and the equitable assessment of Class I handlers for the funds, the buck will continue to stop on these farms. These dairy farmer representatives of the proponents documented the need for the proposals through their own experiences throughout the region.

Mickey Childers operates a family dairy farm along with his father-in-law and two sons in Somerville, Alabama. Childers milks 700 cows producing an average of 22,000 pounds of milk per year and markets his milk through Dairy Farmers of America, a member of Southern Marketing Agency. Mr. Childers supports the adoption of Proposals 1, 2, and 3 in response to rising fuel costs and the deficit production conditions in Alabama where in-state farmers produce less than twenty percent of the milk consumed in the state. (Tr. 142-149)

Gerald Heatwole, a board member of the Southeast Area Council of Dairy Farmers of America, operates (with his family) two dairy farms, one in McGaheysville, Virginia milking 300 cows and one in Keezletown, Virginia milking 175 cows in the Shenandoah Valley. The South East Area Council represents more than 3,200 farms, the overwhelming majority of which are small businesses. Unlike the Southeast generally, the Shenandoah Valley is a local, surplus production area. Milk from the Heatwole farm is shipped a distance of 485 miles to Charleston, South Carolina, to meet the Class I needs of the market[1]. The cost of this transport falls to the producers whose milk is pooled in the SMA pool. This transportation expense just adds to the other high production costs resulting in part from climatic conditions detrimental to milk production and high on-farm energy costs. Mr. Heatwole supports Proposals 1, 2 and 3. (Tr. 158-161)

Glen Easter farms near Laurens, South Carolina. His is a second generation family farm enterprise, East Glen Farm, which began operations in 1927. Twice the business has relocated over 2,000 miles in moves forced from milk marketing situations. He supports the three proposals made by SMA. Proposals 1 and 3 on out of area milk will help his business by assuring that adequate credits are paid and the fuel adjuster kept in line with energy market conditions. He believes the intra-market credit will help East Glen Farm and other Southeast Area Council producer members supply the market and recover costs in a fair manner. He asserts that producers in no other section of the nation are asked or expected to bear transportation burdens to the extent expected of producers in the southeast. Dairymen in the southeast need Federal Order help to recover the costs of supplying these markets and to allocate

[1] Long distance hauls of this magnitude are necessary in this region because of the structural supply demand relationships in spite of the extraordinary efforts of the SMA cooperatives to coordinate the regional supply logistics.

the costs equitably among all who benefit from the Class I pool. (Tr. 169-175)

Reta Dyess and her husband farm in east Texas in Cherokee County midway between Dallas and Houston. They operate a total of six farms with a total of 2,000 milking cows. Their milk is shipped from Texas to the southeast through the Southeast Area Council of DFA. Ms. Dyess is a Council member for the Southeast Council which has approximately 330 members in east Texas. The cost of getting the Dyess's milk to market and maintaining necessary supply balances is increasing with increased fuel prices and increased hauling distances to market. She observes that producers in the Southeast Council have been forced out of business by high costs, which in turn raises the costs of the remaining producers in a never ending cycle. Ms. Dyess supports SMA Proposals 1, 2 and 3. Proposals 1 and 3 on outside milk will help ensure that the cost of getting such milk to the southeast will be covered. Proposal 2 regarding intra-market transportation credits will help the Dyess farms supply the southeast market and recover transportation costs in a way that is fair to all producers. (Tr. 190-195)

Jeff Smith is a director on the Southeast Council of Dairy Farmers of America. Mr. Smith and his brother operate a farm 90 miles northeast of Atlanta in Comer, Georgia, milking 950 cows three times a day with a total herd size of 2,700 head including replacement heifers, steers and bulls. In addition, for the past five years he and his brother have operated a trucking company hauling milk throughout the southeast. He has seen in his personal business enterprise the cost of hauling increase each year for the past five years, not only with respect to fuel, but also with higher labor, insurance, tires and other equipment expenses. He sees no relief in coping with these cost increases coming from the Order system as it is presently structured and believes it is time to take some of the pressure associated with supplying the southeast market off the producers as soon as possible through adoption of Proposals 1, 2 and 3. (Tr. 196-202)

Buckey Jones is a third generation dairy farmer whose farm is located in Amite County, Mississippi just north of the Mississippi-Louisiana border. He began dairy farming and his involvement with dairy cooperative leadership in 1962. At present he is chairman of the board of directors of both Dairy Cooperative Marketing Association and Southern Marketing Agency. Both of these associations encompass the entire southeast in scope and overall operation blanketing both Federal Order 5 and 7. With a decrease in the number of dairymen in the southeast from 12,000 to 5,000 and annual milk production of 12,000,000 pounds to less than 8,000,000 at present, Mr. Jones has seen the loss of dairy production capacity in the southeast moving at an alarming rate leaving fewer producers to supply the market at ever increasing cost. In addition there is imbalance between higher production areas and the location of plants with higher processing capabilities. Mr. Jones calls upon the Department to come to the aid of dairy farmers in the southeast without delay by adoption of Proposals 1, 2 and 3. (Tr. 206-212)

V. THE TRANSPORTATION CREDIT BALANCING FUND PROVISIONS IN BOTH ORDERS 5 AND 7 MUST BE UPDATED TO MEET CURRENT MARKETING CONDITIONS

There are two basic issues to be addressed in updating the existing transportation credit balancing fund in Orders 5 and 7: first, a need for additional funds for those provision requires an increase in the maximum rate of assessment in both orders; second, the increases in the cost of transportation dictate a need to update the rate of reimbursement and provide some automatic updating of the volatile fuel costs factor in the reimbursement formula. Together, these two changes within the structure of the current transportation credit program will restore that fund to an operational level equivalent to that which was originally intended.

A. The need for an increased rate of assessment from transportation credit balancing fund.

The rates of assessment in the transportation credit balancing fund require an increase from their current levels of the maximums of 9.5 cents per hundredweight in Order 5 and $.10 per hundredweight in Order 7. Proposal 1 requests that the maximum rate in Order 5 be increased to $.15 per hundredweight and the maximum rate in Order 7 be increased to $.20 per hundredweight. The rates requested were formulated upon the documented need for additional funds. Every factor determining usage of these funds has increased and supports the requested increases in the maximum rates of assessment. Three factors go into the amount of transportation costs required by these funds: (1) the volume of supplemental milk delivered; (2) the distance the milk is delivered; and (3) the cost per loaded mile of delivery. We will recap the evidence relating to the increases in each of these factors.

The extraordinary increases in volumes of supplemental milk in these orders is incontrovertible. A clear record of the increased volumes is on Exhibit 34 prepared by the Market Administrator with respect to Federal Order 7. Exhibit 34 shows the pounds of milk on which claims were made for reimbursement from the transportation credit balancing fund in Order 7. The increase from 2000 to 2005 for the five month period of July through November is 86%. The production and population trends in the region establish that the need for supplemental milk will continue to increase.

Another way of looking at the need for revenue in these funds is to look at the portion of claims which were paid. Exhibit 25B shows that at the inception of the credits in 1997, 95% of the transportation cost was covered by the transportation credit balancing funds. This was the intent of the regulation in 1996. By 2003, the portion of costs covered was 89.7% in Order 5 and

67.2% in Order 7. In 2004, the payments were down to 54.6% in Order 5 and 38.9% in Order 7. In 2005, using estimated six month data, the payment for claims made was 52.6% in Order 5 and about 43% in Order 7. Since the claims are made at the current reimbursement rate, the portion of the actual cost of the transportation is much less.

The cause for the continually reduced payout is not solely the volume of milk required. It is also a product of the miles delivered and the cost, both of which are depicted on Exhibit 25B. The increased average mileage since 2000 in Order 7 is shown on Exhibit 34. The average miles for delivery trips in the months of July through November in 2000 versus the same months in 2005 increased 20%. These are substantial mileage increases standing alone; but the cost burden is compounded for the suppliers when the increased cost per loaded mile is taken into account.

As Mr. Sims described in detail in his testimony, the average cost per loaded mile for importing supplemental milk into the southeast has increased from 3.7 cents per mile in 1996 at the inception of these provisions to 4.9 cents today (See Exhibit 25B), a 32% increase.

In summary, the 86% increase in milk volumes is required to be hauled an average of 20% further at a cost of 32% more per mile than the cost incurred when the current rate of assessment and compensation was established. These figures are not subject to dispute; they were, in fact, not controverted at the hearing; and, we respectfully submit, the data mandate that these important provisions providing for orderly equitable marketing in the southeast be updated.

The proposed rates for increased maximum assessments are well justified. The increased to $.15 per hundred weight in Order 5 and the $.20 per hundred weight in Order 7 are documented levels of potentially required expense for these funds. In establishing these rates, the Secretary will, of course, keep in mind that they are maximum rates which the Market

Administrator does not need to charge if the funds are not needed. However, if the costs are incurred, the lack of availability of funds creates real market disorder. The proposed increased rates are reasonable and justified and should be adopted.

B. Proposal 3 should be adopted to establish a rate of reimbursement for the transportation credit balancing funds which is current with actual costs required.

It is urgent that the rate of reimbursement for delivery of supplemental milk supplies reflect current costs. That is the basis upon which the rate was set in 1996 and revised in 1997; and should be the basis upon which the rate is established today[2].

In 1997, the cost per loaded mile for over the road hauling was $1.75 to $1.80 per loaded mile. Today, that same rate is approximately $2.35 per loaded mile. This is documented on Exhibit 25E which is a compilation and summary of actual hauler bills to cooperatives during October 2005.

The basis for the increase in hauling costs involves not only diesel fuel but general inflation as well. There have been increases in labor, insurance, equipment, government regulations concerning driver rest, and all costs of transportation over the last eight years. When the current rate of reimbursement was set in 1997 at a level which approximated 95% of the actual costs, it was done in a thoughtful and deliberate manner by the Secretary. All of the reasons for establishing a reimbursement at that level which applied in 1997 apply today. The rate of reimbursement today, which would be equivalent to the 3.5 cent rate in 1997, is 4.33 cents on average for the 12 months of 2005 (Exhibit 25J). Under Proposal 2, the rate of reimbursement would fluctuate with the level of diesel fuel prices. This is appropriate because

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[2] An inadequate rate of location adjustment reimbursement was also a fundamental basis for the Order 30 credits. See Exh. A attached.

of the extreme volatility of diesel fuel prices and their direct impact upon the cost of hauling per loaded mile. Proponents have proposed a formula for adjusting the base costs of hauling for changes in fuel costs using the published, widely accepted, average diesel fuel costs for the Lower Atlantic and Gulf Coast region established by the Energy Information Agency. The changes in per hundredweight cost of diesel fuel are converted into the changes of hauling cost of milk over the road utilizing a 5.5 mile per gallon mileage factor, a rate that is generally accepted in the industry and supported in the hearing record.

The base rate for fuel adjustment is the period in 2003 during October and November when diesel fuel prices were relatively stable averaging $1.48 per gallon nationally with $1.42 to $1.43 prevailing in the lower Atlantic and Gulf Coast EIA regions. Using this period of relative stability in diesel fuel prices, proponents determined that the hauling rate charged in the southeast during that time was approximately $1.91 per loaded mile[3]. Therefore, proponents offer the base period of October and November 2003 with hauling costs of $1.91 per loaded mile and diesel fuel costs in the applicable regions of $1.42 to $1.43 per gallon as the rates from which fuel adjustments would be made assuming usage of the rate of 5.5 miles per gallon. In considering that Proposal 2 uses a base cost period from 2003, the resulting hauling

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[3] The data supporting the $1.91 base rate is in Exh. 25 G 1–5 and was explained by Mr. Sims, Exh. 24, pp. 10-11. Exh. 25 G lists and tabulates the costs of more than 150 transactions involving supplemental milk deliveries to the southeast in October and November 2003. The data was from a variety of sources and to a variety of destinations. It involved more than a dozen different carriers. The accuracy, completeness and representative nature of the data was not challenged. It provides a very firm evidentiary foundation for the base rate from which hauling costs should be adjusted, up or down, for fuel price volatility.

reimbursement rates exclude all cost inflation over the past now two and one half years.[4]

Proponents have calculated, and Mr. Sims explained in detail, the manner in which the fuel-cost-adjusted hauling reimbursement rate will function. We believe it is extremely important to both update the reimbursement rate for supplemental milk transportation costs to a current level and to provide automatic adjustment – both up and down – which a diesel fuel adjuster in Proposal 2 supplies. A monthly fuel adjuster is an eminently fair means of addressing the volatile fuel costs because it reflects both cost increases and decreases; it is not just a tool for capturing upward movements, but for making the reimbursement rate as accurate and equitable for all concerned, consumers as well as producers.

C. Opposition to Proposals 1 and 3.

There was limited direct opposition expressed at the hearing to Proposals 1 and 3. The comments of some producers from the region[5] that any payment for supplemental milk from out of the area depreciates the value of local milk are misplaced. This position apparently is premised upon a misunderstanding of the operation of the transportation credit balancing fund. The transportation credit balancing fund, after the amendments the Secretary made in 1997, can never impact pool revenues in Orders 5 or 7. It is funded solely with the handler assessments

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[4] Maintaining use of the 2003 base rate data going forward builds in a very conservative base rate since the underlying cost elements in that rate have increased, and will continue to increase with the general rates of inflation. Minimal 3% annual inflation since that period would have that rate at $2.05 currently, given the intervening 30 months.

[5]The producers who testified in opposition to Proponents' proposals, including Messrs. Robey and Sumners, deliver their milk every day to local distributing plants as independent producers, and are paid substantial over order premiums routinely. They are not involved in attempting to meet the total needs of those plants and others in the market; and do not have direct knowledge of the expense of that supply. What they do know, however, is that they have a local haul, every day, and no other hauling expenses to be concerned with. They are only able to be in that position because other producers see tot he balance of those plants' needs, at substantial expense.

which are over and above the federal order Class I price. Consequently, there is simply no depreciation of the blend price on local milk.

The demoralized nature of the dairy industry in the southeast at the production level is related to factors far beyond these provisions of the Federal Orders. There are structural factors in the industry relating to climate and costs of production which undoubtedly are contributing to the decline of the dairy industry in the southeast. There is simply no indication that use of reasonable regulations to preserve orderly marketing and equity among producers in the southeast has had or will have any effect whatsoever upon the long term trend of declining production.

The further contention that transportation credits for supplemental milk reduces utilization of the Order will be discussed in connection with proposal 4.

D. Summary regarding Proposals 1 and 3.

The record as a whole provides overwhelming support for Proposals 1 and 3. There was limited opposition in these proposal at the hearing and no evidence which challenged the basic factual underpinnings of these proposals: that increased volumes of supplemental milk are required for Class I in the southeast; that the cost of transporting milk has increased since 1997; and that the miles that the milk must move to meet the needs of the southeast have increased. All of these incontrovertible factual premises support the adoption of Proposals 1 and 3

VI. PROPOSAL 2 FOR INTRA-MARKET TRANSPORTATION CREDITS SHOULD BE ADOPTED

We will discuss the evidence supporting Proposal 2 as follows: (1) the structural conditions in Orders 5 and 7 markets which dictate the need for credits; (2) the legal authority and precedent for the proposals; (3) the operation of the credit program as proposed; and (4) the

arguments made in opposition to intra-market transportation credits.

A. The mismatch of supply and demand in Orders 5 and 7.

The producers and handlers in Orders 5 and 7 have a huge challenge confronting them. The challenge is twofold: There is insufficient milk within the marketing area to meet Class I demand and the milk which is produced within the marketing area is not evenly situated to supply the Orders' distributing plants. Proposals 1 and 3 address the current and ongoing need for financing and sharing the transportation costs for supplemental milk from outside the marketing area. Proposal 2 addresses the need to finance and share the extraordinary transportation costs to move milk from production points to demand points within Orders 5 and 7 and, thereby, supply the markets' Class I needs in an orderly manner.

As discussed earlier, the mismatch of production area and demand points is graphically depicted on Exhibit 22. Page 2 of Exhibit 22 documents the fundamental mismatch of production to population, supply to demand, on a state by state basis. Within this 12 state region, the production to Class I demand ratio varies from 4.27 in Virginia to .18 in Alabama. This is an incredible 24 to 1 difference in the relationship of production to demand within the milkshed. If this were a small geographic area in which the distance from production point to demand point was limited, there would not be a problem. However, when producers in Alabama, as Mr. Childers testified, supply less than 20% of the fluid milk needs for the 4.5 million persons in that state; and producers in Louisiana supply less than 40% of the needs of the 4.5 million people in that state; and the producers in South Carolina supply less than 25% of the needs of the 2.5 million people in that state, there is a huge need to move milk from its areas of production to the population centers. Exhibit 22, page 2, shows that the only "surplus" state in the deep south is Mississippi where a mere 381 million pounds are produced annually, less than

the needs of one substantial fluid milk plant today.

But milk markets are always a set of contradictions and, thus, even within this highly deficit region, there is milk production. As a result a few select plants are supplied with local production, and a few select producers can supply a local plant. This leaves the remainder of the plants and suppliers at a substantial procurement and supply disadvantage. For the great majority of plants without a local supply, the acquisition cost for producer milk will be higher than for the neighboring plant which is able to capture the local supply. This is a market dynamic which the Secretary has repeatedly found to be a disorderly marketing condition. See Exhibits A, B, and C attached. On the producer side, a similar dynamic is at work. That majority of producers who do not have a local outlet will be at a substantial disadvantage when, and if, their deliveries to distant plants are not compensated by the location adjustments in the Order, which they are not. This is again a condition which the Secretary has repeatedly found to be a disorderly one. E.g., Exhibit A, 52 Fed. Reg. at 38241.

A concrete example of this condition in the area is in the testimony of Mr. Heatwole from the Shenandoah Valley of Virginia, one of the few pockets of substantial production in the region. One local distributing plant acquires approximately 20% of local production. The remainder is exported for the market's needs. In his case, his production goes regularly to South Carolina, 485 miles away. The cost of that movement is approximately $2.20 per cwt, as Mr. Sims documented on Exhibit 25, at Q2, but the order only provides $.50 in Class I differential. The remaining cost of $1.70 must be absorbed by the supplier, and the cost is incurred on all milk delivered, regardless of the classification. Even with over order charges on Class I of $1.70, or more, the producer in Virginia is not going to net anything close to the blend price and his neighbor supplying the local plant will have no hauling cost and receive the prevailing

premium on his production.

As a consequence of this structural mismatch in supply, demand, and Class I pricing, there is, in essence, a two-class system of producers in Orders 5 and 7: The select and privileged minority of producers who are able to deliver to a local plant; and the balance of the market, the majority of producers, who must deliver to distant demand points without compensation under the order for the cost of delivering that milk resulting in a net return to them of at least $.20 to $.25 per cwt less than their neighbors[6]. At the same time, the handlers fall into the same classes: those few handlers who are favored with a local supply, on the one hand, and the remainder of the handlers who must arrange for their supplies to be imported from wherever supplemental supplies may be found, inside or outside the marketing areas, again without assistance from the location adjustments in the Order.

B. Unequal acquisition costs, and unequal transportation costs, are disorderly marketing conditions.

As discussed above, the AMAA provides authority for the Secretary to implement provisions within the marketing orders which allow pooled compensation for delivery of milk for Class I uses. This is the legal authority which has been used in Order 30 with respect to the transportation credits implemented there in 1987 (and continuing to date) and in these orders with respect to the supplemental transportation credits. Now this authority should be used to adopt Proposal 2 and implement intra-market transportation credits in these Orders. The

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[6] The pay price information in the record reflects this structural condition in the market. Those producers with local markets, and no supplemental supply obligations, such as Messrs. Robey, Sumners, enjoy favorable pay prices ($.70 or more over blend) and stable, modest hauling expense, e.g. $.60 for Mr. Robey. On the other hand, as Mr. Hollon testified, (Tr. 264-265 (Day 3)) the DFA producers throughout the region have pay prices (using the six month period of January to June 2005) ranging from $.25 under blend to $.30 over blend, with the majority about $.20 over blend.

applicability of the legal authority for Proposal 2 should not be a question. The Order 30 precedent shows both the need for and the justification for these provisions.

The Order 30 decision reveals a three step analysis which should be used here. First, the Decision recognizes that the location adjustment provisions of federal milk orders ordinarily pool the costs of transporting milk for Class I purposes. Secondly, the Decision recognizes that when the location adjustment provisions of the order do not pool the costs of serving the Class I market but the benefits of those deliveries are nevertheless shared, there is inequity among handlers and producers. Finally, the Order 30 Decision shows that a finely tuned transportation credit program within the market can create more orderly marketing conditions. The single difference between Proposal 2 and the Order 30 precedent is that Proposal 2 does **not** fund the payment of the credits from the pool (except as a last resort); rather a new assessments on Class I handlers is the revenue source.

The Order 30 decision explicitly recognizes the critical point of departure: That location adjustments traditionally cause the pooling among all producers of the cost of transporting milk to the Class I market from which all revenues are shared. This point is sometimes not noted when consideration is requested of transportation credits. In federal order pools, in order to return a minimum uniform price to producers, the cost of transporting milk to Class I demand points must be shared equitably among all producers in the pool. That is the function of locations adjustments to both handler and producer prices. As Jeff Sims demonstrated in his testimony, the addition of new Class I sales to a pool may actually **reduce** the blend price to producers if those Class I sales are in a location of the order with a higher Class I differential thereby requiring additional transportation to market. (Exhibit 25S) In other words, when milk is delivered to a higher price zone, because producers delivering there receive a blend price

on all of their milk delivered (to reflect the transportation costs incurred), the overall blend price may be reduced as **all producers share the additional transportation costs required to obtain the additional Class I sales.**

As the Secretary recognized in the Order 30 decision, when the location adjustments in the Order do not cover the transportation to Class I plants (either because the amount of the location adjustment is inadequate or because the milk is moving in a direction which is against the grid of location prices, both of which conditions existed in Order 30 in 1987), there is inequity among both producers and handlers and disorder in the marketplace. That same situation is without question present in Orders 5 and 7 here as the record so plainly demonstrates.

The Market Administrators' data with respect to the hypothetical implementation of Proposal 2 shows that the majority of producers deliver their milk beyond the nearest distributing plant. Exhibit 22, page 1 graphically depicts how this is an everyday reality in the southeast. For those producers delivering to non-local plants, because the location adjustments under the Order provide little if any compensation for the additional mileage, their return from milk deliveries is substantially less than is the return to the limited group of producers who are able to deliver to the nearest plant. This is a situation which is starkly more discriminatory than that in Order 30 and which certainly requires the attention of the Department.

C. The operation of Proposal 2.

Proposal 2 is a finely-crafted system for establishing a fund of **new** revenue which is available to reimburse producers (or their handlers) delivering milk from farms distant from their nearest distributing plant. The reimbursement schedule only applies to Class I milk. The rate is the same as that for supplemental milk and is less than actual costs to assure that there is no incentive for inefficient movements. The calculations to be performed by the Market

Administrator are as follows: (1) The MA will determine the mileage from the producer's farm to the nearest distributing plant and eliminate that amount of mileage from the total mileage to the plant of ultimate delivery. (2) The rate of reimbursement will be applied to that mileage, but any location value provided under the order will be subtracted from the proposed credit. Only Class I pounds will be subject to the proposed credit. The detailed mechanics of the application of the proposed language were discussed in the hearing by Mr. Sims.

D. Opposition arguments concerning Proposal 2.

We want to attempt to address all of the objections and concerns which were raised or could be raised in brief to the proposed intra-market credits.

1. No payments from the pool except as a last resort[7]. One of the most important aspects of Proposal 2 is that it would be funded with assessments upon Class I handlers. Unless and until the need for reimbursement for these credits exceeds the additional assessments which would fund it, there would be no diminution of the pool. However, if it were necessary for the pool to be used for these payments, that is not any different cost-sharing arrangement than occurs with all location adjustment provisions. As a result, we think that the funding mechanism for Proposal 2 which relies upon Class I handlers, primarily, and the pool as a last resort is very justified and reasonable and it is analogous to the location adjustment process in calculation of the producer settlement funds where Class I adjustments (charges) are added to the pool value and producer location adjustments are deducted. (See Exhibit 13M (Order 7), Exhibit 5, page 57

[7] Proposal 2 allows the Secretary to fund the transportation credits in the manner which he deems appropriate, which could include: No costs from the pool under any circumstances (the current system for funding the supplemental milk program); all costs from the pool (the current system found appropriate in Order 30); or any combination of the two revenue sources (proponents having advanced one combination program which would allow pool expenditures with a limit).

(Order 5))

2. The rate is reasonable and inefficiencies will not be encouraged. Commonly, concerns are expressed that any compensation program embedded in order language will encourage inefficient movements for the purpose of receiving the payment. Proposal 2 has been tailored along the lines used by the Secretary in both Order 30 and in the supplemental milk transportation credits in these orders to discourage, and not reward, inefficient movements. The payments are only on Class I milk; the payments are for less than the rate of actual cost of hauling; the payments eliminate the mileage to the producer's closest plant; and the rate will fluctuate up and down with changes in the diesel fuel cost so that no inadvertent windfalls are available. For all of these reasons, we do not believe that inefficient movements for the purpose of obtaining credits would be profitable.

3. The program will complement existing location adjustments and any future changes in those values. The transportation credit reimbursement system is designed to offset, and not duplicate any values provided in the Class I differentials under the Order. Therefore, both existing Class I differential values, and any which might be implemented in the future[8], would be reflected in this system. It is a finely-tuned, limited reimbursement system designed to overlay and not displace the differential structure in the order.

4. Over-order charges cannot do the job. There are several reasons why over-order premiums are not the answer to the issues addressed by Proposal 2. First, just as the Secretary

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[8] Mr. Sims explained in testimony why these credits are sought now rather than changes in location adjustments being requested. See Tr. 17–19 (January 12, 2006). Again, we urge the Department to understand that these credits **will complement, and not displace in any manner,** any future changes in location adjustments which the Secretary may deem appropriate. We would also point out that the Class I only transportation credits in Proposal 2 are a cost-effective mechanism for attracting Class I milk to the points of demand and sharing the cost equitably.

found in Order 30, where the proponents represented 94% of the milk supplied to Class I, over-order charges by the proponent cooperatives (which represent 80% or so of the Class I supply here) cannot fully redress the equity and cost-sharing issues which credits in the Order system can. As the Order 30 decision recognized, the Order system is responsible for assuring that all producers, and handlers, have a uniform, equitable pooled base of operations. Over-order charges are built on that foundation. The Order system must assure that all participants have an equitable starting point. Secondly, over-order negotiations with handlers cannot react to volatile changes in costs in the manner that a monthly-adjusted administered price can. There are situations of extreme short run cost pressures in which it is difficult to pass on all costs, the prime example being fuel cost. Where there is a rapid increase in costs it is very difficult to fully recover fuel cost changes where it is an entirely over-order function. Third, federal order minimum prices have the transparency which over-order prices do not have. This allows costs to be passed through to the ultimate consumer in the most effective and efficient manner[9]. Finally, the Market Administrators' unquestioned integrity and independence in administering the program will assure all in the industry, handler and producer alike, that the credits are being fairly administered.

5. Why not 'Just say No' to costly deliveries? The question is sometimes posed, or implied, that cooperatives should just say "No" and refuse to supply unprofitable accounts, or make unprofitable deliveries, the assumption apparently being that the problem of unshared transportation costs is a self-inflicted problem, or one caused by poor marketing policies and

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[9] Many bottling customers report difficulty in passing on fuel cost surcharges to their customers – the retailers – due in part to the imbalance of market power. However, in all cases changes in Order prices can be, and are, passed through the pricing system to the consumer without challenge.

practices[10]. There are a number of real world reasons why refusing to supply high cost customers with any supply, or any customer with high cost supplies, is not a real world solution to the problem. Cooperatives do not intend to lose money long term supplying any customer. However, customer supply relationships are a long-term partnership and must be considered valuable business assets that cannot be discounted on the basis of short term profit and loss considerations. As a part of its long term nature, a supply relationship may develop regionally and some portions of the geographic territory may be more profitable to service than others. But the entire market may generate adequate returns such that disrupting some portion of the market may be counter-productive. Furthermore, seasonal milk production patterns and sales patterns may make a particular location profitable in the spring and not so in the fall. A regional market may contain areas where some plants are more difficult (i.e. have higher costs) to supply but their sales patterns overlap with plants that have a different cost structure. The sales and distribution patterns must be taken into account when establishing premium levels and thus the profit and loss position of different customers. In today's fluid milk processing industry there are fewer, but larger, multi-regional firms. Multi-plant customers present challenges in sorting between those that can be served profitably and those that cannot. It is difficult to choose to supply one plant and not another. Furthermore, in a regional environment where a single plant handler is in a location that is costly to service, it may be difficult from a legal and regulatory viewpoint to establish different (higher) premium costs without becoming subject to discriminatory or predatory pricing challenges. Even if such charges are ultimately shown to be unfounded, there is a high financial and non-financial cost to being charged with and defending allegedly discriminatory sales and pricing policies. This demonstrates one of the

[10] Mr. Sims also addressed this issue very incisively at Tr. 19-22 (Day 3).

exact purpose for which Orders are established – to set equal and transparent terms of trade for the entire industry. If a cost structure can be adequately demonstrated, documented and reported, then an Order structure can be created to assist farmers in recovering such costs in a way that is clear and transparent and fair to all producers in the market.

6. In the southeast transportation for Class I is a marketwide problem. Finally, the question is sometimes raised concerning transportation credits - whether the problems addressed, and the benefits derived, are localized or marketwide in nature. Exhibit 22 should indicate rather clearly that the problems of deficit production and supply in these orders are not limited to any submarket or local subregion in the southeast. A majority of the Class I sales are impacted by these long distance milk movements within the marketing area which are not reflected in, and reimbursed by, the Class I price structure. This record shows a more pervasive need for transportation credits for Class I within the marketing area geography of these Orders than was demonstrated for the transportation credits adopted in Order 30 in 1987. We submit that this record clearly documents that long distance transportation of milk for Class I use is a marketwide service in Orders 5 and 7 for which additional mechanisms need to be implemented in the orders for appropriate marketwide sharing of the expense.

VII. OPPOSITION TO PROPOSALS 4 AND 5

A. Proposal 4 Should Not Be Adopted.

Proposal Number 4, advanced by Dean Foods Company, requests the adoption of a new limitation on the ability of handlers supplying supplemental milk for Class I use in these order to be reimbursed. Under the proposal, each month during the Transportation Credit Balancing Fund payment period (July to December), on a handler by handler basis, the market administrator would compute whether a handler's total receipts of producer milk were greater

than or less than 130 percent of that handler's physical receipts of producer milk at pool distributing plants and, if so, the handler's transportation credit payments, if any, would be reduced. Giving the Proposal, and the Proponent, the benefit of the doubt, there could be a rational basis for the intent of the proposal – to limit payments of transportation credits to a handler if that handler is pooling "too much" non-class I milk. However, there is no need to adopt any such proposal and, as Mr. Sims testified, there are many problems with the proposal including "interpretation, application, and degree." (Exhibit 42, page 1)

First, the basic "problem" which the Proposal is targeting, the pooling of milk which is not utilized for Class I, is already fully addressed in the pooling provisions of the Orders. All handlers – whether pejoratively referred to as "pseudo-handlers" or otherwise – must meet the performance requirements of these orders which, we would point out, are very tight. See 7 C.F.R. §§ 1005.13, 1007.13 (producer milk definitions). In addition, qualification for transportation credits has the further overlay of special criteria: the producer must reside outside of the marketing area and be off-market at least two months of the previous February through May period; payments are made only on milk allocated to Class I; the payment is reduced by the positive difference between the farm and the receiving plant's Class I zone; and payments are only made from July through December, when the Order provisions for producer status through touch-base deliveries and diversion limitations are most stringent. There is no room within this system for "pool-riding" abuse and the Proponent of Proposal 4 has shown none.

In its application of a fixed percentage litmus test, the proposal seems to suggest the milk world operates on averages; that every handler every month will seek to exactly balance their supply to no more than some stated maximum level of reserve supply, and that every handler can in fact accomplish this balancing act. This works nicely in theory, but goes out the window in

the real life world of milk marketing. Differences at the plant level in the type of customers the plant serves; the receiving and storage capacity of individual plants; the daily fluctuations in demand and supply; the monthly fluctuations in demand and supply; the seasonal nature of the demand at the customers the plant serves; and the seasonal nature of the plant's producer supply all combine to make a handler-specific picture of that handler's individual reserve requirement.[11] The substantial milk deficit condition of the southeast is an overriding factor in decisions on how much milk a handler must procure from outside the southeast to cover the handler's projected deficit in the short season.

Exhibit 43 demonstrates, for the months of January 2004 through October 2005 the ratio of the monthly highest day of pool distributing plant receipts to the lowest day of pool distributing plant receipts for Orders 5 and 7. In the Appalachian Order during the 22 month period, the ratio of the highest day of pool distributing plant receipts to the lowest day of pool distributing plant receipts exceeded 1.30 eighteen times. In the Southeast Order during the 22 month period, the ratio of the highest day of pool distributing plant receipts to the lowest day of pool distributing plant receipts exceeded 1.30 sixteen times. The simple average ratio of the simple average of highest day's receipts to the simple average of lowest day's receipts was 1.35 and 1.38, respectively for Orders 5 and 7. Clearly, there are many months when a 30 percent

[11] As an example, a handler whose customer base contains schools will have a fundamentally different seasonality to its demand base, and thus its reserve requirements, than would a handler focused solely on serving supermarkets. In addition, there exist across the marketing areas differences in seasonality of milk supply which further complicate this desire to have a one-size-fits-all reserve requirement.

reserve factor is not sufficient to cover intra-month balancing.[12]

If the proposal as written is applied to cooperative associations as handlers of milk in determining whether the cooperative is adequately or more than adequately supplied versus the cooperative's deliveries to pool distributing plants, the proposal would advantage the operators of pool distributing plants to the detriment of cooperatives. Cooperative associations handle the predominant volumes of reserve supplies for the two Orders, For plants that receive all of their milk from cooperative associations, the cooperatives handle 100 percent of the reserve. Depending on the method of interpretation of the Proposal 4 provision, cooperative associations, which handle the predominant volumes of supplemental supplies could be left with virtually no opportunity to collect Transportation Credit Balancing Fund payments.[13] The location of handlers relative to reserve supplies may cause handlers to be treated differently in the

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[12] Proponents further analyzed intra-month pool distributing plant balancing requirements, using market administrator data for February 2005. See Exh. 42, pp. 4–6. When comparing the actual daily receipts at pool distributing plants, and making judgments regarding what a reasonable level of marketing reserve requirement should be, the maximum highs and lows must be factored in. The real life world of milk marketing does not work on averages, it operates on extremes. Milk has to be available to cover the needs of plants on the highest day of the week, the month, the season, and the year. In the market administrator data, the average swing from lowest day of pool distributing plants receipts to highest day exceeded the reserve requirement factor suggested in Proposal Number 4. The 35 to 38 percent swing in pool distributing plant deliveries does not even account for any necessary reserve over and above the highest day's delivery. Clearly, the 30 percent reserve requirement suggested in Proposal Number 4 is insufficient. Further exacerbating the problem of the large necessary reserve to balance pool distributing plant supply and demand is the expansion of the milk-shed for the southeast. Milk moves into the southeast from more than half the states in the nation. As a milkshed expands relative to the processing area, reserve requirements increase. Put another way, the farther a milk supply is from its processing destination, the greater the impact the daily variations in supply and demand impact the necessary reserve and the cost of maintaining that reserve.

[13] When supplies at a distributing plant are carried on more than one pool report – either from multiple cooperatives, or involving independent producers and supplemental cooperative supplies – the "right" to the 30% reserve could be allocated in a most inequitable manner such that the supplemental supplier, which is always the cooperative, would be grossly disadvantaged.

reimbursed cost of transport on supplemental milk. Handlers nearer the edge of the southeastern Order areas could benefit, since theoretically their access to reserve supplies would be easier and therefore require a lesser reserve level. The Orders already have safeguards against attaching too much additional milk to the Order pools. During the Transportation Credit payment months in Order 5 the maximum diversion percentage is 25 percent of deliveries to pool plants in July through November, and forty percent in December; while in Order 7, the maximum diversion percentage is 33 percent of deliveries to pool plants in July through December. Thus, the ability to pool milk by diversion on the Orders is essentially at the limits proposed in Proposal Number 4.[14]

In summary, the reserve requirement established in Proposal Number 4 may be insufficient based on receipt patterns of pool distributing plants weekly, monthly, and seasonally; may be insufficient based on production patterns of producers; and may be insufficient based on the distance milk must move to supply Class I needs. The current Order

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[14] Proposal 4 seems to be aimed at limiting the use of Transportation Credits to supply these manufacturing facilities. This is unnecessary. The current Transportation Credit provisions allow a Transportation Credit payment based on the lesser of the Class I utilization of the plant at which received, or the market administrators' monthly estimate of marketwide Class I use. If a pooled manufacturing plant has no Class I use during the month, even if milk is received from a producer whose milk is Transportation Credit eligible, no Transportation Credit will be received on the milk. No additional safeguard is necessary to prevent Transportation Credits being used to supply pool manufacturing facilities. The analogous is true for diversions to nonpool plants. Since Transportation Credits are not available on deliveries to nonpool plants, even if the plant has Class I use, Transportation Credits cannot be used to supply plants for any use in the manufacturing classes. On rare occasions, milk is received at a pool supply plant and held over weekends before being transferred to pool distributing plants, because as testified to earlier, pool distributing plants receive substantially less milk on weekends than on weekdays. This activity in the use of pool supply plants for weekend storage is almost exclusively a function taken on by cooperatives. As proposed, Proposal Number 4 would penalize the cooperative for using pool supply plants as a vessel for short-term storage of milk during the short supply season, because the delivery of milk to the pool supply plant would count as a delivery to a plant other than a pool distributing plant.

provisions prevent the use of Transportation Credits for supplying milk for manufacturing uses, and the Order diversion limits prevent pooling milk on the Orders in quantities substantially in excess of what is suggested by Proposal Number 4. In addition, the application of the provisions has the potential for falling disproportionally on certain segments of the industry. Proposal Number 4 should not be adopted.

B. Proposal 5 Should Not Be Adopted.

Proposal Number 5, presented by Dean Foods Company, would change the price on milk diverted to plants outside the combined marketing areas of Orders 5 and 7 by "zoning out" the price from the nearest pool distributing plant located within the marketing areas. The zone out rate would be four cents per ten miles. The ostensible purpose is to offer certain disincentives (price penalties) to reduce the amount of milk pooled by diversion to plants located outside the marketing areas. This in theory would raise the Orders' blend prices. However, the onerous impacts of the proposal and the intended and unintended consequences negate any perceived positive results. There are a number of reasons why the Proposal should not be adopted.

First, the Proposal implies a fundamental misunderstanding of the milk supplies for the marketing areas. Almost one half of the milk pooled on the Appalachian and Southeast Orders originates from farms outside the marketing areas. Thus, on its face it is unfair to ask this one-half of the regions's milk supply to accept a markedly lower blend price when diverted to a plant nearby its area of production than is now the case. As Mr. Sims explained, prudence in marketing milk dictates that the more distant milk should be the last milk brought into the marketing area to service in-area demand. If marketers of milk are going to minimize the miles milk moves, which is the primary efficiency in milk routing, the logical process is to use in-area milk first, and then supplement that milk with out-of-area produced milk. This means that, as a

matter of good marketing and supply efficiency, the out-of-area milk will have relatively more diversions to non-pool plants than in-area milk. The impact of the location adjustment zone-out suggested in Proposal Number 5 will penalize efficient diversion of the milk produced outside the marketing areas. These out-of-area reserve supplies are critical to the supply of milk for Class I use in the southeast, and these out-of-area producers deserve to be treated no different than producers located inside the marketing area.

The Proposal also appears to have been based on a mistaken premise or premises: that pre-reform diversions out of the southeastern orders were zoned out on the basis of mileage. In fact, as Mr. Schad testified with respect to pre-reform Order 5 (Exhibit 41, pages 3-5), the pre-reform orders frequently conformed the diverted price to the price of the local Order. Order 7 had the same provision. See 7 C.F.R. 1007.52(a)(6)(January 1, 1999)[15]. Order reform made this practice uniform on a national basis. The Secretary had also adopted the practice of using the local order price in the origination area as the reference price for computing transportation credits for out of area milk. See 62 Fed. Reg. at 27535 (May 20, 1997). If this relationship is appropriate for reimbursement of the cost of moving milk for Class I, it ought to be appropriate for blend (producer) pricing purposes.

There are also milk marketing ills which could accrue from the adoption of Proposal 5. Proposal 5 would encourage the uneconomic movement of milk, and would encourage the development of pool supply plants located outside the marketing area. Exhibit 45 calculates the

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[15] That section provided: "For a plant located within another Federal order marketing area, other than in those counties specified in paragraphs (a) (2), (3), and (4) of this section [for which other specified prices were stipulated], the adjustment shall be determined by subtracting the Class I differential price in Zone 7 of this order from the Class I differential price, adjusted for the plant's location, under such other Federal order." The mileage zone out applied only to milk from federally unregulated areas where there was, in essence, no federal order price. The zone out estimated what would be the federal price.

financial incentives which would be present to move milk produced outside the marketing area into the marketing area for manufacturing into surplus product. In the Exhibit 45 example, milk produced in the Goshen Indiana area, which should be processed there when not needed for Class I would be more profitably delivered to Leitchfield Kentucky for processing. This example shows that the location adjustment changes resulting from Proposal 5 would encourage uneconomic movements of milk. The Federal Order program should not be in the business of promoting milk to move longer distances for use in manufacturing. The southeast already spends massive amounts of money moving milk for Class I use and does not need Federal Order location adjustment incentives which encourage manufacturing milk to move longer distances as well.

A second inefficiency which Proposal 5 would foster is the use of out-of-area supply plants. Delivery of milk direct from the farm to plants is of course the most efficient method for assembling and delivering milk.[16] Proposal 5 would encourage the return to using pool supply plants outside the southeastern Order marketing areas. Exhibit 45 shows for a hypothetical pool supply plant located in Portales, New Mexico, how the location adjustment structure as detailed in Proposal Number 5 would encourage the receipt of producer milk into a pool supply plant located outside the marketing areas and then a transfer of milk to pool distributing plants. As that exhibit details, and Mr. Sims explained, the financial difference resulting from Proposal Number 5 would certainly lend itself to establishing pool supply plants outside the marketing area versus taking the loss on producer milk diverted to those out of area plants if the plant was a

[16] Currently some supplemental milk does continue to come to the southeast as milk transferred from other order plants, and occasionally producer milk is received at pool supply plants in the southeast and then is transferred on to pool distributing plants. These receipts at pool supply plants occur most often as a result of holding milk over weekends when pool distributing plants are not receiving as much milk.

nonpool plant, which would occur under the Proposal number 5 location adjustment structure.

The issue of the relative value of milk delivered by location is an issue of national scope, and should be dealt with in a national hearing context. It is inappropriate for the southeast Orders to experience such drastic changes in their milk values on certain milk deliveries without benefit of viewing this issue in its broadest perspective. This is particularly true since almost half of the producer milk supply for the southeast originates outside the Order 5 and 7 marketing areas. A discussion of the relative values of diverted milk by location brings into play the entirety of the analysis of the Federal Order Class I differential surface. These options in this analysis would undoubtedly include raising Class I prices in some areas, lowering Class I prices in some areas, leaving some areas alone, and every permutation and combination of these. Since no organization will likely offer itself up as the ox to get gored, the Secretary must take the lead in these discussions and begin a process of evaluation which is scientific and free of the bias of industry self-interest if this is to be served up as a realistic option.

In summary, the location adjustment computation processes as proposed in Proposal Number 5 would be unfair to an important source of producer milk for the southeast; would lead to uneconomic movements of milk; could lead to uneconomic use of pool supply plants for receiving and transferring milk; and raises issues which, if they are indeed in need of addressing, should be addressed on a national scope. For all of these reasons, Proposal Number 5 should not be adopted.

VIII. PROPOSAL 2 FOR INTRA-MARKET TRANSPORTATION CREDITS SHOULD BE ADOPTED

The marketing conditions relating to the transportation of milk for Class I uses in the southeast are urgent. Proposals 1, 2, and 3 should be adopted on an emergency basis to provide

the earliest possible relief in the marketplace and to restore at the earliest possible time the orderly marketing which is the equitable sharing of costs to supply Class I market from which the revenues are pooled marketwide.

It is informative to note that the Secretary has previously acted on an expedited basis when adopting the transportation credits in Order 30 and in these orders. These decisions reflect the Department's understanding that the inequity reflected in unequal costs among handlers and unequal returns among producers are fundamentally disorderly marketing conditions which orders are intended to eliminate. Thus, these conditions go to the very heart of the system and require prompt, expeditious relief. Proponents, through the testimony of their dairy farmer witnesses and on the basis of the entire record, respectfully suggest that the urgency of these issues in the southeast requires emergency, expedited action by the Department.

IX. CONCLUSION

Proponents have demonstrated in this brief that there are structural supply and demand conditions within the southeast which require marketing order provisions to maintain orderly marketing and equity among handlers and producers in the orders. The Order 5 and 7 markets have both structural shortages for Class I needs and geographic mismatches for supply and demand within the marketing areas. Proposals 1, 2, and 3, taken together, represent thoroughly documented and meticulously supported proposals to establish handler and producer equity within these important federal order markets.

Proponents respectfully thank the Department for the opportunity to present their requests in this hearing process and appreciate the careful consideration which their testimony, evidence and arguments will be given.

Respectfully submitted,

By ______________________

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Dated: March 21, 2006

EXHIBIT A

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional cost may be passed onto producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for both programs need to be expedited. The committees need to have sufficient funds to pay their expense which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 911 and 915

Marketing agreements and orders, Limes (Florida), and Avocado (Florida).

For the reasons set forth in the preamble, it is proposed that §§ 911.226 and 915.226 be added as follows:

1. The authority citation for both 7 CFR Parts 911 and 915 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. The proposal is to add new §§ 911.226 and 915.226, to read as follows:

PART 911—LIMES GROWN IN FLORIDA

§ 911.226 Expenses and assessment rate.

Expenses of $250,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.15 per bushel of limes is established for the fiscal year ending March 31, 1988. Unexpended funds from the 1986–87 fiscal year may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.226 Expenses and assessment rate.

Expenses of $200,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.11 per bushel of avocados is established for the fiscal year ending March 31, 1988. Unexpected funds from the 1986–87 fiscal year may be carried over as a reserve.

Dated: October 7, 1987.

Deputy Director,

Robert C. Keeney,

Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-23879 Filed 10-14-87 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1030

[Docket No. AO-361-A25]

Milk in the Chicago Regional Marketing Area; Emergency Partial Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts, on an expedited basis, amendments to the order regulating the handling of milk in the Chicago Regional marketing area based on industry proposals considered at a public hearing held at Madison, Wisconsin, on June 2–4, 1987. It establishes transfer credits on movements of bulk milk from pool plants to distributing plants for Class I use. One credit, the transportation credit, reimburses distributing plant handlers from marketwide pool funds up to .28 cents/cwt./mile on such tranfer milk. The other credit, the assembly credit, provides an 8-cent per cwt. pool reimbursement to pool plant handlers who assemble milk for transfer to bottling plants.

Marketwide service payment program were authorized by Congress when it amended the Agricultural Marketing Agreement Act of 1937 by the Food Security Act of 1985. The Food Security Improvements Act of 1986 provided further that any program providing payments for marketwide services adopted by the Secretary must be implemented not later than 120 days after a hearing is conducted. Therefore, the order changes must be effective by November 6, 1987; however, for administrative purposes November 1 is a preferable effective date. Accordingly, a recommended decision and the opportunity to file exceptions thereto have been omitted. Other issues considered at the June hearing will be dealt with in a later decision on this record.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

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 12291.

The Regulatory Flexibility Act (5 U.S.C. 601 through 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 action will not have a significant economic impact on a substantial number of small entities. The amendments will promote more orderly marketing of milk by producers and regulated handlers.

This action does not change the current regulatory status of any pool plant located in the Chicago Regional marketing area. It does reimburse to handlers, from pool funds, some of the costs involved in getting milk to bottling plants. This action helps equate the cost of milk for fluid handlers who receive milk by transfer with the cost of milk for fluid handlers who received milk directly from farms. This action also helps equate the monetary returns of handlers who ship milk to bottlers for Class I uses with the returns of handlers who keep their milk and realize marketing margins on finished products. The economic impact of these provisions on dairy farmers whose milk is pooled is expected to be minimal.

Prior documents in this proceeding:

Notice of Hearing: Issued May 15, 1987; published May 19, 1987 (52 FR 18894).

Extension of Time for Filing Briefs: Issued July 31, 1987; published August 6, 1987 (52 FR 29196).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Chicago Regional marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and the applicable rules of practice (7 CFR Part 900), at Madison, Wisconsin on June 2–4, 1987. Notice of such hearing was issued on May 15, 1987 and published May 19, 1987 (52 FR 18894).

Interested parties were given until July 9, 1987, to file post-hearing briefs on proposals for marketwide service payments (numbers 1, 2, 3, 4, 5, and 11 as published in the hearing notice).

The material issues on the record of the hearing relate to:

1. Marketwide service payments.
2. Performance standards for pool plants.

3. Definition of supply plant and reserve supply plant.

4. Definition of producer milk.

5. Location adjustments.

6. Omission of a recommended decision and the opportunity to file written exceptions thereto with respect to material issue number 1.

This decision deals with issues 1 and 6. The remaining issues will be considered in a later decision on this record.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Marketwide Service Payments.

Payments from the Order 30 pool funds should be provided to those handlers who perform certain marketwide services. Payments should be made to distributing plant handlers in the form of a transportation credit on bulk Class I milk received by transfer from pool plants and to pool plant handlers in the form of an assembly credit on milk tranferred to distributing plants for Class I use.

The transportati n credit, in most cases, would be an additional credit for distributing plant handlers on receipts of milk from other pool plants, the other credit being the location adjustment such handlers already receive on certain transfer. A transferee handler would be reimbursed from pool funds for a portion of the hauling costs through a transportation credit equal to .28 cents per mile-per hundredweight times the miles between the shipping and receiving plants and less the difference in location adjustments for the zones where the two plants are located if the milk movement is to a higher-priced zone. For instance, the per hundredweight transportation credit for a distributing plant in Zone 1 that received milk from a pool plant located 50 miles away in Zone 4 would be determined by multipling .28 cents times 50 miles, which equals 14 cents, and subtracting the difference in location adjustments for the two plants of 9 cents (the Zone 1 adjustment is zero and the Zone 4 adjustment is 9 cents). Thus, the transportation credit from the pool would be 5 cents.

At times the transportation credit would be at the maximum level of .28 cents per mile—per hundredweight times the miles between the transferor-transferee plants. This would occur in those cases where a distributing plant handler would not receive any location adjustment credit because either the transferor plant is located closer to Chicago than the transferee plant or both plants are in the same zone. There are also instances when no transportation credit would apply. This would happen when the difference in location adjustments is greater than the amount computed by multiplying .28 cents per mile—per hundredweight times the miles between the two plants. For example, a distributing plant in Zone 1 receiving milk from a pool plant located five miles away in Zone 2 would not receive a transportation credit. This would be the case because the location adjustment in Zone 2 is 3 cents, which is greater than .28 cents times 5 miles, or 1.4 cents.

The volume of Class I milk eligible for the combined hauling credit would be that currently assigned pro rata to receipts during the month of bulk fluid milk products from other pool plants multiplied by 110 percent. And, as indicated above, the transportation credit would apply to all movements of milk for Class I uses from transferor to transferee (distributing plant) regardless of the direction of the milk movements.

The assembly credit is a credit to the transferor-plant handler on bulk transfers to pool distributing plants for Class I use. The transferor plant, year round, would receive an 8-cent per hundredweight credit on its pro rata share of shipments of Class I milk to a bottler, determined on the same basis as described above.

Included in the hearing notice were proposals of Central Milk Producers Cooperative (CMPC), a federation of 11 dairy-farmer cooperatives, which would provide for payments from the Order 30 pool to those who perform certain marketwide services. Under its proposals, there would be payments made to: (1) Distributing plant handlers in the form of a transportation credit on Class I milk received by transfer from pool plants; (2) supply plant handlers in the form of an assembly credit on all milk transferred to distributing plants; (3) producers via distributing plant handlers in the form of a direct-delivery differential on all milk shipped from farms to distributing plants; and (4) producers via supply plant handlers in the form of a divert-transfer type of direct-delivery differential on all milk shipped from farms to distributing plants.

The transportation credit proposed by CMPC would provide for an additional credit at the transferee plant (i.e., distributing plant) on fluid milk products transferred in bulk between pool plants. Together with the location adjustment credits that are already in the order, each distributing plant handler would receive a total credit of .22 cents and .28 cents per mile—per hundredweight on receipts of bulk fluid milk products by transfer from pool plants for Class I user. The rate of .22 cents would apply during the period of March through July and the .28 cent rate would apply for the August through February period. The volume of Class I milk eligible for the combined hauling credit would still be assigned pro rata to receipts during the month of producer milk and of bulk fluid milk products from other pool plants as a group; however, the milk received by transfer which is eligible for the credit would be multiplied by 110 percent and further assigned for transportation credit starting with the receipts from the nearest plant (i.e., sequentially instead of proportionately). An exception to this additional credit would occur when an adjustment for location differences between a transferor plant and a transferee plant already yields a rate greater than the rates proposed. In this case, the greater rate would still apply. One final feature of this proposal is that it would apply to all movements of milk for Class I uses from transferor to transferee, regardless of the direction of the milk movements (i.e., the traditional north and south movements and movements from south to north and west to east). Therefore, movements of milk which presently go against the grain, from a plant in a zone with a higher price than that of the distributing plant to which the milk is being transferred, and presently do not receive any price adjustment for location differences would be given a transportation credit at the full rate proposed.

CMPC's proposed assembly credit would also provide a deduction from the handler's obligation to the pool. As proposed, supply plant handlers, which transfer milk to distributing plants would be entitled to a credit of 6 cents or 8 cents per hundredweight. The 6 cents per hundredweight would apply during the period of March through July and the 8 cents per hundredweight would apply for the August through February period. This credit would apply to the total amount of milk transferred and not just on the Class I portion as proposed for the transportation credit.

The direct-delivery differentials proposed by CMPC would be deducted in the uniform price computation. Producers would receive 6 cents or 8 cents per hundredweight of milk shipped directly from their farms to the distributing plants. As with the assembly credit, the 6 cents and 8 cents per hundredweight would apply during March through July for the former and

during August through February for the latter and the payment would be based on the actual amount of the shipment. As proposed, the distributing plant handlers would be obligated to pay these proceeds to those particular producers who shipped to them directly.

The fourth marketwide service payment proposed by CMPC would provide for further deductions from the uniform price computation in order to compensate those particular producers whose milk was delivered directly to distributing plant handlers by divert-transfer. The specifics of this payment are identical to those for the direct-delivery differentials except that a supply plant handler that diverts milk to a distributing plant would be responsible for the direct-delivery differential payment to producers.

Other proponents. The Southland Corporation and Kraft, Inc. (Southland and Kraft), also offered a proposal to consider marketwide service payments. Dean Foods Company (Dean) originally was a co-proponent with these handlers, but at the hearing and in its brief Dean supported CMPC's proposals on marketwide service payments. The Southland and Kraft proposal, however, is basically a modification of CMPC's proposals for assembly credits, direct-delivery differentials and divert-transfer type of direct-delivery differentials. As such, Southland and Kraft proposed that payments from the Order 30 pool should be made to those who make milk available for Class I uses at all pool plants, regardless of whether the receiving plant is a distributing or supply plant. Also, they proposed that beyond Zones 1 and 2, the per hundredweight rate should decrease one cent for each more distant zone until no payment is realized.

As with the CMPC proposal, Southland and Kraft's assembly credit would be a deduction from the handler's obligation to the pool and the rates used would be 6 cents per hundredweight during the March-July period and 8 cents per hundred weight during the August–February period. However, the similarity ends there because: (1) Southland and Kraft's assembly credit applies to any pool plant (supply or distributing) that transfers milk to another pool supply or distributing plant, whereas CMPC's credit is for transfers from a supply plant to a distributing plant only; (2) Southland and Kraft's assembly credit would apply only on the Class I portion of the transfer whereas CMPC's would be based on the actual amount of the transfer; and (3) Southland and Kraft's assembly credit decreases 1 cent per zone for transferee plants located beyond Zone 2 whereas CMPC's credit is constant throughout the marketing area.

Southland and Kraft's direct-delivery differential and divert-transfer type of direct-delivery differential, also like the CMPC proposals would be a deduction in the uniform price computation at the 6 cent and 8 cent per hundredweight rates. However, as with Southland and Kraft's assembly credit proposal, these proposed differentials would be paid only on the Class I portion of the farm deliveries to pool plants at decreasing rates beyond Zone 2.

In its brief, Southland, on its own behalf, modified its proposal to provide for an assembly credit and direct-delivery differential on milk moved to plants for Class I and Class II uses. Also, both the assembly credit and direct-delivery differential, year-round, would be 8 cents per hundredweight for plants in Zones 1 and 2, 7 cents per hundredweight for plants in Zones 3 and 4, and 6 cents per hundredweight for plants located beyond Zone 4.

In its brief, Kraft did not concur with the Southland modification of the assembly credit and direct-delivery differentials. Furthermore, Kraft took a supporting stance concerning CMPC's proposed transportation credit, and suggested limiting the transportation credit to transfers of milk which exceed 60 miles in order to encourage direct deliveries of close-by milk, while compensating handlers when nearby milk is unavailable.

At the hearing, two farmer organizations, National Farmers Organization (NFO) and Farmers Union Milk Marketing Cooperative (FUMMC), opposed the CMPC proposals and the part of the Southland and Kraft proposal which deals with assembly credits. NFO and FUMMC did support the Southland and Kraft concept of direct-delivery differentials and divert-transfer type of direct-delivery differential; however, they did not favor the decreasing-rate schedule.

Also at the hearing, a proprietary group, the Trade Association of Proprietary Plants (TAPP), said that CMPC's proposed transportation credit had merit although they questioned the need for a reduced rate during the flush months, because in their opinion both rates are sufficiently below actual hauling costs to discourage unnecessary milk movements. In its brief TAPP supported that proposal suggesting the following limitations:

1. If a distributing plant receives enough direct-shipped milk to satisfy its Class I needs, then there would be no transportation credit on shipments received from any other pool plant, be it affiliated, (i.e., the distributing plant and supplying pool plant are owned by the same entity), or non-owned.

2. If a distributing plant does not receive enough direct-shipped milk to satisfy its Class I needs, then there would be a transportation credit on shipments received from other pool plants, however, such supplemental shipments would have to come from affiliated pool plants and the transportation credit would be snubbed at that amount resulting from shipment between the closest distributing plant-supplying pool plant pairing of affiliated plants. Only if a distributing plant does not receive enough direct-shipped milk to satisfy Class I needs and has no affiliation with other pool plants would a transportation credit apply on shipments from non-owned supplying pool plants.

Notwithstanding its support for a transportation credit, TAPP, in general, opposed all marketwide service payments. Wisconsin Cheesemakers Association (WCMA) likewise stated that the transportation credit proposal was justifiable but opposed the other marketwide service payment proposals. However, in its brief, WCMA suggested that the rate be reconsidered. Instead of the .28 cent and .22 cent per mile rate proposed, they called for the rate to be constant throughout the year, set at 50 percent of actual transportation costs. Utilizing the data introduced at the hearing, they arrived at a rate of .21 cents.

CMPC is composed of the following 11 dairy cooperatives: Alto-Golden Guernsey Cooperative, Associated Milk Producers Inc.–Morning Glory Farms Region, Independent Milk Producers Cooperative, Lake-to-Lake Division of Land O'Lakes Dairy Cooperative, Manitowoc Milk Producers Cooperative, Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers, Outagamie Milk Producers Cooperative, Southern Milk Sales, Wisconsin Dairies Cooperative, and Woodstock Progressive Milk Producers Association. CMPC members account, in the aggregate, for approximately 80 percent of the milk delivered monthly to Order 30 pool plants. Also each month, approximately 94 percent of the milk allocated to Class I is received by Order 30 pool plants subject to the CMPC announced terms of sale.

In support of its proposal for payment from the Order 30 pool for a transportation credit, the spokesman for CMPC claimed that the present location adjustments do not adequately cover the cost of hauling milk from a supply plant

to a bottling plant, a milk movement that involves approximately 116 million pounds per month or 40 percent of the milk needed for fluid use, nor do they recognize all ordinary movements of milk for fluid use. He stated, however, that because the 1985 Farm Bill amended the Agricultural Marketing Agreement Act (Act) to allow payments from the pool for services of marketwide benefit, now both of these problems can be simultaneously resolved.

Proponent testified that other approaches to solving the problem of inadequate location adjustments were not acceptable. One approach, to increase the location adjustment between plants, he said, would not only increase the transportation rate but also decrease the uniform price for most producers. This, he said, could result in a mass exodus of producers from the pool. He added that one other approach, to increase the Class I differential, repeatedly was denied by the Department for hearing.

The proponent claimed that the rate now employed under location adjustments is clearly outdated. Proponent introduced an exhibit into the record to show that distributing plant handlers, on average, are presently paying 72 percent of the cost of hauling milk from supplying plants to their bottling operations. However, proponent also showed that when the proposed $.0028 per mile rate was applied, handlers would have to pay an average of only 35 percent of the actual cost of hauling. Thus, he said, CMPC's goal of effectively increasing the rate applicable on all transfers without completely recovering the hauling costs for most fluid handlers would be accomplished.

Proponent testified that present location adjustment provisions were structured on the premise that milk moves from the milkshed in the north to the city of Chicago in the south. Proponent's claim is that milk no longer just moves in a north-south direction but also in south-north and west-east directions because the bottling industry has developed along the eastern side of the marketing area. Proponent added that milk moves in any direction in which it is economically feasible to satisfy the needs of the fluid sector. Therefore, it was their belief that these new provisions should accommodate everyday milk movements.

The proponent also stated that CMPC proposed a lower rate of $.0022 per mile applicable during the period of March through July, in order to discourage milk from moving long distances during the flush. Although transportation costs do not vary seasonally, proponent believes that it is not necessary for the order to provide the same rate for transportation during the period of higher production as it does for the short production months.

Proponent testified that a sequential assignment of transfers would help assure that the transportation credit is not abused. Such a change, he said, would encourage transfers from pool plants located the shortest distance from the receiving plant.

NFO and FUMMC both opposed CMPC's transportation credit proposal. Their spokesmen concurred that such credit is not advisable because it would take money out of the pool, thereby decreasing the blend price. Also, it was their view that a south to north shipment is inefficient and uneconomic. FUMMC added that the transportation credit would encourage less efficient milk movements. Taking into account that the haul of direct-shipped milk is highly subsidized by bottlers, FUMMC believes that the extra credit to handlers would be more than enough to get them to switch from direct to transfer milk.

In support of its proposal for payment from the Order 30 pool for an assembly credit, a CMPC spokesman claimed that the cost of supplying milk to distributing plants is not borne evenly by all pool supply plants or their associated producers. Proponent stated that although 40 percent of all the milk needed by bottling plants is received by way of transfer, i.e., roughly 116 million pounds per month, only some supply plants actually meet these needs while others realize manufacturing margins from retained milk. Yet, he added, all draw equally from the pool money generated by the Class I value of milk supplied by the performing plants.

The spokesman stated that the assembly credit which they proposed fits the description of a marketwide service benefit. As proponent took note in it statement from the Department's earlier decision which dealt with this same issue, the entire market benefits from market balancing activities performed by certain handlers; therefore, all producers should share in the cost of providing these services.

In its brief, proponent pointed to statistics presented at the hearing to show the contrast between those who perform for the fluid market and those that do not. Proponent showed that during the period of September 1986–April 1987, CMPC member plant shipments to distributing plants averaged 38 percent of monthly receipts. On the other hand, for the period August 1984–January 1985, there were 66 pool supply and reserve supply plants that shipped less than 5 percent of their producer receipts.

Proponent stated that the assembly credit rate proposed would only provide partial compensation. This is so, he said, because CMPC did not want the Federal order to be an establisher of rates. In its brief, CMPC added that the rate proposed is constant over all 16 zones because this added incentive is needed to move milk from supply plants to distributing plants irrespective of the zone in which the bottler is located. Proponent acknowledged that the Chicago metroplitan area exhibits the greatest deficit of producer milk production in relaton to consumer demand. However, CMPC holds the view that there is a demand for milk at bottling plants located in farther-out zones that may be shipping packaged milk into the Chicago area to meet consumer demands for fluid milk. Proponent added that the distributing plants in the outer zones face steep competition with the manufacturing plants for their milk supplies.

One final point of the proponent was that the credit would apply only on actual shipments to pool distributing plants because of the fact that retained milk realizes marketing margins. It would, however, apply on the entire shipment regardless of the use made of it by the bottling handler. Otherwise, according to proponent, shipping handlers would request (but not all would get) Class I status for the milk that they transfer to bottlers.

Alto-Golden Guernsey (AGG), a member of CMPC which operates three reserve supply plants and two distributing plants regulated under Order 30, gave a minority statement regarding who should be entitled to the assembly credit. It was AGG's view that milk shipments from any pool plant to a distributing plant should entitle the transferor, whether supply plant or another distributing plant, to the credit. This is consistent, a spokesman said, with the current location adjustment provisions and the CMPC proposed transportation credit, which allow distributing plants a credit on receipts of milk from any pool plant.

NFO, FUMMC, TAPP, and WCMA all opposed the assembly credit proposal because they believe such costs should be paid through over-order charges by the handlers who receive the milk. NFO added that the proposed rate may be set at a point where some supply plants would cover all operational costs because they believe that efficient reloads can operate at the 8 cent per hundredweight level or less.

In support of its proposed direct-delivery differentials, the CMPC spokesman stated that such payments

would help preserve the direct-shipped milk and divert-transfer milk that currently moves to fluid handlers. The proponent claimed that direct farm to distributing plant type of shipments supply a monthly average of 173 million pounds or 60 percent of the milk needed each month at the bottling plants, with 81 million pounds being direct-shipped milk and 92 million pounds being divert-transfer milk. These milk movements, he said, are the most efficient and should be encouraged.

Proponent testified that the differentials should apply on the entire shipment to a distributing plant, because to limit it to anything less could result in producers receiving varying values based on handlers' Class I utilizations. In addition, CMPC, in its brief, claimed that the Food Security Act of 1985 specifically provides for such payments out of pool funds irrespective of the use classification of such milk. CMPC also stated that to limit the credit based on a plant's Class I utilization clearly would violate the marketwide pooling requirement of the Act, and in effect, create an individual-handler pool. It was CMPC's opinion that any such proposal would lead to producers switching to the plants with highest utilization. This is turn would cause those plants with relatively lower utilization to match the extra payment to retain supplies, and thus, costs would increase. CMPC added that limiting the credit based on a plant's Class I utilization would also lead to producers shipping milk farther distances to get to the highest utilization plants, at least further than necessary to derive the benefit that would be secured by CMPC's proposal.

Southland and Kraft, co-proponents of a proposal which basically modifies the CMPC assembly credit and direct-delivery differential proposals, each operate in the Chicago Regional market. Southland has one and Kraft five regulated reserve supply plants. A spokesman for Southland and Kraft claimed that such modifications are necessary because as proposed, the CMPC assembly credit and direct-delivery differential proposals would both create an unfair price difference between competing handlers and give special incentives for moving milk to distributing plants located in areas of high milk production when not needed.

The spokesman, referring to a 1977 decision of the Secretary to amend the Chicago Regional order, pointed out that it has been Department policy to promote a more equitable and competitive basis between a handler with Class I and II products produced in one plant and a handler with these same products produced in separate, specialized plants. However, he stated that CMPC's proposal, if not modified, would result in distributing plants with other than Class I products having an advantage over supply plants that produce like Class II or III products. This is so, he said, because producers or handlers who ship to any distributing plant would collect the 6 or 8 cents per hundredweight on the entire load no matter what class-use was made of it, whereas if they were to ship milk to any supply plant, they would not receive extra monies from the pool even if such shipment was directed for Class I use.

He added that such a proposition ignores the basic rationale for marketwide service payments of supplying the Class I needs of the market. Also, he said, it creates an incentive to couple Class II and III operations with Class I operations.

In its brief, Kraft claimed that the Southland and Kraft proposal would more effectively achieve the intent espoused by CMPC (i.e., meeting the fluid needs of the market) and would avoid inequities between Class II handlers. However, in its brief, Southland alone took the revised stance that the assembly credit and direct-delivery differential be provided for milk moved to plants for both Class I and Class II uses in order to maintain competitive equity among handlers producing like products. Kraft stood firm in its view that it is inappropriate to provide credits for milk shipments used to produce Class II products.

It was Southland and Kraft's view that prior to deciding which direct-delivery differential proposal had merit, the Secretary would have to answer the question of whether or not either proposal is authorized by the Act because both cause unequal payments to producers for milk delivered to similarly situated plants, depending upon the utilization or status of the plant. Southland and Kraft pointed out that under the CMPC proposal, producers delivering milk directly to a distributing plant would be eligible to receive a credit, while producers deliverying to a neighboring supply plant, at the same location, would not be eligible for such additional compensation. In addition, under their own proposal, the amount of credit passed on by handlers to producers would vary, depending on the Class I utilization of the plant.

In support of their proposal to gradually reduce the assembly credit and direct-delivery differential to zero in the outer zones, the Southland and Kraft spokesman claimed that it would provide an incentive for producers and shipping plants to supply the fluid needs of Class I handlers in the milk-deficient zones of the market. Outside of Zones 1 and 2, he said, there is sufficient milk to meet the consumer fluid milk demands. Southland and Kraft introduced an exhibit into the record to show that the Chicago area was milk-deficient relative to consumer demand, having to reach out 90 miles to meet that demand. Two other consumption centers of the market shown on the exhibit, Madison and Milwaukee, Wisconsin, had sufficient milk production in their own and surrounding counties. Therefore, Southland and Kraft believes that the credits are acceptable incentives for the Chicago area, specifically Zones 1 and 2, and that they compensate for the hauling shortfall built into the present location adjustment system, but elsewhere in the market they are not acceptable. The spokesman added that in other markets, direct-delivery differentials are given on milk deliveries to bottlers located in the major consumption area, not in the milkshed.

One other point put forth by the spokesman was that the assembly credit should be decreased in direct relationship to the need for assembled milk. If a bottler is located in a sea of milk, then the handler's milk supply should be obtained by direct-delivery; there should be no encouragement to pass through a supply plant before delivering it to plants so situated. However, for plants located in Chicago, he said, running the milk through a reload from some supply areas may be the most efficient system.

In its brief, Southland took the revised stance that year-round, the assembly credit and the direct-delivery differentials should be 8 cents per hundredweight for plants in Zones 1 and 2, 7 cents for Zones 3 and 4, and 6 cents for the remaining zones. Citing several marketing facts brought out at the hearing, such as distributing plants are located throughout the 18-zone area and that these plants currently receive milk by transfer, including the plants in Zones 8 through 16, Southland stated that while the need for assembling and transferring milk may not be as great in some parts of the market as others, it is an important part of milk procurement throughout the Order 30 region.

Kraft, in its brief, stood firm that these payments should only apply to shipments to the inner zones of the market where milk supplies are short and the need for milk is greatest. Furthermore, Kraft stated that CMPC's proposals would reward those who made close-by shipments the same as

those who moved their milk relatively longer distances. Therefore, Kraft holds the view that under such a scheme, shipments to bottlers in the milkshed would be preferred since one would reap the same reward at less expense. Kraft added that if the credits are allowed on shipments to bottlers in the milkshed, then inefficient transfers of milk would ensue, in place of direct shipments, so that plant operators could take advantage of all the new credits.

As stated, Dean, a major milk handler in the Chicago Regional market with three distributing plants, two reserve supply plants, and one supply plant regulated under Order 30, withdrew as a co-proponent of alternative proposals and gave its support to CMPC's proposals. In its brief, Dean stated that the assembly credit and direct-delivery differentials should apply towards an entire shipment, not just the portion used in Class I, because operators of supply plants and producers ship to bottlers believing that their milk will be used in Class I products. The cost over the entire load is the same, Dean said, no matter what its ultimate use is at the plant. Therefore, they should not be deprived the extra monies when a distributing plant handler decides to use only part or none of the load in the bottle. Dean warned that a handler who owns both a bottling and shipping plant could decide to assign all Class I to its own shipments, which, Dean believes, would not be in the best interest of orderly marketing. One other outcome, Dean stated, could be that the shippers, either plant operators or producers, would seek out the higher Class I use bottlers and avoid those with relatively low Class I use.

Dean also stated opposition to the decreasing payment by zone proposed by Southland and Kraft, contending that milk delivered to a plant in Green Bay (Zone 12) is equally valuable to the fluid market as that delivered to plant in Milwaukee (Zone 4) or Chicago (Zone 1).

Although they favored the Southland and Kraft direct-delivery differential proposal insofar as it limits such payments to the Class I use at the receiving plant, NFO and FUMMC opposed the decreasing rate schedule because they believe that distributing plants located beyond Zone 2 also serve the fluid needs of the milk-deficient Chicago area. In their opinion it is equally important that all bottling plants be granted identical differentials in order to draw milk to them.

TAPP and WCMA both opposed any form of direct-delivery differentials because in their view, such payment, especially to plants located beyond Zone 6, would be disruptive to orderly marketing. This is so, they said, because direct-delivery differentials would give bottling plants a 6 or 8 cent competitive advantage over proprietary manufacturing plants located in the same area. Such proposals, they said, would undermine the manufacturing segment of the dairy industry. They added that the Southland and Kraft modification, i.e., payment on the Class I portion of a shipment, would undermine the marketwide concept of pooling. One further point raised was that the direct-delivery differentials proposed may not even be authorized by the Food Security Act of 1985, which allows for payment from the pool to handlers, not to producers.

a. *Transportation Credits.* The order should provide transportation credits at the rate of .28 cents per mile per hundredweight to pool distributing plant operators for the Class I portion of bulk milk received by transfer from other pool plants. The volume of such transfers on which the transportation credit would be allowed would be determined on the same basis that location adjustment credits are determined for Class I milk from pool plants. The transportation credits would thus be assigned pro rata to Class I receipts from each pool plant multiplied by 110 percent. The transportation credits would be based on the distance between the distributing plant and the shipping pool plant, as determined by the market administrator, and would be applicable to movements of milk in any direction.

Supply plants are a major source of milk for distributing plants in the Chicago order. In 1986, actual transfers of milk from supply plants and reserve supply plants to pool distributing plants averaged bout 116 million pounds per month, varying from less than 100 million pounds in June and July to about 145 million pounds in October and November. In 1986, 40.2 per cent of the total raw milk physically received at distributing plants was received by transfer from supply plants and reserve supply plants.

In the Chicago market, the distributing plant operator pays the cost of hauling to the distributing plant milk purchased from a supply plant. The distributing plant operator receives any allowable Class I location adjustment under the order on Class I milk at the shipping plant zone. In contrast, milk that a distributing plant receives directly from dairy farms is accounted for at the order prices applicable for the zone where the plant is located. If authorized by the producer, the handler may deduct from payments to a producer the cost of hauling milk from the farm to the plant. Accordingly, if the hauling deduction is made, the handler's lowest cost source of milk should be milk that is recieved directly from producers.

The order provides a location adjustment to the Class I price for milk obtained from a plant located in a zone more distant from Chicago than the distributing plant. This pricing system is intended to recognize the cost of moving milk toward the major population center in the market, Chicago. However, the location adjustment rate of 2.3 cents per hundredweight per 15 miles provided in the order (equal to 1.5 cents per hundredweight per 10 miles) no longer adequately reflects actual hauling costs for moving milk from one plant to another plant. Thus, the additional cost not covered by the order for transferring milk from another pool plant to a distributing plant creates an inequity at a given location between handlers who receive milk via other plant transfers and those who receive milk by direct shipments from the farms of producers. Where there may not be adequate supplies of direct-shipped milk to meet the Class I needs of distributing plants, plants that rely on supply plant milk have some competitive disadvantage compared to those plants that are able to meet their needs with direct-shipped milk.

In addition to the inadequacy of the location adjustment rate provided in the order, the very nature of the market tends not to encourage the movement of milk to distributing plants for Class I uses because manufacturing plants are located throughout the marketing area and provide strong competition for producer milk supplies. The result is that distrubuting plants have difficulty attracting adequate milk supplies at prices that allow them to be competitive with handlers under other nearby orders.

It is not the purpose of the Federal milk marketing order program to arrange for a supply of milk for any milk plant, or to find an outlet for any supply of milk. However, contrary to views expressed by opponents at the hearing, a major purpose of the order program is to assure an adequate supply of pure and wholesome milk for the fluid market and to establish and maintain orderly marketing conditions. This includes adopting order provisions to facilitate securing adequate supplies of milk to meet the market's fluid milk needs. The record shows that obtaining adequate milk for those needs is not being accomplished in an orderly and equitable fashion under the current order provisions.

Conceptually, there are more ways than one to approach this problem. One way would be to increase the Class I price level and increase the location adjustment rate under the Chicago order. While this would encourage more milk to move to fluid milk plants, it would also create misalignment of prices with other nearby orders. Since the Chicago price would be too high relative to the other orders, fluid milk handlers would be placed in an unfavorable competitive position and could lose sales to handlers regulated under other orders. Moreover, a higher Class I price would be difficult, if not impossible, to justify given the current supply-demand situation in the Chicago market where the Class I utilization level averages about 20 percent annually.

Another way to encourage milk to move to the market for Class I use would be to simply provide a steeper slope to the location adjustments of the Class I and unform prices. However, this approach also would create price alignment problems which could result in a competitive advantage for Chicago area handlers relative to other orders. This, too, would not be an acceptable solution.

Because of the existence of these price alignment constraints, the cooperatives that make up CMPC have implemented a system outside the order to deal with a portion of the transportation costs of moving milk between plants. Now that the Agricultural Marketing Agreement Act (the Act) has been amended to permit payments to handlers out of pooled producer returns for services of marketwide benefit, CMPC is proposing that the order do what CMPS has attempted to do outside the order, namely, reimburse handlers of Class I milk for a portion of the cost of obtaining milk from supply plants.

The concept of using pool funds to facilitate the movement of milk from supply plants and other pool plants to distributing plants was widely supported at the hearing. However, two cooperatives, FUMMC and NFO, opposed the concept. Their position was that no provision should be adopted that would take money from producers to pay handlers for providing services that benefit primarily the handlers. This position is noted. However, the Act provides that such payments may be made.

Specifically, in section 608c(5)(J)(iii) of the Act, Congress has delineated "transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification * * *." as a service of marketwide benefit. Congress also indicated that any program of paying handlers for performing marketwide services must meet the requirements of the Act.

The transportation credit provisions adopted in this decision meet the requirements set forth in the statute. The market as a whole benefits from having the fluid milk market adequately supplied in a manner that promotes orderliness in the marketplace. The transportation credits will tend to promote the orderly marketing of milk by encouraging supply plants and other pool plants to make milk available to distributing plants for Class I use.

Distributing plants are located throughout the market. Some are situated with plentiful supplies of raw milk nearby. Others are located more distant from milk supplies. However, a principal characteristic of the Chicago market is that manufacturing plants also are located throughout the milkshed, thus providing intense competition for milk supplies. In this situation, it is essential to orderly marketing that the order recognize more fully the costs of transporting milk.

The current order has location adjustment provisions that recognize a portion of the costs of transporting milk. Through the operation of marketwide pooling, that portion of the hauling costs covered by the location adjustments is shared by all producers. However, as noted earlier in this decision, the location adjustment provisions no longer adequately reflect current hauling costs. Thus, handlers who pay for transporting for milk between plants incur a greater cost than is recognized by the order. Those handlers who incur such additional hauling costs have higher costs than other handlers who do not receive milk from other plants. Moreover, the additional hauling costs, which are not reflected in the order's blend prices, are not shared by all the producers who enjoy the blend prices that results from marketwide pooling. However, as indicated earlier, full recognition of hauling costs in the location adjustment provisions is not a practicable means of dealing with this problem.

The transportation credits provided herein will promote orderly marketing through provisions that are fully consistent with the intent and purposes of the Act. The operation of the credits will improve equity among competing fluid milk handlers by reimbursing a protion of the additional costs incurred when such handlers must reach out to other plans to obtain milk for Class I uses. On the other hand, the costs of such reimbursement will be spread out among all of the market's producers. Thus, all producers who share in the benefits of the higher returns of the fluid market through marketwide pooling will share also the costs of servicing the fluid milk sector of the market on a more equitable basis.

CMPC's proposal would have varied the per-mile hundredweight rate from .28 cents for September through February to .22 cents for March through August. The purpose behind the seasonal variation was that during the surplus production season milk moves to distributing plants from significantly shorter distances than it does during the short production season. CMPC was concerned that a constant rate could encourage distant shipments when not needed and thus further reduce the blend price unnecessarily.

Proponents introduced exhibits showing actual hauling costs paid by distributing plant operators during May, October, November, and December 1986 for plant-to-plant shipments of milk. These data, covering shipments ranging from one mile to 393 miles, indicate an overall average hauling rate of about .42 cents per mile-per hundredweight, although there was a wide range in the hauling rates paid. CMPC chose to propose two-thirds of the average hauling cost to yield a transportation credit rate of .28 cents in the fall months in order to not provide total recovery of hauling cost. Similarly, they proposed 80 percent of the fall rate for the flush production months.

The .28 cents per mile-per hundredweight rate is reasonable and should be adopted as the maximum transportation credit for all months. There is no basis in the record for concluding that hauling rates in the flush production season are 80 percent of short-season rates.

The transportation credits should be applied pro rata to receipts of milk from pool plants. This procedure will conform to the way location adjustments are applied. Since the transportation credits are intended to supplement the location adjustments, it is consistent to follow the same procedures for both provisions.

As proposed, the transportation credits should be applicable to plant-to-milk shipments that move in any direction. The market's principal direction of milk movements is from north to south and northwest to southeast, that is, from the production areas to the principal population center, the Chicago area, which is located in the southeast corner of the marketing area. However, other major population areas, such as Milwaukee and Green Bay, Wisconsin, are along the western shore of Lake Michigan, which forms the

eastern boundary of the marketing area. The record demonstrates that in certain cases shipments of milk from west to east and south to north are feasible and economically practicable. However, the order's location adjustments apply only to shipments that move in the traditional north to south or northwest to southeast direction. Thus, there is no incentive under the order's price structure to move milk supplies in those directions for which there are no location adjustments. The current location adjustment provisions would not be changed by this decision.

There was no specific opposition to the proposed application of transportation credits to milk movements as just described. However, the brief filed on behalf of Kraft urged that the transportation credits apply only to shipments that originate from plants located more than 60 miles from the distributing plant. The purpose of such a limitation would be to encourage primarily the longer distance shipments to distributing plants located in zones one through four. It is clear that these plants do not have sufficient supplies of milk nearby and must depend to a great degree on supply plant milk for their supplies. Also, according to the brief, such a limitation on the application of the transportation credits would discourage distributing plant operators from reaching out to distant supply plants for milk when direct-shipped milk is available from nearby farms.

A similar view was expressed in the brief filed by TAPP, which proposed several restrictions on allowing distributing plants to receive transportation credits. The brief urged that transportation credits only apply to:

1. Class I use, including inventory and shrinkage;
2. Necessary supplemental milk from supply plants; the credits should not apply if the distributing plant has an adequate supply of direct-shipped milk or if the distributing plant shifts milk available by direct shipment to other plants.

Similarly, distributing plants should not receive hauling credits in excess of those applicable to receipts from its own closest supply plants.

The concerns addressed in the briefs filed by Kraft and TAPP should be adequately addressed under the safeguard adopted herein. That is, the less than total coverage of hauling costs by the credits should discourage bypassing locally available supplies in order to obtain credits by receiving milk from more distant plants. Moreover, it would be administratively burdensome to make some of the determinations that would be required to carry out the intent of some of the restrictions called for in TAPP's brief.

As adopted the transportation credits and the current location adjustment provisions will be complementary. The maximum total credit (the transportation credit and the location adjustment combined) on any shipment of milk will be the amount determined by multiplying the .28 cents per mile-per hundredweight rate by the distance between the shipping and receiving plants. Such distance would be determined by the market administrator on the same basis that distances between plants are determined under the current location adjustment provisions of the order. If milk moves in a direction such that a location adjustment covers part of the transportation cost, the location adjustment would apply and the transportation credit would be reduced by the amount of the transportation costs covered by the location adjustment. However, if the location adjustment does not cover any of the transfer cost, the full transportation credit would be allowed. This will carry out the intent that credits apply to milk movements in any direction, but that total compensation not cover the entire hauling cost.

b. *Assembly Credits*. The order also should provide an assembly credit to pool plant operators on milk they assembly and ship to distributing plants for Class I use. Like the transportation credits, the assembly credits would be deducted from the pooled value of milk before computation of the uniform price and would be credited against the supplying handler's pool obligation. The rate for the credit should be eight cents per hundredweight.

The Act, in 608c(5)(J)(i), delineates "providing facilities to furnish additional supplies of milk needed by handlers * * *" as a service of marketwide benefit. The operation of supply plant facilities is a service of marketwide benefit because it is a function involved in moving milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification. Before milk can be transported from a supply plant to a distributing plant, it must be assembled, and perhaps cooled and stored, then reloaded onto a truck. The costs incurred in performing these functions are not currently recognized in the order.

Since servicing the Class I milk needs of fluid milk handlers is recognized as a service of marketwide benefit, it is appropriate that all producers share in the cost of providing that service. This will be realized by providing an assembly credit, and it is consistent with a major purpose of the Act to assure an adequate supply of pure and wholesome milk for the fluid market and to maintain orderly marketing conditions.

The assembly credit as adopted differs from CMPC's proposal in that the eight cents per hundredweight rate would be applicable each month, rather than varying seasonally, and would be based on transfers assigned to Class I use of the receiving plant. The assembly credit recognizes that there are certain costs associated with the process of assembling and shipping milk to distributing plants. These costs are in addition to the hauling costs that are incurred when milk is shipped from a supply plant to a distributing plant and which will be recovered in part through the transportation credits as discussed elsewhere in this decision.

CMPC proposed that an assembly credit be provided at eight cents per hundredweight for the months of August through February and six centers per hundredweight in the remaining months.

In order to develop a cost basis for the assembly credit, CMPC conducted a detailed survey of the costs incurred in operating 10 reload plants that are totally dedicated to serving the fluid milk market. It was CMPC's view that the mixed operations of manufacturing plants precluded the isolation and determination of the basic costs of assembling Grade A milk for shipment to the fluid market from such plants.

The survey of costs of the 10 reloads yielded a weighted average costs of operation of 12.79 cents per hundredweight, comprised of both fixed and variable costs, for the months of September 1985 through August 1986. A summary of the costs were presented in exhibit number 35 and need not be set out herein in detail. During the 12-month period, the total volume of milk handled through the reloads each month varied from just under 100 million pounds to more than 123 million pounds. The reloads were operated by cooperative associations and proprietary handlers.

It is apparent from data provided in exhibits that the milk received at the 10 reloads included in the detailed cost survey represents a substantial portion of the milk that is transferred to distributing plants from supply plants and reserve supply plants. For example, in Janaury 1986, the 10 reloads had producer milk receipts of 108.3 million pounds. In that month, distributing plants received 110.6 million pounds of milk by transfer from supply and reserve supply plants. Thus, the producer milk receipts of the 10 reloads equaled about

98 percent of the amount actually transferred that month. In June 1986, the same computation yields about 78 percent. Thus, it appears that the cost survey represents costs applicable to a vast majority of the milk that moves from supply and reserve supply plants to distributing plants via actual transfer.

The cost data assembled for the reload operations must be viewed as being suitable for the purpose intended here. Although some questions were raised about the cost data, no other data was presented to refute the validity of the costs submitted by CMPC as representative of actual reload operating costs.

The proponents also did not wish to reimburse supply plants for the total costs of assembling milk, yet they wanted to cover much of those costs. So they first multiplied 12.79 cents by 80 percent, which yielded about 10 cents. This was again by 20 percent because there was variation in the costs of operating the various reloads. The end result thus was the eight cents per hundredweight that CMPC proposed for the short production season. The 80 percent was applied again because the use of reloads varied from month-to-month, which yields the six cents per hundredweight that was proposed as the rate for the assembly credits during March through July.

As in the case of the transportation credits, the arguments in favor of seasonally varying the assembly credits are not convincing. The cost data submitted by CMPC does not reveal any particular seasonal pattern. If a seasonal variation were adopted, it should be based on a demonstration that costs actually vary on a seasonal basis. That is not the case here and so the eight cents per hundredweight rate should be applicable each month.

As adopted herein, the assembly credit will be available to any pool plant that receives milk and ships it to a distributing plant. CMPC's proposal would have limited the credit to shipments from supply plants to distributing plants. However, it is more consistent with the structure of the Chicago order to provide the credits for the pro rata share of Class I milk in any pool plant's shipments of bulk milk to a distributing plant. Whether such shipments originate at a supply plant or another distributing plant, the benefit to the market in terms of supplying milk for Class I use is the same.

Similarly, CMPC's proposal to apply the assembly credit to the entire quantity of milk from a supply plant to a distributing plant should not be adopted. Instead, each pool plant that ships milk to a distributing plant should receive a credit based on a pro rata share of the distribution plant's allocation of Class I use. The procedure to be followed would be essentially the same as now applies in determining the total location adjustment allowed a distributing plant when it receives Class I milk from several different sources. As in the case of both the location adjustment and the transportation credit, the basis for establishing the total amount of assembly credits to be allowed would be 110 percent of the distributing plant's total Class I assigned to receipts from other pool plants.

The primary reason, according to CMPC's spokesman, for proposing to allow assembly credits on all milk that is shipped form the supply plant to a distributing plant was to facilitate the billing process between the shipping and receiving handler. Nevertheless, it is more consistent with the concept of recognizing service to the Class I market to restrict the assembly credits to a measure of the receiving plant's Class I use.

c. *Direct-Delivery Differentials.* Proposals to provide separate payment of up to eight cents per hundredweight from pool funds to producers on milk direct-shipped or divert-transferred from farms to distributing plants should not be adopted. Although such payments perhaps would get milk to bottling plants, they would tend to offset what is intended to be accomplished by adoption of the transportation credits and the assembly credit. In addition, the authority for such payments under the marketwide service provisions of the Act is questionable, since the provisions are couched in terms of payments to handlers for services they perform.

Presently, about 60 percent of the milk needed by bottlers is shipped directly from farms, either by direct delivery or divert-transfer, based on data for the period of January-December 1986. Proponent and others at the hearing testified that the minority of milk moves in this manner because it is the most efficient way to get milk to bottlers. Furthermore, it was proponent's belief that payments should be made to producers for direct-shipped milk in order to maintain the present level of efficient shipments in light of their other proposals.

One reason for adopting proponent's other proposals is to alleviate the cost difference between handlers who obtain their milk by transfer and those who receive milk directly from farms. To also grant a per-hundredweight payment to producers on the milk that they direct deliver to bottlers would be a contrary action. Yet, not adopting the direct-delivery differential will not jeopardize these most-efficient shipments because even with adoption of the transportation credits, the recipient of transfer milk will still, on the average, have to pay 35 percent of the shipping cost.

In its brief, Kraft questioned whether such a proposal was authorized under the amended Act. However, in light of the conclusion that the proposal would thwart the other order provisions adopted herein, Kraft's contention need not be addressed.

For the foregoing reasons, all proposals relating to direct-delivery differential payments are denied.

6. Omission of a Recommended decision and the Opportunity to File Written Exceptions Thereto

The Food Security Improvements Act of 1986, mandates that the Secretary shall implement a marketwide service program that meets the requirements of the Agricultural Marketing Agreement Act of 1937 not later than 120 days after a hearing is conducted. The Department has determined that the receipt of briefs represents the completion of the hearing conducted by the Administrative Law Judge on the issue and the start of the 120-day timeframe for implementation. Accordingly, any amendatory action taken as a result of the public hearing held in Madison, Wisconsin, on June 2-4 1987, with the briefing date on marketwide service payments issue being July 9, 1987, must have an effective date of no later than November 6, 1987. However, for administrative purposes, November 1 is a preferable effective date.

If the normal rulemaking procedures of issuing a recommended decision and providing time to file exceptions thereto were followed, the amended order could not be made effective by November 1, 1987.

It is therefore found that the due and timely execution of the functions of the Secretary under the Act imperatively and unavoidably require the omission of a recommended decision and an opportunity for written exceptions with respect to issue No. 1.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the

requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional order was first issued and when it was amended. The previous findings and determinations are hereby ratified an confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) 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 area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be 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

(c) The tentative marketing agreement and the order, as hereby proposed to be 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, a marketing agreement upon which a hearing has been held.

Marketing Agreement and Order.

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Chicago Regional marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

June 1987 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Chicago Regional marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on October 8, 1987.

Richard E. Lyng,

Secretary.

Order Amending the Order, Regulating the Handling of Milk in the Chicago Regional Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was 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 agreement and to the order regulating the handling of milk in the Chicago Regional marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 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 order as hereby amended, and all of 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 effect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order 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 order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which as has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Chicago Regional marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for CFR Part 1030 continues to read as follows:

Authority: Secs 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1030.52, paragraph (b) is revised to read as follows:

§ 1030.52 Plant location adjustments for handlers.

* * * * *

(b) For the purpose of this section and §§ 1030.55 and 1030.75, the distances to be computed shall be on the basis of the shortest highway mileage as determined by the market administrator—with fractions rounded up to the next whole mile.

(1) The market administrator shall notify each handler of the zone of mileage determination from the city hall in Chicago for each plant and for each handler's pool distributing plant the mileage to each transferor pool plant.

(2) Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination with 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

* * * * *

3. A new § 1030.55 is added to read as follows:

§ 1030.55 Transfer credits on bulk Class I milk

(a) For each handler who operates a pool distributing plant (or plants) a transportation credit on milk received from each other pool plant shall be computed by the market administrator as follows, except that paragraph (a)(2) shall not apply when the Class I milk price adjusted for location pursuant to

§ 1030.52(a) is higher at the transferor plant than at the transferee plant:

(1) Multiply the number of hundredweights of the quantities of milk subject to the computations pursuant to § 1030.52(c)(9) and (10) times the product of 0.28 cents times the number of miles between the transferor plant and the transferee plant; and

(2) Subtract an amount computed by multiplying the absolute value difference between the location adjustment rates specified in § 1030.52(a) applicable at the transferee and transferor plants times the hundredweights of milk used in the computation in paragraph (a)(1) of this section. If the amount computed pursuant to this paragraph is greater than the amount computed in paragraph (a)(1) of this section the transportation credit will be zero.

(b) For each handler who transfers milk from a pool plant to a pool distributing plant (or plants) an assembly credit shall be computed by the market administrator at the rate of 8 cents per hundredweight of such handler's transfers of milk included in the computations pursuant to § 1030.52(c) (9) and (10).

4. In § 1030.60, change the reference "§ 1033.44(a)(9)" in paragraph (c) to "§ 1030.44(a)(9)", delete the word "and" at the end of paragraph (f); at the end of paragraph (g) change the period to a semicolon and add the word "and"; and add a new paragraph (h) to read as follows:

§ 1030.60 Handler's value of milk for computing uniform price.

* * * * *

(h) Subtract an amount equal to any credits applicable pursuant to § 1030.55.

Marketing Agreement Regulating the Handling of Milk in the Chicago Regional Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1030.1 to 1030.86, all inclusive, of the order regulating the handling of milk in the Chicago Regional marketing area 7 CFR Part 1030 which is annexed hereto; and

II. The following provisions:

§ 1030.87 Record of milk handled and authorization to correct typographical errors.

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of June 1987, ___ hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1030.88 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

[FR Doc. 87-23836 Filed 10-14-87; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 242

[INS Number: 1035-87]

Detention and Release of Juveniles

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The purpose of this regulations is to codify Service policy regarding detention and release of juvenile aliens and to provide a single policy for juveniles in both deportation and exclusion proceedings. This regulation will provide consistent servicewide standards and treatment for exclusion and deportation cases.

DATE: Comments must be received on or before November 16, 1987.

ADDRESS: Please submit written comments in triplicate to the Director of Policy Directives and Instructions, Room 2011, 425 I Street NW., Washington, DC 20538.

FOR FURTHER INFORMATION CONTACT: Mary Ruth Calhoun, Juvenile Detention Specialist, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-4128.

SUPPLEMENTARY INFORMATION: The proposed rule adds a new § 242.24 which sets forth Immigration and Naturalization Service policy regarding detention and release of juvenile aliens.

The new section defines "juvenile" as an alien under the age of eighteen (18) years and provides guidelines to the district director regarding the decision to detain or release a juvenile. In addition, the position of "Juvenile Coordinator" is created for the purpose of coordinating family reunification and/or locating suitable placement of juvenile detainees. The regulation also provides a procedure for cases in which the interests of a juvenile are at odds with the wishes of the parents or legal guardian. Finally, the proposed rule would delete the existing text of § 212.5(a)(2)(ii) and would provide in lieu thereof, for the district director or chief patrol agent to consider the factors set forth in § 242.24 in determining whether juveniles detained in accordance with § 235.3(b) or (c) will be paroled out of detention.

In accordance with 5 U.S.C. 605(b) the Commissioner of the Immigration and Naturalization Service certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule would not be a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Parole, Juveniles.

8 CFR Part 242

Administrative practice and procedure, Aliens, Juveniles.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows and all other authority citations which appear in Part 212 are removed:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252, 1182b, 1182c.

2. Section 212.5(a)(2)(ii) is revised to read as follows:

§ 212.5 Parole of aliens into the United States.

(a) * * *

(2) * * *

(ii) Aliens who are defined as juveniles in 8 CFR 242.24. The district director shall follow the guidelines set

EXHIBIT B

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011, and 1046

[Docket No. AO-388-A9, et al.; DA-96-08]

Milk in the Carolina and Certain Other Marketing Areas; Tentative Decision on Proposed Amendments To Marketing Agreements and Orders

7 CFR Part	Marketing area	Docket No.
1005	Carolina	AO-388-A9
1007	Southeast	AO-366-A38
1011	Tennessee Valley	AO-251-A40
1046	Louisville-Lexington-Evansville.	AO-123-A67

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative partial decision proposes, on an emergency basis, amendments to four Federal milk orders in the Southeastern United States. The amendments would establish a transportation credit balancing fund from which to reimburse handlers for the cost of importing bulk milk into these markets for fluid use when milk supplies that are normally associated with these markets are insufficient to meet fluid needs. The amendments also would establish a monthly assessment to maintain the solvency of the fund and a methodology for computation of the transportation credits. The proposed rules are based upon proposals that were considered at a public hearing held May 15-16, 1996, in Charlotte, North Carolina. Producers in the affected areas will have an opportunity to vote on the interim amendments before they go into effect.

DATES: Comments must be submitted on or before August 19, 1996.

ADDRESSES: Comments (4 copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, 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 Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities. No new entities will be regulated as a result of the proposed rules and any changes experienced by handlers will be of a minor nature.

The amended orders will promote orderly marketing of milk by producers and regulated handlers by providing transportation credits to assist them in bringing supplemental milk to the market for fluid use. The record of this proceeding indicates that supplemental milk is regularly imported into the Southeastern United States, that the burden of cost for providing this service has been increasing, and that it falls unevenly among the handlers and dairy farmers operating in these markets.

There will be a modest assessment on handlers to provide funds for the proposed new transportation credits, which will be used to reimburse handlers for the costs that they incur, but this assessment will not exceed 6 cents per hundredweight of Class I producer milk. The assessment will be reduced or waived completely once the balance in the transportation credit balancing fund is sufficient to cover the sum of six months' credits. The 6-cent per hundredweight assessment translates to about one-half cent per gallon of milk.

At present, all handlers regulated under the 4 milk orders involved in this proceeding file a monthly report of receipts and utilization with the market administrator. The proposed amendments resulting from this proceeding will only add 2 lines of information to this report. However, only those handlers applying for transportation credits on supplemental milk will have to provide this additional information to the market administrator. The estimated time to collect, aggregate, and report this information, which is already compiled for other uses, is less than 15 minutes per month.

The net impact of the proposed amendments on dairy farmers should be insignificant. Some dairy farmers may experience a reduction in their blend price during the first year that the new rules are in effect. This reduction, which should amount to less than 5 cents per hundredweight, will occur only if the balance in the transportation credit balancing fund is insufficient to cover the current month's transportation credits. Once the fund has been fully endowed, dairy farmers would experience no reduction in the uniform price as a result of transportation credits.

The preamble of this tentative decision clearly explains to all handlers and dairy farmers in these markets how the new provisions will work. The market administrator will send a copy of this decision to each handler, cooperative association, and nonmember dairy farmer covered by these orders. In addition, the market administrator's office is accessible by telephone for any additional questions that may arise during regular business hours.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed 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 request 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 May 1, 1996; published May 3, 1996 (61 FR 19861).

Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreements and 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 (7 CFR Part 900), in Charlotte, North Carolina, on May 15-16, 1996. Notice of such hearing was issued on May 1,

1996, and published May 3, 1996 (61 FR 19861).

Interested parties were given until May 28, 1996, to file post-hearing briefs on the proposals as published in the Federal Register and as modified at the hearing. Comments also were requested on whether the proposals should be considered on an emergency basis.

Interested parties may file written exceptions to this tentative decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250 by the 30th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The material issues on the record of the hearing relate to:

1. Transportation credits for supplemental bulk milk received for Class I use.

2. Deductions from the minimum uniform price to producers.

3. Whether emergency marketing conditions in the 4 regulated marketing areas warrant the omission of a recommended decision with respect to Issue No. 1 and the opportunity to file written exceptions thereto.

This tentative partial decision only deals with Issues 1 and 3. Issue 2 will be handled through normal rulemaking procedures in a forthcoming recommended decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Transportation Credits for Supplemental Bulk Milk Received for Class I use

Federal Milk Orders 1005, 1007, 1011, and 1046 (hereinafter referred to as "the 4 orders") should be amended to provide a transportation credit for supplemental bulk milk that is transferred from an other order plant to a pool plant during the months of July through December. A credit also should be provided to those handlers who import supplemental bulk milk for fluid use directly from producers' farms. For plant milk, the credit should be limited to milk that is allocated to Class I and should be computed at a rate equal to 3.7 cents per 10 miles per cwt. or fraction thereof from the transferor plant to the transferee plant. The credit should be reduced to the extent that the Class I price at the transferee plant exceeds the Class I price at the transferor plant.

In the case of milk received directly from producers' farms, the origination point of a bulk tank truck containing more than one producer's milk should be the city closest to the farm from which the last farm pickup was made. Alternatively, the origination point may be the location specified on a certified weight receipt obtained at an independently operated truck stop after the last farm pickup has been made. The credit should be computed by multiplying 3.7 cents times the number of 10-mile increments between the origination point and the location of the plant receiving the milk, less any positive difference in the Class I prices at the two points under the order receiving the milk.

A transportation credit for bulk milk received from an other order plant for Class I use was proposed by Mid-America Dairymen, Inc., a cooperative association that represents approximately 50 percent of the producers in Orders 5, 7, and 11, and nearly one-third of the producers in Order 46.

A spokesman for Mid-Am testified that: (a) The Southeast states are chronically short of milk for fluid use at certain times of the year and this shortage will be particularly acute during the upcoming summer and fall months; (b) the Federal order Class I pricing structure will not accommodate the movement of milk from surplus markets to deficit markets; (c) the burden of supplying the 4 Southeast markets with supplemental milk for fluid use falls disproportionately on the cooperative associations serving these markets; (d) the Agricultural Marketing Agreement Act provides for "marketwide service payments" to provide for greater equity between producers and handlers supplying a market with supplemental milk during short production months; and (e) therefore, the Secretary should immediately amend the 4 orders effective July 1, 1996, to provide relief to those handlers who will be relied upon to provide supplemental milk to meet the fluid needs of consumers in the area.

The General Manager of Carolina Virginia Milk Producers Association (CVMPA), a cooperative association with producers supplying plants regulated under all 4 orders, testified in support of Mid-Am's proposed transportation credits but stated that the proposal should be expanded to include supplemental milk received directly from producers' farms. The spokesman testified that during the period from July through December 1995, CVMPA imported more than 19 million pounds of plant milk at a transportation cost of 307 thousand dollars. During that same period, however, CVMPA imported more than 38 million pounds of supplemental producer milk directly from farms at a cost of 528 thousand dollars, he said.

The CVMPA spokesman testified that supplemental milk shipped directly from producers' farms can often be purchased at lower cost than plant milk. He also noted that this farm-shipped milk is often of better quality because it requires less handling. He concluded that the orders should be amended to give handlers the economic incentive to transport milk in the most efficient manner.

A spokesman for Milk Marketing, Inc. (MMI), a cooperative association supplying handlers under Orders 11 and 46, testified in opposition to the Mid-Am proposal as it relates to Order 46. The MMI spokesman stated that MMI opposed the proposal on the basis that over-order charges would be a better method of obtaining reimbursement for the costs associated with importing milk into the market for fluid use. Also, he said that MMI did not support the proposal because it did not provide a transportation credit for bulk supplemental milk shipped directly from producers' farms to plants. However, he said that if the Department should adopt Mid-Am's proposal, it should be expanded to include supplemental milk received directly from producers' farms. Receiving milk in this manner, he explained, would encourage hauling efficiencies, improve milk quality, eliminate pump-over expenses, and reduce product loss due to handling.

Select Milk Producers, Inc., a New Mexico dairy cooperative that provides supplemental milk to the Southeast markets, endorsed the suggestion of CVMPA and MMI to provide transportation credits for farm-to-plant milk as well as plant-to-plant milk.

The Mid-Am proposal also received a qualified endorsement from Fleming Dairy. The spokesman for Fleming, which operates pool distributing plants in Nashville, Tennessee, and Baker, Louisiana, suggested that Mid-Am's proposal be modified to restrict transportation credits to the months of July through October instead of July through December. He also suggested eliminating the provision proposed by Mid-Am that would permit credits during the months of January through June if the Class I utilization during the month is higher than 80 percent.

The Fleming spokesman stated that during the months when transportation credits are in effect, Class III–A pricing in these markets and in the surrounding markets should be suspended. At the present time, he said, the presence of Class III–A pricing in these markets significantly adds to the cost of obtaining supplemental milk because cooperatives and fluid milk processors have to bid this supplemental milk away from butter-powder plants.

A spokesman for Land O' Sun Dairies, Kingsport, Tennessee, Milkco, Inc., Asheville, North Carolina, and Hunter Farms, Charlotte and High Point, North Carolina, also offered constructive criticism of the Mid-Am proposal. The spokesman suggested that handlers seeking reimbursement for transportation costs should be required to show that they, in fact, incurred the cost. If the actual transportation cost was less than the credit provided in the order, a handler should only receive reimbursement for the cost actually incurred. He also questioned whether the proposed 3.9 cents per 10 miles accurately represented the cost of transporting bulk milk and he criticized the proposal for not restricting transportation credits on the movement of bulk milk between the 4 orders involved in this proceeding. Finally, the witness suggested borrowing funds from the producer-settlement fund reserve, instead of the marketwide pool, when the proposed transportation credit balancing fund contains an insufficient balance to cover a month's transportation credits.

Several proprietary handlers testified in opposition to the proposed transportation credits. The president of Southern Belle Dairy, Somerset, Kentucky, stated that handlers make choices in arranging for their milk supplies and the Federal order program should not be called upon to "absolutely level the playing field." He said the proposed 6-cent assessment for the transportation credit balancing fund would put Southern Belle at a competitive disadvantage with its competitors in Indiana, Virginia, West Virginia, and Ohio. He also stated that it will promote inefficient movements of milk by giving regional cooperatives the opportunity to divert regional milk supplies to Florida and then replace those supplies with supplemental milk at handlers' expense. Finally, he criticized the proposal for not including the suspension of Class III-A pricing.

The Director of Milk Procurement for Dean Foods Company, Franklin Park, Illinois, also testified in opposition to the Mid-Am proposal. He said that negotiation between buyer and seller was the best vehicle to recover costs and that proprietary handlers that purchase all or part of their milk supply from independent producers should not be expected to pay into a transportation pool to assure a milk supply for processors who choose to purchase their milk from a "marketing agency." The proposed amendments, he said, could create false shortages and force fluid processors to make unnecessary payments into a transportation pool for the sole benefit of cooperatives.

The vice president of finance for Holland Dairies, Holland, Indiana, also testified in opposition to the proposal. The witness stated Holland Dairies has developed its own milk supply from independent producers and, as a result, carries the risk of balancing this milk supply during the flush and short seasons of production. He said that while the proposed transportation credits would cost Holland Dairy a considerable amount of money, it would provide no apparent benefit to Holland Dairy. He concluded that suppliers of milk in the Southeast voluntarily chose to do business in that region and should therefore be required to manage their business accordingly.

Briefs. Several briefs were filed following the hearing. A brief from the Kroger Company indicates Kroger's opposition to the transportation credit proposal. Kroger states in its brief that "* * * a temporary situation should not be used as justification for a permanent change in the order which would allow the use of pool money to cover the cost of transportation * * * the current system has worked in the past and will continue to do so in the future."

Holland Dairies, Inc., in its brief, reiterated its opposition to the transportation credit proposal. Holland stated that "it is completely unfair to independent handlers and processors to legislate that they are required to pay into a fund that only a cooperative can draw funds from." (It appears from this statement that Holland has misconstrued the proposal. As proposed, and as adopted herein, transportation credits would be available to any handler that brings supplemental milk into the market. Accordingly, should Holland Dairy run short of milk during the months of July through December, it could import milk from Wisconsin or Michigan, for example, and receive a transportation credit for such milk.)

While conceding that the Southeast has always been in a deficit position, Holland maintains that handlers should pay for supplemental milk through premiums outside of the order. Holland is also concerned that stair stepping of milk to markets farther south will occur and that normal deliveries should be excluded from receiving a transportation credit.

Holland also argues in its brief that handlers should have a choice of buying milk from a cooperative association or from independent producers. It states that the proposed transportation credits would eliminate this choice.

Holland contends that Order 46 should not be part of the proposed transportation credit because it is far removed from deficit areas in Georgia and Florida. Finally, it states that if a transportation credit is implemented, it should not apply for the first 250 miles.

A brief filed on behalf of the Fleming Company states that the proposed transportation credits are compellingly supported by the evidence in this proceeding. Fleming, however, reiterates its suggestion that the credits be limited to the months of July through October and suggests a further limitation based upon mileage or source of supply. The handler again expresses a concern about Class III—A pricing and suggests that it be suspended when supplemental milk is needed in the Southeast. Fleming urges the Secretary to act on an emergency basis to adopt the proposal.

A brief was also filed on behalf of Land O' Sun Dairies, Milkco, Inc., and Hunter Farms. The plants of these handlers are regulated under Orders 5 and 11.

These handlers note in their brief that "the record discloses a disturbing trend in raw milk production and fluid consumption in the Southeastern United States * * * raw milk production has not been keeping pace with consumption in the Southeast." While desiring to maintain a local dairy industry in the Southeast, they recognize that "some considerations must be made for obtaining fluid milk supplies from non-local sources when that milk is needed."

The brief of these handlers indicates that they are not opposed to adoption of a modified transportation credit proposal. They are concerned, however, that the provision not be abused. For this reason, they offer several suggestions to prevent abuse. One suggestion is to exclude bulk shipment of milk between the 4 orders from receiving any transportation credits. (This suggestion has been adopted in this decision.)

Another suggestion of these handlers is to establish historical movements of milk from these 4 orders to the 3 Florida orders. If a handler or a cooperative association shipped anything more than these historical shipments to Florida

and, at the same time, imported milk into the market from which these Florida shipments originated, the new or replacement milk would not qualify for a transportation credit.

These 3 handlers state that they are opposed to a provision in the Mid-Am proposal that would permit transportation credits during the months of January through June if a market's Class I utilization exceeds 80 percent. The basis for their opposition, according to their brief, is that some parties may try to manipulate the Class I utilization in one or more of these markets, causing some handlers to pay an assessment for transportation credits while their competitors in one or more of the other 4 markets involved in this proceeding do not.

Taken to its logical conclusion, the position of these 3 handlers seems to be that this provision should be administered as if the 4 separate markets were, in fact, one market. This would have to be so because the only way that the assessment for the transportation credits can be uniform among the 4 individual orders is if the transportation credits given out each month are proportionately the same in each market. It is unlikely that this will be the case since the Class I utilization does vary among the 4 markets. It is conceivable that during some months Orders 5, 7, or 11 may need supplemental milk, while Order 46 may not. Thus, transportation credits and assessments for transportation credits would be applicable under Orders 5, 7, and/or 11, but not Order 46.

The 3 handlers also state that transportation credits should not apply for the first 100 miles of shipment and that the credit should be something less than the proposed 3.9 cents per 10 miles. They also suggest borrowing money from the producer-settlement fund reserve, rather than the producer-settlement fund itself, when transportation credits exceeds the available funds in the transportation credit balancing fund. In support of this idea, they state that local milk production has suffered enough and payments to producers should not be reduced further by taking money out of the producer-settlement fund.

The brief of the 3 handlers supports the proposal of CVMPA to allow farm-to-plant supplemental milk to qualify for a transportation credit. However, they suggest limiting this milk to dairy farms located outside of the 4 marketing areas.

Finally, the 3 handlers express their concern about the possible exclusion of Order 46 from the transportation credit proposal. If this were to happen, they state, it would disrupt the competitive relationship among competing handlers in Orders 5, 11, and 46.

A brief was received on behalf of Select Milk Producers (SMP), a cooperative association based in Artesia, New Mexico. The brief states that SMP expects to market milk in the Southeast marketing area in the fall of 1996 and therefore requests that transportation credits be extended to farm-to-plant milk as well as to plant-to-plant milk.

SMP states that they concur with MMI's suggestion regarding the application of transportation credits for farm-to-plant supplemental milk. SMP suggests that supplemental milk be defined as milk that was not associated with any of the 4 markets during the prior months of January through July.

Southern Belle Dairy, Somerset, Kentucky, reiterated their opposition to the transportation credit proposal for Order 11 in its brief. Southern Belle states that it bears the full cost of its milk supply and that it has made private arrangements to solve any problem that might arise. It also contends that the proposal would reduce their competitive relationship vis-a-vis handlers in other markets and that the Tennessee Valley order does not need the transportation credits. Finally, it states that Florida is an integral part of the deficit problem in the Southeast and, accordingly, should be included in the solution to the problem.

Southern Belle concludes that the proposed transportation credits are simply a money-shifting scheme whereby dairies such as itself that have developed an independent supply of milk over a long period of time will be forced to subsidize other dairies who have not invested in these relationships which would ensure a steady supply of milk.

Gold Star Dairy, Little Rock, Arkansas, also filed a brief in opposition to the proposed transportation credits. This handler maintains that there is no need for supplemental milk in the western part of the Southeast market, and that, in those parts of the marketing area where supplemental milk is being brought in, cooperatives are now being compensated through over-order charges.

Gold Star argues that it has little in common with plants in the eastern part of the marketing area; it does not share a common supply area with them; it is only technically part of the Southeast market because it is within the defined marketing area; it is already paying for marketwide services through over-order charges; and that if, notwithstanding these arguments, the Secretary should adopt the proposed transportation credits, the assessment to fund the credits should not be based on Class I sales made outside the marketing area.

In its brief, Carolina-Virginia Milk Producers Association offers several suggestions for implementing its modified proposal, which would provide transportation credits for supplemental milk supplied to the market directly from producers' farms. The cooperative supports a prohibition on credits for milk moving between the 4 markets, as well as the proposed hauling rate of 3.9 cents per 10 miles. CVMPA also endorses a suggestion made at the hearing to borrow funds from the producer-settlement fund reserve, rather than the producer-settlement fund itself, when there are insufficient funds in the transportation credit fund to cover a current months' credits. It states that the reserve fund could be paid back in future months for the money that is borrowed.

With respect to the mechanics of providing transportation credits for farm-to-plant milk, CVMPA suggests defining "supplemental milk" as the milk of dairy farmers which is pooled only during the period of market shortage. Specifically, it suggests that transportation credits not be available to a dairy farmer who was a producer on any of the 4 markets "for more than 35 days during more than 8 months in the previous July–June period."

To determine the origination point for farm-to-plant milk, CVMPA suggests using the county courthouse closest to the farm of the last producer whose milk is on the load. It also suggests subtracting any positive difference between the Class I price at the receiving pool plant and the Class I price at the origination point in computing the net transportation credit. This treatment would make the transportation credit computation virtually identical for transfers of plant milk and direct farm-to-plant deliveries.

Finally, CVMPA suggested the requirement that receiving handlers provide the market administrator with a list of the producers for whom transportation credits are requested.

Milk Marketing, Inc., filed a brief reiterating its opposition to the transportation credit proposal for Order 46 only. It maintains that over-order pricing is the best method for handling additional costs associated with importing milk to the market for fluid use. MMI states that if the Department should nevertheless adopt a transportation credit provision for Order 46, the provision should include an extension of the credit to cover supplemental milk shipped directly from farm to plant. Several of the

safeguards mentioned in the brief are similar to those already described with respect to CVMPA's brief.

Mid-America Dairymen, Inc., submitted a lengthy brief setting forth the historical background for the hearing, pertinent facts and figures brought out in the hearing record, the legislative history for the marketwide service payment provision contained in the Agricultural Marketing Agreement Act, a review of past agency decisions concerning transportation credits, and a comprehensive review of the arguments supporting its proposal.

Several points brought out in Mid-Am's brief are particularly noteworthy and should be emphasized. Mid-Am points out once again that a disproportionate share of the supplemental milk that is brought into the Southeast markets is brought in by the cooperative associations serving these markets. It argues that the costs incurred in importing this milk cannot simply be passed on to their customers because it would put these customers at a competitive disadvantage with other handlers who are fortunate enough to have adequate supplies of locally-produced milk to meet their needs.

Mid-Am contends that the cost of supplying these markets with surplus milk puts their member producers at a disadvantage compared to non-member producers who do not share in this cost. The cooperative also points out that when these markets are short of milk, it shuts down its manufacturing plants, which adds to its cost. It notes, for instance, that during the months of July through December 1995, it shut down its facilities in Louisville, Kentucky, Lewisburg, Tennessee, and Franklinton, Louisiana.

In its review of the legislative history of the Food Security Act of 1985, the foundation for the marketwide service provision in § 608c(5)(J) of the Act, Mid-Am notes that Congress sought to achieve equity between producers or handlers who bear service costs that benefit the market and those who do not. It included an excerpt from one of the committee reports (reprinted at 1985 U.S. Code Congressional and Administrative News 1103), which appears to be particularly relevant to the proposal at hand. It reads: "* * * At the moment, there are three major problems with respect to the operation of the Federal order systems: (1) minimum Federal order Class I prices are not adequate to attract the necessary supply to meet the Class I needs in deficit areas; (2) handlers who must go outside their territory to acquire additional milk incur greater costs for milk than handlers who obtain all of their milk from the local area; and (3) those producers who assume the responsibility of supplying the needs of the market have to pay the cost of transporting supplemental milk, resulting in producers not receiving uniform prices." Mid-Am argues that its proposal for transportation credits conforms to the equity-promoting goals described in the legislative history.

Mid-Am also argues that its proposal conforms with past agency decisions. Among many quotes included in its brief is the following from a final decision issued October 8, 1987, incorporating permanent transporting credits in the Chicago Regional order (52 FR 38240): "* * * a major purpose of the order program is to assure an adequate supply of pure and wholesome milk for the fluid market and to establish and maintain orderly marketing conditions. This includes adopting order provisions to facilitate securing adequate supplies of milk to meet the market's fluid needs. The record shows that obtaining adequate milk for those needs is not being accomplished in an orderly and equitable fashion under the current order provisions."

Mid-Am states that the suggested modifications of MMI and CVMPA to provide transportation credits for farm-to-plant milk should be given favorable consideration by the Secretary. It urges the Secretary to incorporate appropriate safeguards, however, to ensure that no artificial economic advantage is created for supplies that are not normally associated with the market.

Mid-Am notes that the supply/demand situation in the Southeast has become particularly acute in recent months. It emphasizes that the shortage this summer and fall will likely be even worse than in 1995, pointing to reduced production during the first 4 months of 1996, compared to a year earlier, especially in Tennessee and Kentucky, 2 important supply areas for the Southeast. It also notes that the Olympic Games that will be held in Atlanta this summer will likely increase consumer demand for fluid milk. It urges the Secretary to issue an expedited decision that would allow the transportation credits to be effective by July 1, 1996.

Conclusion. Testimony and exhibits introduced at the hearing indicate that the Southeastern United States has a chronic shortage of milk for fluid use in the summer and fall months, which often extends into the winter months. This shortage has been worsening over time as milk production has declined and population has increased, and this trend is likely to continue, exacerbating the problem of obtaining a sufficient supply of milk for fluid use in an orderly and equitable manner. Under current arrangements, the costs of obtaining an increasing supply of supplemental milk are not being borne equally by all handlers and producers in each of the 4 orders. The service provided by handlers, particularly, cooperative associations, in obtaining sufficient supplies of milk is a service of marketwide benefit for which the Secretary is authorized to include provisions in Federal milk orders to compensate handlers. The record of this hearing demonstrates that disorderly marketing conditions exist because of the significantly different costs that are incurred by handlers who provide the additional service versus those who do not. The increasing magnitude of the disproportionate sharing of costs is jeopardizing the delivery of adequate supplies of milk for fluid use. Thus, the record justifies the adoption of these provisions to restore stability and order in providing adequate supplies of milk for fluid use for Orders 5, 7, 11, and 46, as explained below.

Data in the record of this hearing show that the area covered by Orders 5, 7, 11, and 46 is a highly seasonal, deficit milk production area. As shown in Table 1, milk production in the 12 Southeast states of Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, and West Virginia has fallen from 15.4 billion pounds in 1988 to 14.5 billion pounds in 1995. Based upon this trend, production in the year 2000 is expected to be 13.1 billion pounds.

TABLE 1.—MILK PRODUCTION AND POPULATION IN 12 SOUTHEASTERN STATES 1988–2010

Year	Population	Production (lbs.)
1988	57,961,000	15,432,000,000
1989	58,732,000	15,356,000,000
1990	59,266,000	15,505,000,000
1991	60,265,000	15,362,000,000
1992	61,090,000	15,499,000,000
1993	61,926,000	15,310,000,000
1994	62,767,000	14,994,000,000
1995	63,573,000	14,554,000,000
2000	66,876,000	13,114,000,000
2005	70,471,000	11,603,000,000
2010	74,066,000	10,092,000,000

Source: Population—U.S. Bureau of the Census.
Milk Production—*Milk Production*, NASS, USDA, Washington, DC.

The bar graph below compares quarterly production in the 12 Southeastern states during the past 4 years. It shows that quarterly production is down from the previous year's quarter

for the past 4 years. The graph also shows that not only has production decreased for 4 consecutive years, but that such decreases have occurred at an accelerating rate. Furthermore, the graph demonstrates that the degree of seasonality between the relatively flush and short production months has also been increasing.

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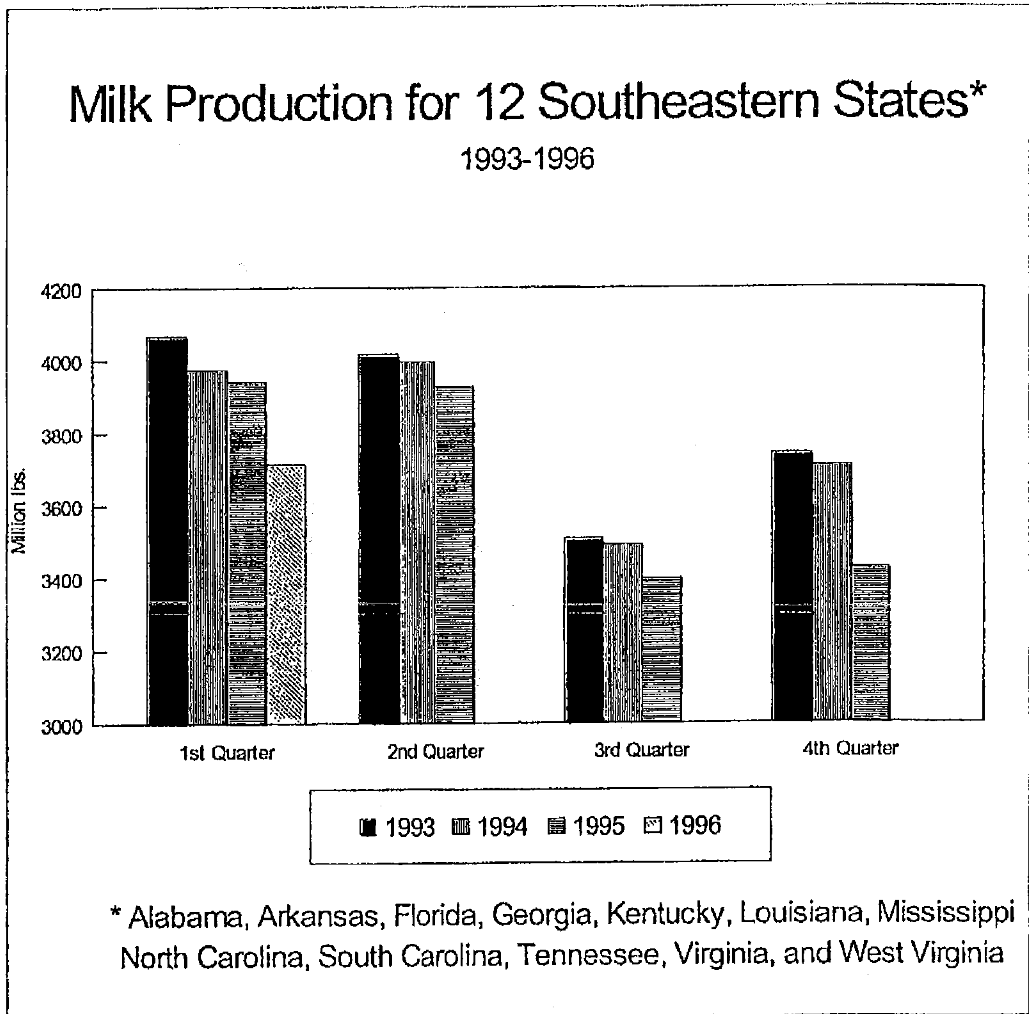

Source: Milk Production - Milk Production, NASS, USDA, Washington D.C.

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While production in the Southeast has been declining, the population of this area has been rising. As shown in Table 1, the population of the 12 Southeastern states rose from 57.9 million in 1988 to 63.5 million in 1995. By the year 2000, population is expected to reach 66.8 million.

Data in the record indicates that the per capita consumption of all dairy products in the 12 Southeastern states has grown in the past 7 years, from 568 pounds (milk equivalent) per capita in 1988 to 582 pounds in 1995. Conservatively estimating no growth in the per capita consumption of fluid milk products in the next 10 years, the deficit in Southeast milk production will grow significantly based upon population growth alone. According to Census Bureau data, 16 states will gain more than 1 million persons by the year 2020; 7 of these states are covered at least in part by the milk orders involved in this proceeding. There clearly is no question concerning the continuing—and, in fact, growing—need to import supplemental milk into the Southeastern United States for fluid use.

The record shows that the production decline and the population increase has resulted in an increasing Class I utilization in these 4 markets. During the period from April 1995 to April 1996, producer milk pooled under the 4 orders decreased by 42 million pounds. At the same time, the Class I utilization of producer milk under the 4 orders increased by almost 13 percentage points to 77.5 percent. It undoubtedly would have increased even more except for the fact that the milkshed continues to expand in a northerly and westerly direction to more and more distant farms. In this regard, it should be noted that milk has been regularly flowing into the Southeast markets from Texas and New Mexico, and there are indications that such shipments will start sooner than ever this summer.

These markets are tightest during the late summer and fall months. The Class I utilization reached 86.1%, 85.5%, 83.7%, and 80.2% in Orders 5, 7, 11, and 46, respectively, during August 1995. This compares to 84.0%, 83.3%, 85.1%, and 73.8%, respectively, one year earlier. Percentages of this magnitude indicate a very tight market situation when taking into consideration the bottling schedule of fluid milk plants, the desire of handlers to make some Class II products locally, and the unavoidable need to process some local milk into storable manufactured products, particularly on weekends when it is not needed for fluid use.

It is impossible to reveal precisely the total amount of supplemental milk needed by these markets because of restrictions on the release of confidential data (i.e., data represented by less than 3 handlers). In addition, much of the supplemental milk that is needed entered these markets directly from the farms of dairy farmers who are not regular suppliers of these markets. With these shortcomings taken into consideration, market administrator data entered in the record for Orders 5, 11, and 46 show that bulk receipts of other order milk for Class I use increased from 13.1 million pounds in 1993 to 49.6 million pounds in 1995. For these 3 markets, the data also show that first quarter receipts of bulk other order milk for Class I use is running at more than 10 times the level of 1995.

It is difficult to compare similar data for Order 7 to earlier periods because several markets were merged into the present Southeast marketing area in July 1995. Thus, shipments which formerly would have been other order bulk transfers are now transfers between pool plants within the order. Nevertheless, treating the merged order as if it were still 5 separate orders and comparing the other order bulk receipts for Class I use in 1995 to 1993 indicates a more than twofold increase in such receipts.

Data entered into the record by Mid-Am shows that during the months of July through December 1995 more than 100 million pounds of other order bulk receipts were transferred into Orders 5, 7, 11, and 46. According to Mid-Am, the cooperative also brought in supplemental producer milk on a direct-ship basis. The record data also show that while Mid-Am represents 47 percent of the producer milk pooled under the 4 markets, it accounted for more than 70 percent of the other order bulk milk that was brought into these markets during the months of July through December 1995.

Exhibits entered by CVMPA show that the cooperative imported more than 19 million pounds of other order plant milk during the months of July through December 1995, while at the same time bringing in more than 38 million pounds of supplemental milk directly from producers' farms. The exhibits show that the transportation cost for these supplemental purchases were nearly one million dollars.

A detailed breakdown of Mid-Am's interorder transfers during the months of July and August 1995 shows the location of the transferor plant and the transferee plant, the mileage between the two plants, the total cost of hauling the milk, and the freight rate broken down into 10-mile increments. During July and August 1995, the exhibit shows that the average hauling cost for this milk was 3.7 cents per 10 miles.

The Mid-Am spokesman testified that Mid-Am was proposing a hauling credit of 3.9 cents per 10 miles due to increasing fuel costs in recent months, justifying a slightly higher credit.

After carefully reviewing the record testimony and data, it is concluded that a transportation credit for supplemental milk during the seasonally short period of July through December is fully justified for this year's milk shortage and on a continuing basis, as needed, for future years. Such a credit will restore market order and provide the opportunity for all handlers to bring in supplemental milk when needed for fluid use.

While handlers opposed to the incorporation of these credits in the orders argue that reimbursement for transportation costs should be handled outside the order, experience has shown that this is not always possible. The absence of reimbursement for the costs of providing supplemental milk by cooperatives in this area last summer and fall demonstrate very well what can happen in a competitive market situation. Over-order pricing does not always ensure either stability or uniform costs among handlers. Also, premiums can disappear as quickly as they are introduced even when markets are desperately short of milk because of the pressure to maintain uniform costs among competing handlers.

Over-order pricing has been used in these markets in the past to equalize costs among handlers, but the industry was much different than it is today. There are now far fewer, but larger, fluid processing plants operating in these markets, creating daily and weekly demands to which the market's suppliers must react. On the supply side, the number of cooperative associations has decreased dramatically in the last decade. Consequently, only a few organizations are incurring costs in providing balancing services for these markets and the amount of milk being handled is far greater than the quantity of milk handled by any single cooperative in prior years. For this reason, it is imperative that the cooperatives and handlers providing balancing services for the benefit of the entire market be fairly compensated for these costs to ensure that an adequate supply of milk is available for fluid use.

In fact, the current market is not meeting the standard of orderly marketing. Markets which, at times, are short of milk must have some structure to provide for sharing the costs in the movement of supplemental milk to processors. Otherwise, orderly

marketing conditions can deteriorate and all handlers will not be competing for a supply of milk on an equal footing.

Under current market conditions, producers supplying these markets are also negatively affected. Producers who are members of cooperative organizations incurring the costs of supplemental milk are forced to bear the costs unfairly relative to nonmember producers.

The Agricultural Marketing Agreement Act recognized that disorderly markets can occur in a market when there are no standards which all segments of the market must satisfy. In this case, such standards must apply to all milk supplied to the regulated market. When the market fails to provide this equity, it becomes necessary for the order structure to provide the system.

As indicated, over-order premiums may be used to serve this purpose. This record clearly indicates, however, that such is not the case in these markets. The record, in fact, clearly indicates that the supplemental milk supplies, as they are currently being handled, are creating disorder. It is, therefore, proper that the regulations be amended to restore order to the system by equitably allocating the costs associated with obtaining supplemental milk supplies.

The adoption of transportation credits will enable handlers to make decisions involving supplemental milk supplies with a greater degree of certainty and be assured that the equity required by the Act is provided.

Congress recognized the inequities that can and do occur in supplying markets with supplemental milk and provided the Secretary of Agriculture with certain tools to handle these problems. The record of this hearing clearly demonstrates a need for these remedies in the 4 orders involved in this proceeding. Moreover, the production and population statistics justify the incorporation of these tools on a permanent basis so that they can be used when needed. The alternative approach, which some handlers appear to favor, is to hold a hearing and temporarily amend the orders each time a crisis occurs. However, as last fall's crisis demonstrated, it is very difficult to hold hearings and amend orders after these problems already have occurred. It is much better to anticipate the problems and have provisions that can be used as needed. Accordingly, the permanent incorporation of provisions to facilitate the importation of supplemental milk to these deficit markets is the most prudent course of action to follow and is fully supported by the record of this hearing.

The amendments adopted in this tentative decision are similar to those proposed by Mid-Am, but also differ in several respects. First, the transportation credits should be limited to the months of July through December. It should not include other months when the Class I utilization is over 80 percent because handlers would not know until after the month is over whether or not they would be eligible for a transportation credit on bulk milk brought into the market.

A better approach during the months of January through June would be to simply give the market administrator the authority to expand the transportation credit period if market conditions indicate that producer milk for Class I use will be in short supply and the marketwide Class I utilization is likely to exceed 80 percent. The market administrator is in an excellent position to review such a request, which should be made in writing at least 15 days prior to the beginning of the month for which it is to be effective.

Upon receiving a request to extend the transportation credit period, the market administrator will notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. The market administrator's notice to interested parties also may invite comments on other remedies that may be available including, but not limited to, an increase in the supply plant shipping percentage as provided in §§ 1005.7(b), 1007.7(f), and 1011.7(b)(4) and, in the case of Order 7, the desirability of adjusting diversion limitations as provided in § 1007.13(d)(9). Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

The provisions adopted in this decision also differ slightly from Mid-Am's proposal with respect to plant-to-plant shipments that are eligible for transportation credits. As proposed by Mid-Am, Class I bulk transfers from any other order plant would qualify for transportation credits. As adopted in this decision, however, the credits are limited to plants that are outside of the marketing areas of Orders 5, 7, 11, and 46.

There was a great deal of concern expressed at the hearing about "stair stepping" milk from one market to another. For instance, if milk from Order 11 was transferred to Order 7 while at the same time supplemental milk was brought into Order 11 from Order 46, handlers in Order 11 conceivably could be contributing funds to replace milk that, if not sent to Order 7, would have been available to Order 11 handlers.

This issue can be quite complex, particularly in large markets, such as the Southeast market. It may very well make economic sense to ship surplus milk from one part of a market (for example, southern Louisiana in the Order 7 marketing area) to another market that is short of milk (for example, the Upper Florida market) while during the same day bring in bulk milk for a handler in another part of the marketing area (for example, Fleming Dairy in Nashville) from another order plant (other than from one of the 4 orders involved in this proceeding). Given the order's current pricing structure, it is unrealistic to expect milk from southern Louisiana, where the Class I differential price is $3.58, to be shipped north to Nashville, where the Class I differential price is $2.55.

The attached order amendments place no restriction on the the interorder shipment of milk among the 4 markets, but they do not provide transportation credits for such shipments. The record of this hearing supports a restriction of credits to milk that is truly supplemental to the market. For this reason, transportation credits should be restricted to bulk shipments from plants outside of these 4 marketing areas. Data and testimony in the record indicate that nearly all of the supplemental milk needed for these 4 markets comes from plants located outside of the 4 marketing areas anyway, so that the restriction should not be a major problem for handlers in locating supplemental milk. Moreover, handlers may still obtain plant milk from within the 4 orders; they simply would not be able to get a transportation credit for such milk.

Another departure from the original Mid-Am proposal concerns the milk eligible for the transportation credit. It was apparent from hearing testimony and briefs that other cooperatives operating in these markets are more apt to supply the market with supplemental milk on a direct-ship basis rather than transferring milk from an other order plant. Such cooperatives include CVMPA, MMI, and Select Milk Producers. The testimony was convincing that permitting a credit on such imports would be more equitable to those organizations that are unable to import plant milk, would promote efficiencies in bringing supplemental milk directly from producers' farms, would result in better quality milk because unnecessary pumpovers are eliminated, and would result in less milk lost due to reduced handling.

While the inclusion of farm-to-plant milk is a logical extension of the transportation credit concept, there are some practical problems to overcome in implementing such a provision. One of the first problems that arises in constructing a transportation credit on farm-to-plant milk is distinguishing a market's regular producer milk from its supplemental producer milk on which the credit would apply.

A primary consideration in distinguishing the market's regular producers from the supplemental producers is the location of producers' farms. It is reasonable to conclude that the markets' regular producers are located reasonably close to the plants receiving their milk. Thus, such producers' farms are likely to be within the geographic marketing areas defined in each order. Accordingly, transportation credits should not apply to any producer whose farm is located within any of the 4 marketing areas. This provision was suggested by MMI and should be adopted.

Not all of the pool distributing plants regulated under these orders are located within the defined marketing areas. For example, a pool distributing plant regulated under Order 5 is located in Lynchburg, Virginia, which is outside of the Order 5 marketing area. In such a case, some other location criteria is needed to distinguish a regular producer from a supplemental producer.

In its suggested language, MMI proposed restricting supplemental producers to those who are more than 85 miles from Louisville or Lexington, Kentucky, or Evansville, Indiana. This proposal should be adopted but expanded to cover all pool distributing plants within or outside of the 4 marketing areas. In other words, farm-to-plant milk that is eligible for a transportation credit must be produced on a farm that is outside of the 4 marketing areas and at least 85 miles away from the plant to which the milk is delivered.

In addition to considering the geographic location of a dairy farm for the purpose of determining whether milk from that farm is supplemental to a market's needs, attention should be focused on whether milk from that farm is regularly associated with the market or is shipped to the market as needed.

As noted earlier, MMI in its brief stated that transportation credits should not apply to the milk of a dairy farmer who was a producer under Orders 5, 6, 7, 11, 12, 13, or 46 during more than 8 months in the previous July through June period or if more than 32 days' production of the producer was received as producer milk under these orders during the entire 12-month period. CVMPA's brief contained a similar proposal but did not include Orders 6, 12, and 13 (the 3 Florida orders) and specified 35 days' production, rather than 32, for the prior 12-month period.

These proposals should not be adopted. As proposed, if a dairy farmer was a producer on one of these markets for more than 8 months in the previous July through June period, the dairy farmer could not be considered as a supplemental producer under another one of the 4 markets. For example, if a dairy farmer from Texas was a producer under Order 11 during the months of January through September 1996, that dairy farmer would be ineligible to receive a transportation credit under Order 7 in October 1996, even though the dairy farmer's farm meets the location criteria set forth in this decision for a supplemental producer and the dairy farmer was never previously associated with Order 7.

It is questionable whether the provisions of one order should be based on a dairy farmer's association with another order. Each order should stand on its own. Accordingly, the determination as to whether a producer is regularly associated with a market or is, in fact, only seasonally associated with the market should be based on the dairy farmer's association with that market alone.

Since the need for supplemental milk generally drops off sharply after the month of December—1996 being an exception—in all of these markets and does not reappear, usually, until the month of July, it is reasonable to conclude that the milk of a producer who is located outside of any of these marketing areas generally would not be needed during the months of January through June, but might be needed starting in July. It is also logical that the milk of a supplemental producer would not be needed each day but perhaps once or twice a week. Accordingly, if a dairy farmer was a regular supplier of the market during January through June—i.e., a "producer" on the market for more than 4 of those months—the milk of such a dairy farmer should not be considered supplemental milk during the following months of July through December. It would be unduly restrictive to disqualify a dairy farmer for shipping a limited amount of milk during one or two months of the January through June period, however, because even the months of January and June can be short months in the Southeast. Therefore, the provision should be flexible enough to accommodate some shipments to the market during the January through June period.

Specifically, a dairy farmer should not lose his/her status as a supplemental producer if his/her milk is shipped to a market for not more than 2 months of the January through June period. However, shipments during this period should be of a limited duration, so not more than 32 days' production may have been received as producer milk during the two months of the January through June period in which the dairy farmer was a producer on the market.

Having established the criteria to distinguish a supplemental producer from a regular producer, attention must now focus on the provisions needed to establish the transportation credit for farm-to-plant supplemental milk. The first question that arises in this regard is the determination of the origination point for the load of milk. Two problems arise. First, there may be more than one dairy farmer's milk on the truck. Second, even if a dairy farmer can fill up an entire truck with milk, his or her farm may be impossible to pinpoint on a map.

This decision adopts two alternatives to determine the origination point for a load of farm-to-plant milk. First, after filling the tank truck with farm milk, the hauler may elect to stop at an independently operated truck stop to obtain a certified weight receipt identifying the truck, the gross weight of the loaded truck, the time and date, and the location of the truck stop. This certificate would be turned over to the pool plant operator receiving this load of milk and, in turn, be made available to the market administrator for verification of the information. Truck stops with scales are commonly found along major highways and in small towns and cities. Thus, it would be neither time-consuming nor expensive to fulfill this requirement.

Alternatively, if the hauler does not obtain a certified weight receipt to establish an origination point, the market administrator will determine the location of the farm of the last load of milk that was added to the truck, locate the nearest city, and compute the mileage from that city to the receiving pool plant for purposes of determining the mileage. If this alternative understates the mileage involved to the plant, the hauler can easily obtain a certified weight receipt if that would result in a more accurate transportation credit.

Traditionally, provisions in Federal milk orders have used the county courthouse as a basing point to determine mileage. In their briefs, MMI and CVMPA suggested using the county courthouse closest to the farm of the last producer on the route to establish the

origination point for a load of farm-to-plant milk. The reason for not adopting this suggestion is that there are now more precise ways of measuring the mileage between various points using any of several computer mapping programs that are available in addition to more traditional standard highway mileage guides that are available to the market administrator. By specifying "city" rather than "county courthouse," in conjunction with providing the option of establishing location based upon a certified weight receipt, we hope to achieve greater precision in establishing the mileage between the last producer's farm and the plant to which the milk is delivered.

This decision adopts the proposed transportation credit balancing fund concept proposed by Mid-Am, as well as a monthly assessment on Class I milk to provide revenue for the fund. It differs from the proposal, however, in using the higher of the hauling credits distributed in the immediately preceding 6 months or in the preceding July–December period for purposes of determining the current month's assessment level in § 100X.81(a). This was done to ensure that the fund will have a sufficient balance to meet the markets' needs when credits start to be distributed in the month of July. As proposed by Mid-Am, if no credits were distributed during the months of January through June, no new assessment would be warranted. Therefore, the yardstick to measure the assessment level would begin to decline in January and, if no new credits were given out, would be zero by July. This depletion of the fund could jeopardize its usefulness and require the market administrator to transfer funds for transportation credits from the producer-settlement fund.

This should only be done as a last resort. It will be less likely to occur by using the alternative yardstick approach adopted in this decision for determining the minimum balance needed in the transportation credit balancing fund.

The market administrator is authorized to maintain the transportation credit balancing fund, deposit assessments into it, and distribute transportation credits from it. Payments due from a handler will be offset against payments due to a handler.

The use of a transportation credit balancing fund will permit assessments that are needed for the transportation credits to be spread out throughout the year. This will permit the assessment rate to be kept at a lower and more stable level. It will also allow handlers to reflect the assessment in their pricing plans. At the maximum level permitted, the 6-cent assessment represents about one-half cent of the raw product cost of a gallon of milk.

In its brief, Gold Star Dairy suggested exempting from the assessment Class I sales made outside of the 4 marketing areas. This suggestion should not be adopted. While such an exemption might put Gold Star in a more favorable position with competitors in other markets, such as the Texas marketing area, it would not be fair to those handlers with whom Gold Star competes in the Southeast marketing area, its primary sales territory. Moreover, if supplemental milk is brought into any one of the 4 markets to supply a handler, there is no reason why that handler should not bear its fair share of the transportation costs for such milk, regardless of where the handler may eventually sell it.

The market administrator will announce the assessment for the transportation credit balancing fund on the 5th day of the month preceding the month to which it applies. Accordingly, on the 5th day of December, the assessment would be announced for January. An exception to this rule should be made during the first month that transportation credits are in effect because otherwise all of the first month's transportation credits would have to come out of pool funds. Accordingly, for the first month that these rules are in effect, the assessment for the transportation credit balancing fund will be announced no later than the Federal Register publication date of the interim order amending the orders. For example, if the interim order amending the orders is published on July 1, 1996, handlers will be notified of the assessment for July on, or a few days before, that day. On July 5, handlers will be notified of the assessment for August.

For the first 3 months that these amendments are effective, the assessment for the transportation credit balancing fund should be 6 cents per hundredweight. It is necessary to specify a rate in Section 81(c) of the attached orders because there is no 6-month credit distribution history from which to determine it, as provided in paragraph (a) of Section 81.

It is possible that during the first year that these provisions are in effect, and possibly thereafter under unusual conditions, it may be necessary to transfer funds from the producer-settlement fund to pay the transportation credits that are distributed. Transferring funds from the producer-settlement fund will result in lower uniform prices to producers. For this reason, several parties suggested, instead, borrowing from the producer-settlement fund reserve and paying back the reserve fund in future months from transportation credit assessments that are collected.

The market administrator maintains a producer-settlement fund (psf) reserve equal to approximately 4–5 cents per hundredweight of producer milk in the pool. This reserve is used to pay audit adjustments and other unforseen expenses.

The suggestion to borrow from the reserve is no doubt well-intentioned, but the alternative of transferring funds from the psf itself is the better approach for several reasons.

First, the reserve fund is maintained as a cushion to provide ready cash for audit adjustments and other unforseen expenses that arise. Depleting this reserve to pay for transportation credits, even for a temporary period of time, would not be prudent.

Second, we appreciate the concerns of those who do not want to reduce the blend price to producers to pay for transportation credits, but we believe that this transfer of funds may only be necessary during the first year that this provision is in effect. Thereafter, there should be adequate funds in the transportation credit balancing fund to pay for future transportation credits.

Third, by transferring funds from the psf, rather than borrowing the funds from the psf reserve, it will not be necessary to postpone the disbursement of credits, as might be necessary under the alternative approach suggested by Milkco and others. To the extent that reimbursement for transportation expenses is postponed, certain handlers will be disadvantaged relative to others who did not incur such expenses.

Finally, by transferring funds from the psf, rather than borrowing the funds from the psf reserve, producers will be sharing with handlers the cost of supplying the market with supplemental milk. This will help to minimize the assessment to handlers during months when transportation credits are not needed because the current month's assessments will not be used to pay back funds borrowed from the psf reserve for prior months but, instead, will be used to pay only current months' credits or to build up the transportation credit balancing fund for future months.

At this hearing, concern was once again expressed about the difficulty of obtaining supplemental milk when the Class III–A price is allegedly providing a profitable market for manufacturers of nonfat dry milk. A proposal was made to suspend Class III–A pricing while transportation credits are in effect.

As noted earlier, Mid-Am testified that it shut down its butter-powder plants in these 4 markets during the months of July through December 1995. Therefore, to the extent that handlers were competing with butter-powder plants for supplemental milk, it was not supplemental milk in these 4 markets.

The proposal to suspend Class III–A pricing in other markets goes beyond the scope of this hearing. Therefore, the proposals to suspend such pricing must be denied.

Several handlers criticized the proposed transportation credits for not including the Florida markets. They argued that since the Florida markets are the markets most in need of supplemental milk, it is unfair that handlers in those markets do not have to pay the assessment for the transportation credit balancing fund.

There was no testimony at this hearing concerning the current premium structure in the Florida markets. It is a known fact, however, that the Florida markets are 100 percent cooperatively supplied and that the premium structure in those markets as of the September 1995 hearing was markedly different (and much higher) than the premium structure prevailing in Orders 5, 7, 11, and 46.

Whether or not the Florida markets have the type of transportation credits adopted in this decision is immaterial to the need for such provisions in Orders 5, 7, 11, and 46. Given the tight supply situation prevailing in the Florida markets, it is unlikely that any Florida handler would have a pricing advantage over a handler regulated under one of the 4 markets involved in this proceeding. Moreover, since cooperative associations control the entire supply of milk in the Florida markets, those markets do not have to deal with the difficult issue of unequal sharing of the cost of supplying the market with supplemental milk (i.e., the member versus nonmember issue).

The absence of a transportation credit in Florida does not mean that handlers in Orders 5, 7, 11, and 46 will bear the cost of providing supplemental milk to Florida. To the extent that milk is shipped to Florida from any of the 4 markets involved in this proceeding, such milk likely would have been shipped with or without Florida's participation in the current hearing.

3. Whether Emergency Marketing Conditions in the Four Regulated Areas Warrant the Omission of a Recommended Decision and the Opportunity to File Written Exceptions Thereto With Respect to Issue 1

The omission of a recommended decision was proposed by the Mid-Am spokesman. He also requested that the issue be handled on an expedited basis, but suggested that the Secretary may wish to issue a tentative final decision to provide another opportunity for comments and adjustments to the amendments. No testimony was received in opposition to the request.

The due and timely execution of the functions of the Secretary under the Act imperatively and unavoidably require the omission of a recommended decision and an opportunity for written exceptions with respect to Issue No. 1. The continued orderly marketing of milk in the respective areas requires that the attached order be made effective as soon as possible, since the amount of supplemental milk needed for Class I use in each of the four orders is expected to increase significantly during the summer and fall months. Handlers, cooperative associations, and others should know promptly and with certainty how the Department is proposing to facilitate the importation of supplemental milk so that arrangements may be made.

It is therefore found that good cause exists for omission of a recommended decision and the opportunity for filing exceptions to it. As noted earlier, however, this decision is being issued as a tentative final decision. What this means is that producers will vote on the amendments to the 4 orders just as they would with a normal final decision. However, interested parties will have 30 days from the Federal Register publication of this tentative final decision to comment on it. After the comment period is over, the Department will then issue a final decision, and producers will again have an opportunity to vote on the orders as amended.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first 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.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreements and orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) 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 aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and are in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be 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.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof is an Interim Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. It is hereby ordered that this entire decision and order amending the orders be published in the Federal Register. Parties who desire to enter into a marketing agreement covering the terms and conditions of the attached interim order may request a marketing agreement from the market administrator of the respective order.

Determination of Producer Approval and Representative Period

April 1996 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas is approved or favored by producers, as defined under the terms of the individual orders (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

It is hereby directed that a referendum be conducted to ascertain producer approval in the Louisville-Lexington-Evansville marketing area. The referendum must be conducted and completed on or before the 30th day from the date that this decision is issued in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended, and as hereby proposed to be amended, regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the marketing area.

The agent of the Secretary to conduct such referendum is hereby designated to be Arnold M. Stallings.

List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046

Milk marketing orders.

Dated: July 12, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

Interim Order Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first 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 of 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 aforesaid 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 regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Proposed Interim 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 amended, as follows:

The authority citation for 7 CFR Parts 1005, 1007, 1011, and 1046 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. In § 1005.30, paragraphs (a) and (c) are revised to read as follows:

§ 1005.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1005.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, for which a transportation credit is requested pursuant to § 1005.82;

(6) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to § 1005.82(c)(2);

(7) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1005.40(b)(1); and

(8) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph (a).

* * * * *

(c) Each handler described in § 1005.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a) (5) and (6) of this section.

* * * * *

2. Section 1005.61 is amended by redesignating paragraphs (a)(4), (a)(5), (b)(5), and (b)(6) as paragraphs (a)(5), (a)(6), (b)(6), and (b)(7), respectively, amending paragraph (b)(3) by revising "(a)(3)" to read "(a)(4)" and "(a)(4)(ii)" to read "(a)(5)(ii)", amending newly designated paragraphs (b)(6) by revising "(b)(4)" to read "(b)(5)", amending newly designated paragraph (b)(7) by revising "(b)(5)" to read "(b)(6)", and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1005.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1005.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1005.80;

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1005.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1005.80;

* * * * *

3. Following § 1005.78, a new undesignated center heading and §§ 1005.80, 1005.81, and 1005.82 are added to read as follows:

Marketwide Service Payments

§ 1005.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1005.81 and out of which shall be made the payments due handlers pursuant to § 1005.82. Payments due a handler shall be offset against payments due from the handler.

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1005.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1005.61 (a)(4) or (b)(5).

(c) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than [the publication date of the final rule in the Federal Register] and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1005.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30 (a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, and allocated to Class I milk pursuant to § 1005.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1005.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1007, 1011, or 1046, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1005.53;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Multiply the number computed in paragraph (d)(2)(iii) of this section by the hundredweight of milk described in paragraph (c)(2) of this section;

(v) Subtract this order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section from the Class I price applicable at the distributing plant receiving the milk; and

(vi) Subtract any positive difference computed in paragraph (d)(2)(v) of this section from the amount computed in paragraph (d)(2)(iv) of this section.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

4. The authority citation for part 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674.

4a. In § 1007.30, paragraphs (a) and (c) are revised to read as follows:

§ 1007.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046, for which a transportation credit is requested pursuant to § 1007.82;

(6) Receipts of producer milk described in § 1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to § 1007.82(c)(2);

(7) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b)(1); and

(8) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph (a).

* * * * *

(c) Each handler described in § 1007.9 (b) and (c) shall report:

(1) The quantities of skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a) (5) and (6) of this section.

* * * * *

5. Section 1007.61 is amended by redesignating paragraphs (a)(4), (a)(5), (b)(5), and (b)(6) as paragraphs (a)(5), (a)(6), (b)(6), and respectively, (b)(7), amending (b)(3) by revising "(a)(3)" to read "(a)(4)" and "(a)(4)(ii)" to read "(a)(5)(ii)", amending newly designated paragraph (b)(6) by revising "(b)(4)" to read "(b)(5)", amending newly designated paragraph (b)(7) by revising "(b)(5)" to read "(b)(6)", and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1007.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1007.80;

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1007.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1007.80;

* * * * *

6. Following § 1007.78, a new undesignated center heading and §§ 1007.80, 1007.81, and 1007.82 are added to read as follows:

Marketwide Service Payments

§ 1007.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1007.81 and out of which shall be made the payments due handlers pursuant to § 1007.82. Payments due a handler shall be offset against payments due from the handler.

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1007.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1007.61 (a)(4) or (b)(5).

(c) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than [the publication date of the final rule in the Federal Register] and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1007.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the *transportation credit period*) to any

of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046 allocated to Class I milk pursuant to § 1007.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1007.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1011 or 1046, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1007.52;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Multiply the number computed in paragraph (d)(2)(iii) of this section by the hundredweight of milk described in paragraph (c)(2) of this section;

(v) Subtract the order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section from the Class I price applicable at the distributing plant receiving the milk; and

(vi) Subtract any positive difference computed in paragraph (d)(2)(v) of this section from the amount computed in paragraph (d)(2)(iv) of this section.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

7. In § 1011.30, paragraphs (a) and (c) are revised to read as follows:

§ 1011.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1011.9(c);

(3) Receipts of milk from handlers described in 1011.9(d);

(4) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(5) Receipts of other source milk;

(6) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1046, for which a transportation credit is requested pursuant to § 1011.82;

(7) Receipts of producer milk described in § 1011.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to § 1011.82(c)(2);

(8) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1011.40(b)(1); and

(9) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph (a).

* * * * *

(c) Each handler described in § 1011.9(b), (c) and (d) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1011.82, all of the information required in paragraphs (a) (6) and (7) of this section.

* * * * *

8. Section 1011.61 is amended by redesignating paragraphs (a)(4), (a)(5), (b)(5), and (b)(6) as paragraphs (a)(5), (a)(6), paragraph (b)(6) and (b)(7), respectively amending paragraph (b)(3) by revising "(a)(3)" to read "(a)(4)" and "(a)(4)(ii)" to read "(a)(5)(ii)", amending newly designated paragraph (b)(6) by revising"(b)(4)" to read "(b)(5)", amending newly designated paragraph (b)(7) by revising "(b)(5)" to read "(b)(6)", and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1011.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1011.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1011.80;

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1011.82 exceeds the available balance

in the transportation credit balancing fund pursuant to § 1011.80;

* * * * *

9. Following § 1011.78, a new undesignated center heading and §§ 1011.80, 1011.81, and 1011.82 are added to read as follows:

Marketwide Service Payments

§ 1011.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1011.81 and out of which shall be made the payments due handlers pursuant to § 1011.82. Payments due a handler shall be offset against payments due from the handler.

§ 1011.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1011.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1011.61 (a)(4) or (b)(5).

(c) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than [the publication date of the final rule in the Federal Register] and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1011.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1011.30(a)(6), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1011.30(a)(7), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1011.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1046, and allocated to Class I milk pursuant to § 1011.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1011.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1046, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1011.52;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Multiply the number computed in paragraph (d)(2)(iii) of this section by

in the transportation credit balancing fund pursuant to § 1011.80;

* * * * *

9. Following § 1011.78, a new undesignated center heading and §§ 1011.80, 1011.81, and 1011.82 are added to read as follows:

Marketwide Service Payments

§ 1011.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1011.81 and out of which shall be made the payments due handlers pursuant to § 1011.82. Payments due a handler shall be offset against payments due from the handler.

§ 1011.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1011.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1011.61 (a)(4) or (b)(5).

(c) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than [the publication date of the final rule in the Federal Register] and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1011.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1011.30(a)(6), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1011.30(a)(7), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1011.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1046, and allocated to Class I milk pursuant to § 1011.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1011.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1046, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1011.52;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Multiply the number computed in paragraph (d)(2)(iii) of this section by

the hundredweight of milk described in paragraph (c)(2) of this section;

(v) Subtract this order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section from the Class I price applicable at the distributing plant receiving the milk; and

(vi) Subtract any positive difference computed in paragraph (d)(2)(v) of this section from the amount computed in paragraph (d)(2)(iv) of this section.

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

10. The authority citation for part 1046 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

10 a. In § 1046.30, paragraphs (a) and (c) are revised to read as follows:

§ 1046.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1046.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, for which a transportation credit is requested pursuant to § 1046.82;

(6) Receipts of producer milk described in § 1046.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to § 1046.82(c)(2);

(7) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1046.40(b)(1); and

(8) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph (a).

* * * * *

(c) Each handler described in § 1046.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1046.82, all of the information required in paragraphs (a) (5) and (6) of this section.

* * * * *

11. Section 1046.61 is amended by redesignating paragraphs (a)(4), (a)(5), (b)(5), and (b)(6) as paragraphs (a)(5), (a)(6), (b)(6), and (b)(7), respectively, amending paragraph (b)(3) by revising "(a)(3)" to read "(a)(4)" and "(a)(4)(ii)" to read "(a)(5)(ii)", amending newly designated paragraph (b)(6) by revising "(b)(4)" to read "(b)(5)", amending newly designated paragraph (b)(7) by revising "(b)(5)" to read "(b)(6)", and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1046.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1046.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1046.80;

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1046.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1046.80;

* * * * *

12. In § 1046.73, paragraph (f)(2) is revised to read as follows:

§ 1046.73 Payments to producers and to cooperative associations.

* * * * *

(f) * * *

(2) On or before the 10th day after the end of the following month for milk received during the month an amount computed at not less than the value of such milk at the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1046.74 applicable at the location of the receiving handler's pool plant and any transportation credit that is due the cooperative association pursuant to § 1046.82(a), less the payment made pursuant to paragraph (f)(1) of this section.

13. Following § 1046.78, a new undesignated center heading and §§ 1046.80, 1046.81, and 1046.82 are added to read as follows:

Marketwide Service Payments

§ 1046.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1046.81 and out of which shall be made the payments due handlers pursuant to § 1046.82. Payments due a handler shall be offset against payments due from the handler.

§ 1046.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1046.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1046.61 (a)(4) or (b)(5).

(c) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than [the publication date of the final rule in the Federal Register] and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1046.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1046.30(a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1046.30(a)(6), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to

paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1046.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be paid to such cooperative association by the pool plant operator pursuant to § 1046.73(f)(2).

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, and allocated to Class I milk pursuant to § 1046.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1046.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1011, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1046.52;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Multiply the number computed in paragraph (d)(2)(iii) of this section by the hundredweight of milk described in paragraph (c)(2) of this section;

(v) Subtract this order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section from the Class I price applicable at the distributing plant receiving the milk; and

(vi) Subtract any positive difference computed in paragraph (d)(2)(v) of this section from the amount computed in paragraph (d)(2)(iv) of this section.

[FR Doc. 96–18227 Filed 7–15–96; 3:34 pm]
BILLING CODE 3410–02–P

EXHIBIT C

Proposed Rules

Federal Register
Vol. 62, No. 97
Tuesday, May 20, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011, and 1046

[Docket No. AO–388–A9, et al.; DA–96–08]

Milk in the Carolina and Certain Other Marketing Areas; Partial Final Decision

7 CFR part	Marketing area	Docket No.
1005	Carolina	AO–388–A9
1007	Southeast	AO–366–A38
1011	Tennessee Valley ...	AO–251–A40
1046	Louisville-Lexington-Evansville.	AO–123–A67

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision would modify interim amendments which established transportation credit provisions in 4 Federal milk orders in the Southeastern United States. The interim amendments were based upon proposals that were considered at a public hearing held in Charlotte, North Carolina. The proposed modifications to the interim amendments are based upon additional testimony heard at a reopened hearing held in Atlanta, Georgia. The major modifications would increase the maximum assessment by one cent or less in two of the orders to pay for transportation costs and eliminate the reduction of blend prices to producers to pay for transportation costs. The amendments adopted in this decision will become effective if approved by the producers in the affected markets.

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 (Tel:202/690–1932; E-mail:NMemoli@USDA.gov).

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.

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

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 proposed rule will not have a significant economic impact on a substantial number of small entities. No new entities will be regulated as a result of the proposed rules, and any changes experienced by handlers will be of a minor nature.

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 farmers. 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 milk of approximately 8,600 producers is pooled on the Carolina, Southeast, Tennessee Valley and Louisville-Lexington-Evansville milk orders. Of these producers, 95 percent produce below the 326,000-pound production guideline and are considered to be small businesses.

There are 43 handlers operating pool plants under the four orders. Of these handlers, 22 have fewer than 500 employees and qualify as small businesses.

The proposed rules amending the transportation credit provisions will promote orderly marketing of milk by producers and regulated handlers operating within the 4 marketing areas. This decision eliminates the provision which provides for the transfer of funds from the producer-settlement fund to the transportation credit balancing fund when the latter is insufficient to cover the amount of credits to be distributed to handlers for a given month. Thus, the possibility of a reduction of uniform prices to producers resulting from transportation credits will no longer exist.

This decision also modestly increases the handler assessment from 6 cents to 6.5 cents per hundredweight of Class I producer milk in the Carolina market and to 7 cents per hundredweight in the Southeast market, but maintains the current 6-cent assessment in the Tennessee Valley and Louisville-Lexington-Evansville markets. A 6-cent per hundredweight assessment translates to approximately one-half cent per gallon of milk. The one-half to one-cent assessment increase in Federal Orders 1005 and 1007 may negatively impact some small businesses, as any price increase would, but it may also positively impact other small businesses by providing more funds for transportation credits.

At present, all handlers regulated under the 4 milk orders involved in this

proceeding file a monthly report of receipts and utilization with the market administrator. The proposed amendments will not significantly add to the amount of information required to be reported by those handlers requesting transportation credits. The estimated time to collect, aggregate, and report this information will vary directly with the amount of milk for which credits are requested, but should not be significant.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Partial Final Decision: Issued July 12, 1996; published July 18, 1996 (61 FR 37628).

Interim Amendment of Orders: Issued August 2, 1996; published August 9, 1996 (61 FR 41488).

Extension of Time for Filing Comments: Issued August 16, 1996; published August 23, 1996 (61 FR 43474).

Extension of Time for Filing Comments: Issued October 18, 1996; published October 25, 1996 (61 FR 55229).

Notice of Reopened Hearing: Issued November 19, 1996; published November 25, 1996 (61 FR 59843).

Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreements and 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 (7 CFR Part 900), in Charlotte, North Carolina, on May 15–16, 1996, and in Atlanta, Georgia, on December 17–18, 1996. Notice of the May hearing was issued on May 1, 1996, and published May 3, 1996 (61 FR 19861).

An interim order amending the orders was issued on August 2, 1996, and published on August 9, 1996 (61 FR 41488). The interim amendments became effective on August 10, 1996.

Following 3 months' experience with the interim amendments, the industry requested, and the Department agreed, to reopen the hearing to receive additional evidence concerning their impact. This hearing was held in Atlanta, Georgia, on December 17–18, 1996, following a notice of such reopened hearing that was issued on November 19, 1996, and published on November 25, 1996 (61 FR 59843).

Interested parties were given until January 24, 1997, to file post-hearing briefs on proposals following the reopened hearing.

The material issues on the record of the hearing relate to:

1. Transportation credits for supplemental bulk milk received for Class I use.
2. Deductions from the minimum uniform price to producers.
3. Whether emergency marketing conditions in the 4 regulated marketing areas warrant the omission of a recommended decision with respect to Issue No. 1 and the opportunity to file written exceptions thereto.
4. The definition of producer.

This partial final decision only deals with Issue 1. Issue 3 was discussed in the tentative partial final decision that was issued July 12, 1996, and is now moot. Issues 2 and 4 will be handled through normal rulemaking procedures in a forthcoming recommended decision.

Summary of Changes to the Interim Amendments

This final decision differs from the tentative decision in several respects. The key changes in the order amendments are as follows:

1. The provision providing for a transfer of funds from the producer-settlement fund to the transportation credit balancing fund when the latter fund has an insufficient balance to pay for the month's transportation credits has been removed. Instead, the available balance in the transportation credit balancing fund each month will be prorated to handlers applying for transportation credits for that month. See § 100X.82(a).

2. The assessment for the transportation credit balancing fund has been raised from 6 cents to 6.5 cents per hundredweight for the Carolina order and to 7 cents per hundredweight for the Southeast order. See §§ 1005.81(a) and 1007.81(a).

3. The per mile rate for computing the transportation credit has been reduced from 0.37 cent to 0.35 cent per hundredweight of milk. See § 100X.82(d)(2)(ii) and (d)(3)(iv).

4. A net shipment provision has been added to each of the 4 orders. This provision reduces the pounds of milk eligible for a transportation credit at a pool plant by the amount of milk transferred from that pool plant to a nonpool plant on the same calendar day the supplemental milk was received. See § 100X.82(d)(1).

5. The computation of the transportation credit for producer milk has been changed to more closely match the way the transportation credit is computed for milk that is transferred from an other order plant. In particular, if the farm "origination point" is within another Federal order's marketing area, the Class I price at the origination point shall be the price that would apply at that location under the provisions of the order covering that area. See § 100X.82(d)(3)(v). In addition, in computing the credit for farm-to-plant milk there is a deduction of 85 miles from the distance between the farm origination point and the receiving plant. See § 100X.82(d)(3)(iii). Finally, the proportion of producer milk that is eligible for the transportation credit has been changed to more closely reflect the proportion of other order plant milk that would receive the credit. See § 100X.82(c)(2)(i).

6. The restricted area from which producer milk would be considered ineligible to receive a transportation credit has been revised to include six Kentucky counties—Allen, Barren, Metcalfe, Monroe, Simpson, and Warren—in addition to the specified marketing areas of Federal Orders 1005, 1007, 1011, or 1046. See § 100X.82(c)(2)(iii).

7. The months during which the market administrator may extend transportation credits have been changed from January through June to January and June. See § 100X.82(b).

8. The limitation on the amount of milk that may be delivered as producer milk without being disqualified for transportation credits has been changed from 32 days of production to 50 percent of the dairy farmer's total production during not more than 2 months of January through June when the dairy farmer was a producer. See § 100X.82(c)(2)(ii).

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Transportation Credits for Supplemental Bulk Milk Received for Class I Use. The tentative decision issued on July 12, 1996, concluded that Federal Milk Orders 1005, 1007, 1011, and 1046 (hereinafter referred to as "the 4 orders") should be amended to provide transportation credits for supplemental bulk milk that is transferred from an other order plant to a pool plant and for supplemental bulk milk imported directly from producers' farms during the months of July through December. Additionally, the decision concluded that a handler assessment on the total pounds of Class I producer milk should be added to each order to fund the transportation credits.

This final decision reaffirms the conclusions of the earlier decision, but also recommends changes to that decision based upon the testimony of the reopened hearing. This decision consists of four parts. Part 1 is a brief summary of the testimony and briefs resulting from the initial hearing; part 2 is a summary of the interim amendments that were adopted in the July 12, 1996, tentative decision; part 3 is a summary of the testimony and briefs resulting from the reopened hearing; and part 4 explains why the interim amendments should be modified.

A Brief Summary of Testimony and Briefs Resulting From the May 15–16, 1996 Hearing

A transportation credit for bulk milk received from an other order plant for Class I use was proposed by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents approximately 50 percent of the producers in Orders 5, 7, and 11, and nearly one-third of the producers in Order 46. According to Mid-Am, the Southeast States are chronically short of milk for fluid use at certain times of the year, namely the late summer and fall months. Mid-Am stated that the costs of supplying handlers with an adequate supply of fluid milk fall disproportionately on cooperative associations serving these markets. Arguing that the Agricultural Marketing Agreement Act provides for "marketwide service payments" to provide for greater equity between producers and handlers supplying a market with supplemental milk, Mid-Am testified that the Secretary should immediately amend the 4 orders to incorporate transportation credits into the 4 orders on milk that is transferred from other order plants.

Carolina Virginia Milk Producers Association (CVMPA), a cooperative association with producers supplying plants regulated under all 4 orders, stated that the Mid-Am proposal should be expanded to also include supplemental milk received directly from producers' farms. CVMPA noted that it imported far more supplemental milk directly from producers' farms than from other order plants during the months of July through December 1995.

The proposal to include supplemental milk shipped directly from producers' farms was endorsed by both handlers and other cooperative associations. Receiving milk in this manner, it was argued, would encourage hauling efficiencies, improve milk quality, eliminate pump-over expenses, and reduce product loss due to handling.

Fleming Dairy, a handler operating in Tennessee and Louisiana, supported the transportation credit concept, but argued for a shorter transportation credit period than was proposed by Mid-Am. Fleming stated that extension of the transportation credit period should be removed from the proposal.

Several witnesses suggested that the rate of 0.39 cent per mile that was proposed by Mid-Am for computing a transportation credit was too high. Testimony was also given regarding the necessity of restricting transportation credits on bulk milk transfers between the 4 orders.

Several proprietary handlers testified in opposition to the proposed transportation credits by arguing that the assessments would create competitive disadvantages among handlers. The record indicated that several handlers feared that marketing practices, such as stair-stepping milk from one market to another, would result in false shortages in the shipping market and, thus, that the cost of obtaining additional milk supplies would not be shared equitably among handlers.

Briefs filed by various handlers reiterated their reservations regarding transportation credits. It was maintained that the milk shortage situation in the Southeast should be dealt with through means outside of the order system, such as over-order premiums. Issues such as Class III–A pricing and stair-stepping of milk were addressed as concerns which could jeopardize the true intent of transportation credits to compensate handlers for costs incurred in obtaining supplemental supplies of milk for fluid use.

While acknowledging that sufficient testimony and record evidence was offered in support of transportation credits, additional briefs submitted by interested parties cautioned the Department against potential abuse. Offsetting milk shipments into and out of the marketing areas, establishing historical milk movements, and limiting the amount of credits available (e.g. deducting the first 100 miles) were all addressed as areas of concern.

One handler opposed the incorporation of transportation credits in total, claiming that such credits were money-shifting schemes proposed by those who have made no efforts to develop business relationships to ensure a steady supply of milk. The brief of another handler suggested limiting assessments to Class I sales made within the 4 marketing areas.

Several of the post-hearing briefs argued that supplemental producer milk, as well as plant-to-plant milk, should be eligible for credits. CVMPA offered a definition of "supplemental milk" as the milk of dairy farmers which is only pooled during the months of short production. Suggestions for supplemental producer ineligibility were offered to distinguish such producers from those normally associated with subject markets. Recommendations on how to determine an origination point for producer milk were also proposed, including taking into consideration differences in Class I prices at the receiving plant and the origination point.

In its post-hearing brief, Mid-Am emphasized that cooperatives were bearing a disproportionate burden in supplying these markets with supplemental milk. It argued that the cost associated with such milk cannot be passed along to their customers and that absorbing this cost placed their member producers at a competitive disadvantage relative to non-member producers who do not share in this cost. Mid-Am also pointed out that the incorporation of transportation credits would conform with past agency decisions and would facilitate securing adequate supplies of milk to meet the markets' fluid needs. It indicated that its proposal should be expanded to provide transportation credits for producer milk as well as plant milk.

Interim Amendments Effective August 10, 1996

Following the May hearing, interim amendments providing for transportation credits became effective for the 4 orders on August 10, 1996. The amendments provided transportation credits to pool plant operators and cooperative associations for Class I bulk milk received from an other order plant and for milk received directly from producers' farms and used in Class I.

Handlers and cooperative associations are required to report to the market administrator receipts of bulk milk from other order plants and receipts of producer milk, including the identity of individual producers, for which transportation credits are requested pursuant to Section 30 of the orders.

For plant milk, the credit is limited to milk that is allocated to Class I. It is computed at a rate equal to 0.37 cent per mile per cwt. based on the distance from the transferor plant to the transferee plant. The resulting number is reduced to the extent that the Class I price at the receiving plant exceeds the Class I price at the shipping plant to arrive at the transportation credit for that load of milk.

In the case of milk received directly from producers' farms, the origination

point of a bulk tank truck containing more than one producer's milk is either the city closest to the farm from which the last farm pickup was made or the location specified on a certified weight receipt obtained at an independently-operated truck stop after the last farm pickup has been made. The credit is computed by multiplying 0.37 cent times the number of miles between the origination point and the location of the plant receiving the milk, less any positive difference in the Class I prices at the two points under the order receiving the milk.

Transportation credits are limited to the months of July through December; however, an extension may be requested for any of the months of January through June. During the months of January through June, the market administrator has the authority to expand the transportation credit period if market conditions indicate that producer milk for Class I use will be in short supply and the marketwide Class I utilization is likely to exceed 80 percent. Such a request must be made in writing at least 15 days prior to the beginning of the month for which it is to be effective and requires the market administrator to issue a decision on the request by the first day of the month for which it is to be effective.

Pursuant to the interim amendments, the credits are limited to transfers from other order plants that are not regulated under Orders 5, 7, 11, or 46. This provision was added in response to concerns expressed at the hearing that handlers in one of these 4 markets could be required to pay for transporting milk into another of these markets in the absence of any such restriction.

Certain location restrictions are also provided for supplemental producer milk. Transportation credits do not apply to the milk of any producer whose farm is located within any of the 4 marketing areas. In addition, the farm must be at least 85 miles away from the plant to which the milk is delivered.

In order to receive credits on producer milk, the producer cannot be normally associated with the market in which the credit is requested. A producer's milk is eligible to receive such credits as long as the dairy farmer was not a producer under the order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of such farmer was received as producer milk on the market.

The interim amendments adopted a transportation credit balancing fund, as well as a 6-cent per hundredweight (or lesser amount) monthly assessment on Class I producer milk to provide revenue for the fund. The higher of the hauling credits distributed in the immediately preceding 6 months or in the preceding July–December period is used to determine the current month's assessment level. The market administrator is authorized to maintain the transportation credit balancing fund, deposit assessments into it, and distribute transportation credits from it. Payments due from a handler are offset against payments due to a handler. The assessment for the transportation credit balancing fund is announced on the 5th day of the month preceding the month to which it applies.

In the event that the transportation credit balancing fund is insufficient to cover the cost of the transportation credits to be distributed, the difference is deducted from the producer-settlement fund.

Testimony and Briefs Resulting From the Reopened Hearing

At the reopened hearing, Mid-Am testified that it supports the continuation of transportation credits in the 4 orders, but that certain modifications should be made to fine-tune the provisions. Mid-Am testified that changes should be made in the provisions applicable to producer milk, but that no changes were needed with respect to the provisions applicable to other order plant transfers.

Mid-Am testified that: (a) the credits applicable to a load of producer milk should be comparable to those applicable to milk received from an other order plant; (b) the mileage for computing credits should be reduced by 85 miles from the origination point to the receiving plant; (c) the transportation credit computation on producer milk should reflect the difference between the shipping order's Class I price at the origination point and the receiving order's Class I price at the receiving plant; and (d) the geographic area from which producers would be ineligible to receive credits on their milk should be further expanded and clarified, including basing points found on the edges of the marketing areas. In addition, Mid-Am proposed a revision to Section 78, Charges on Overdue Accounts, in the Carolina, Southeast, and Louisville-Lexington-Evansville orders to include payments of transportation credit assessments due pursuant to Section 81 of the orders.

Carolina-Virginia Milk Producers Association (CVMPA), a cooperative association with producers supplying plants regulated under all 4 orders, testified in support of Mid-Am's proposal to modify the transportation credits. CVMPA testified that, like Mid-Am, it believes that the interim amendments are in need of some fine-tuning so that the credits available on producer milk are comparable to those available on plant milk. Also, CVMPA said that Mid-Am's proposed changes will reduce the total amount of credits available on producer milk, thereby lessening the probability that the value of the credits distributed will exceed available funds.

Associated Milk Producers, Inc. (AMPI), a cooperative association representing producers in the South and Southwest which also operates manufacturing facilities in various states, testified in support of the basic concept proposed by Mid-Am and CVMPA, but stated that certain modifications to such proposals should be considered. AMPI testified that it supports the proposal regarding the equalization of transportation credits granted to producer milk imports and plant milk shipments, but opposes the institution of basing points and the 85-mile exclusion rule to establish producer milk ineligibility for transportation credits. AMPI argued that the ineligibility requirement would cause the uneconomical movement of milk because supplemental supply sources in relatively close areas, such as eastern Texas, would be passed over since supplemental producer milk from that area would not receive any transportation credits. AMPI testified that it does not oppose other aspects of Mid-Am's proposed modifications, such as deducting the first 85 miles from the hauling distance to compute the transportation credit value and having the credit cover only that portion of a producer's load that is allocated to Class I.

AMPI also suggested including a net shipment provision as it pertains to transportation credits on a daily or monthly basis. AMPI argued that transportation credits should not be available on milk received by a plant when on the same day the same milk may be diverted or transferred to other order plants. While being unaware of any such abuse currently, AMPI said that inclusion of such a provision would prevent the encouragement of future abuse.

AMPI also testified that the transportation credits, as currently structured, have created disorderly marketing conditions by establishing an incentive for handlers to solicit producers away from cooperatives during the transportation credit period. Although AMPI contended that it had not lost producer membership, AMPI testified that other cooperatives had lost some membership.

Testimony was also offered by a spokesman on behalf of Piedmont Milk Sales, an organization that markets the milk of 277 dairy farmers to handlers in the Southeast. Piedmont testified that the provision which permits funds to be transferred from the producer-settlement fund to the transportation credit balancing fund when the latter fund has an insufficient balance to pay the month's transportation credits has been detrimental to dairy farmers in the Southeast. Piedmont testified that the loss of income to producers reflected in their reduced blend prices is contrary to the economic philosophy relied on in half a century of Federal order and price support administration.

Piedmont pointed out that the May 1996 hearing record indicated that the impact on the blend price would be less significant than has actually occurred, suggesting, perhaps, that abuse of the transportation credits has occurred and will continue to occur in the absence of any modification of the provision. In order to curtail abuse, Piedmont suggested that transportation credits be prorated on the basis of available funds collected from handlers and deposited into the transportation credit balancing fund.

Piedmont also called for the restriction of credits on producer milk by including a provision which would eliminate credits on milk shipped directly from distant farms unless such milk was diverted between markets; it should then be treated as if it were plant milk. In essence, Piedmont argued for the tightening of the transportation credit provisions to prevent the uneconomic movement of milk from sources as far as California. The rate of 0.37 cent/mile also was criticized as being too high; however, no specific alternative rate was offered.

Piedmont supported a net shipment provision which would reduce the amount of transportation credits obtained by a handler if that handler shipped milk to a plant not regulated under any of the 4 orders. While conceding that some transfers and diversions were justified and did not constitute abuse, Piedmont contended that it is the responsibility of the handler to demonstrate that supplemental milk actually moved into such order(s) if a credit is requested.

In response to questions regarding the computation of the credits for the various orders, Piedmont stated that currently under the interim amendments the procedure used to compute such credits is not identical for each of the orders with respect to location adjustments. In order to promote greater equity, Piedmont suggested that the procedures used in Orders 11 and 46 for such computation should be used for all 4 orders.

Several Southeastern dairy farmers testified at the reopened hearing to oppose and voice their concerns over the reduction in blend prices resulting from the implementation of the transportation credits. One dairy farmer stated that he does not understand why Class I utilization rates have dropped in his marketing area in recent months, while, at the same time, supplemental milk is being imported and is eligible for transportation credits. Many of the farmer witnesses complained that by deducting the difference between the amount of credits to be paid out and the amount of funds available to cover these credits from the producer-settlement fund, dairy farmers are penalized and handlers are provided an incentive to continue to bring in milk whether it is needed or not.

One dairy farmer stated that the importation of supplemental milk would contribute to the demise of the dairy industry in the South. He contended that hauling in supplemental milk does not benefit local suppliers of feed or fertilizer and will eventually harm the Southeastern economy. He also expressed concern about price uncertainty which, he said, is exacerbated as a result of the transportation credits. One dairy farmer maintained that producers already have to contend with a number of variable factors affecting their blend price (including the weather and drought) and should not be subject to any additional uncertainties which may further reduce their blend price. He stated that once the blend price is reduced, the dairy farmer has no way to recoup the loss and cannot pass that cost along to anybody else.

Another dairy farmer testified that it is unfair and illogical to reduce the blend price in the Southeast to bring in supplemental milk when milk is also moving out of the area. He stated that he welcomes competition from dairy farmers outside the Southeast area, but that Southeast dairy farmers should not be responsible in any way for hauling their distant competitors' milk into the area. He said that, in essence, this has occurred with the implementation of the transportation credit provisions.

Kraft, Inc. (Kraft), which operates manufacturing plants in several states, testified that it is generally not opposed to "cautious and conservative use of transportation credits where necessary to assure that milk required for Class I use is equitably and adequately supplied." Kraft contended that the transportation credit provisions adopted in the interim amendments appear to provide a financial incentive to acquire distant supplemental producer milk rather than plant milk by absorbing some of the hauling charges that would normally be paid by the supplying producer. Kraft testified that the credits should be continued, but that there should be an equalization of incentives and/or disincentives with respect to plant milk versus producer milk.

Kraft also testified that if a net shipment provision is to be incorporated into the transportation credit program, it should only include milk which has been transferred or diverted for Class I use to another handler.

Milk Marketing, Inc. (MMI), speaking on behalf of its member producers whose milk is pooled under Order 46, testified that it supports Mid-Am's and CVMPA's proposal to modify the interim amendments. MMI contended that such proposed modifications are needed to resolve issues of equity involving producer milk and plant milk. In addition, MMI stated that it firmly believes that producer milk normally associated with the market should continue to be ineligible to receive transportation credits.

Fleming Dairy, which operates pool distributing plants in Nashville, Tennessee, and Baker, Louisiana, testified that it opposes any increase of the current 6-cent assessment rate that is charged to handlers regulated under the 4 orders. Fleming also addressed the issue of net hauling provisions by stating that this is an area which needs to be examined more thoroughly.

When asked about funds taken from the producer-settlement fund to supplement the transportation credit balancing fund, Fleming testified that Mid-Am's and CVMPA's proposals to reduce the amount of credits given out will most likely result in a situation where a 6-cent assessment will be enough to cover the value of the credits. Fleming testified, however, that transportation credits primarily benefit dairy farmers and, for this reason, it is appropriate to have all producers supplement the funds available for credits by a reduction in the blend price. In conclusion, Fleming testified that without transportation credits, it would have had less money available within the company to pay premiums to independent dairy farmers. Thus, according to Fleming Dairy, dairy farmers have benefited from the incorporation of transportation credits.

A witness representing Dairy Fresh Corp. and Barber Pure Milk Co., two handlers operating pool plants regulated under Order 7, also supported

transportation credits as a concept, but opposed increasing the handler assessment rate from 6 to 7 cents. Addressing the issue of the credit rate, and in response to a question asked earlier at the hearing, the witness stated that the 0.37 cent/mile rate should not be decreased as the distance hauled increases. He argued that this would not be appropriate because at times it is necessary to seek distant sources of available milk supplies. Finally, the witness testified that Mid-Am's proposal involving the 85-mile ineligibility requirement would discourage handlers from obtaining milk directly from producers' farms and thereby discourage greater efficiency and better quality milk.

Post-hearing briefs were filed by various interested parties. While changes to the current transportation credit provisions have been recommended throughout such briefs, the concept of transportation credits was not opposed by any of the submitting parties, with the exception of one handler recommending that the credits be eliminated from Order 11.

In its brief, Southern Belle, a handler regulated under Order 11, opposes any assessment on Class I producer milk for transportation credits in Order 11, reiterating its position following the initial hearing. Southern Belle restated the argument that many of its competitors are pooled under an order which does not require such assessment; therefore, the assessment places Southern Belle at a competitive disadvantage. Furthermore, such brief stated the current 6-cent assessment negatively impacts the Southern Belle's sales of bottled milk.

A brief submitted by Kraft Foods, Inc., stated that Kraft does not oppose transportation credits, but suggested that these provisions should be modified to equalize the costs of supplying fluid milk supplies to the Southeast. The brief stated that Kraft is at a disadvantage in procuring milk for Class II use because credits are available to those handlers with fluid milk plants which compete with Kraft in their ancillary Class II operations. Kraft also expressed concern over a net shipments provision and urged the Department to be cautious in its adoption of any such provision by having shipment limitations apply only when Class I milk (eligible for a transportation credit) received in any of the markets has replaced Class I milk (ineligible for a transportation credit) shipped out of the same market if the receiving plant is not within the 4-market area. Kraft's brief also reiterated its recommendation that the incentive and disincentives regarding transportation credits on supplemental plant milk versus supplemental producer milk should be equalized.

In its brief, Fleming Companies strongly supported the continuation of transportation credits, but stated that a few minor adjustments may be necessary. Fleming also restated its position that it opposes any increase in the handler assessment rate. Additionally, the brief stated that it is not inequitable for producers to share in the cost of the transportation credits since such cost provides services of marketwide benefit. As long as the contribution of handlers through assessments exceeds the amount of contribution by producers, then, according to Fleming, no increase in the assessment rate is justified.

Piedmont Milk Sales also submitted a post-hearing brief on behalf of the 277 dairy farmers who ship through Piedmont and regulated handlers, Land O'Sun, Inc., Hunter Farms, and Milkco, Inc. In its brief, Piedmont conceded that transportation credits are needed in the Southeast; however, Piedmont also recommended that certain changes are necessary regarding transportation credits in order to curtail abuse or potential abuse. According to Piedmont, several areas need to be modified, including: (1) Producer milk eligibility, (2) the January through June extension period for transportation credits, (3) the deduction of funds from the producer-settlement fund resulting in blend price reductions, and (4) the inclusion of a net shipment provision.

Piedmont suggests that credits have been given on milk which was imported for Class I use into the 4-market area, while at the same time milk was being shipped out of this area into Florida. Handlers and producers, it was stated, paid to bring in replacement milk from as far away as California when the milk could have been obtained from closer sources. Piedmont argued that the current transportation credits create an incentive to acquire milk on the basis of the generosity of the credits as opposed to the most efficient movement of milk.

Piedmont's brief also suggested that the market administrator's responsibility should be expanded to monitor transportation credit requests to determine whether milk that was imported was actually supplemental milk. The brief explains that the market administrator should be required to verify that the credits due a handler do not exceed the actual costs of hauling. In addition, Piedmont reiterated its request for a net shipment provision to ensure that shipments from these 4 markets to other order plants are not occurring simultaneously with the importation of supplemental milk to replace these exports.

In its brief, Piedmont also strongly opposed any reduction in the blend price of producers. A recommendation to prorate the available funds to be paid out to handlers was supported.

According to Piedmont, if the Department does not eliminate producer milk from being eligible for transportation credits, certain restrictions should be placed on it. While supporting the proposed amendment to assign producer milk to Class I in the same manner as transferred milk, Piedmont opposes the other proposed changes involving producer milk. Piedmont stated in its brief that when computing the transportation credit, such credit should be reduced by 125 miles and that it should also be reduced by an increment of 5% for each 100 miles over 250 miles. In addition, Piedmont supports a reduction in the credit rate of 0.37 cent per mile per hundredweight that is used in the calculation of the credits. The rate decided upon should ensure that handlers have an economic incentive to reduce the cost of transporting milk.

A brief submitted by CVMPA supports a continuation of transportation credits for the 4 markets, but also recommended that certain modifications be adopted to the current provisions. In its brief, CVMPA stated that the marketing situation which prompted the need for transportation credits in the Southeast has not changed, and any return to the pre-transportation credit situation would result in disorderly marketing and irreparable harm to producers in certain groups.

CVMPA stated that the credits available on supplemental producer milk should be comparable to credits available on other order plant milk. It suggests that one way of accomplishing this is to use the same marketwide Class I utilization percentage to determine the proportion of transferred milk and producer milk that is eligible for the credit. A second change supported by CVMPA involves the adjustment of the credit by the difference between the shipping point Class I price and the receiving plant Class I price whether it is a producer load or an other order plant transferred load. This will further equate the amount of credits available on supplemental producer milk versus supplemental plant milk.

In its brief, CVMPA restated its support of the reduction of the first 85 miles in computing the transportation credit. Such a reduction, CVMPA argued, would serve as a proxy for the

normal distance milk moves from farm to plant. This reduction is appropriate, according to CVMPA, because the producer should be responsible for the cost of farm-to-market hauling. This modification, it adds, will further equate credits on producer milk and plant milk.

CVMPA's brief supports the proposal to have a producer's milk ineligible for credits if the producer's farm is located within 85 miles of the plant receiving the milk, is within the 4 marketing areas, is within 85 miles of certain cities on the periphery of the 4-market area, or is located within certain states in the southeastern United States. CVMPA argued that expansion of the geographic area would tend to curtail the incentive to move milk uneconomically. CVMPA also refuted certain arguments brought up during the reopened hearing which maintained that such an expansion would result in the procurement of milk from further distances so that credits could be earned. This, CVMPA argued, is false logic.

Regarding the assessment rates, CVMPA argued in its brief that assessments should be raised to a level high enough to ensure that there will be no insufficiencies in the transportation credit balancing fund. No justification exists for reducing the blend price to producers, according to CVMPA; therefore, no deductions should be made from the producer-settlement fund. CVMPA's brief also stated that any other alternative, such as over-order pricing, will result in inequity or uncertainty.

Finally, CVMPA opposed the installation of a net shipment provision for reducing transportation credits received by a plant that also ships out Class II or Class III milk during the same month that transportation credits are received by such plant. In its brief, CVMPA argued that seasonal, monthly, and weekly balancing of customer needs is very important to a cooperative association such as itself. While some operators of supply plants have the ability to reshuffle supplies through the week and weekend to help with weekly balancing, cooperatives which do not have manufacturing plants lack such opportunity. According to CVMPA, it is untenable to reduce transportation credits on supplemental milk simply because a cooperative is balancing the daily and weekly need of distributing plants by diverting producer milk.

Mid-Am also submitted a post-hearing brief in support of the continuation of transportation credits under the 4 orders, but with the modifications summarized earlier. Mid-Am reiterated its support for a modification of the interim provisions that would ensure that credits given on producer milk are comparable to credits given on plant milk.

Mid-Am pointed out in its brief that if the proposed modifications to the interim amendments concerning credits on producer milk are adopted, the amount of credits paid out will be significantly reduced; therefore, for Orders 5, 11, and 46, the current assessment rate of 6 cents per hundredweight should be sufficient to cover the costs of credits due. However, Mid-Am stated that in order to prevent funds from being deducted from the producer-settlement fund, an increase of the assessment to 7 cents in Order 7 would be necessary. Mid-Am also reiterated its opposition to the adoption of a net shipment provision for reducing transportation credits. According to Mid-Am, no justification exists for the incorporation of such a provision. Milk Marketing Inc. also submitted a brief in support of the continuation of transportation credits.

MMI stated that it fully supports the positions of CVMPA and Mid-Am with respect to the modification of the interim amendments. According to MMI, the proposed modifications will result in the transportation credit provisions being administered in a more equitable and uniform manner.

A brief filed by AMPI also supported modifications of the current transportation credit provisions so that the credits available on producer milk are more comparable to the credits available on other order plant milk. According to AMPI, such modifications would result in the elimination of the transportation credit advantage of producer milk over plant milk which causes disorderly procurement activities by various handlers.

In its brief, AMPI opposes the modification proposed by Mid-AM and CVMPA that would render ineligible for credits that milk shipped from producers' farms located outside the 4 marketing areas, but within 85 miles of certain basing points. AMPI argues that such a restriction would result in the uneconomical movement of milk, thereby creating additional transportation costs in the Southeast.

AMPI's brief also recommends the inclusion of a net shipment provision to guard against abuse of the transportation credits by various handlers. AMPI's brief stated that it is unreasonable to base such a net shipment provision on monthly transfers and diversions; it suggested that netting shipments that occur within the same 24-hour period would be more appropriate.

Barber Pure Milk Company and Dairy Fresh Corporation also submitted a post-hearing brief opposing certain modifications of the current transportation credit provisions. Barber and Dairy Fresh stated that they are concerned over issues of inequity which may result from any changes to the current provisions.

In their brief, Barber and Dairy Fresh oppose any proposal to have credits on supplemental producer milk be contingent upon the lower of the marketwide Class I utilization or the Class I utilization of the receiving plant. By making the credits on producer milk and plant milk comparable, they argue, other inequities would be created. Additionally, they note that the proposed modifications, including the proposal to subtract 85 miles from the total farm-to-plant mileage, would encourage the importation of other order plant milk rather than producer milk, which is more efficient.

According to Barber and Dairy Fresh, the interim orders should remain as they are with respect to adjustments involving Class I prices applicable at the origination point and the receiving plant. Any modification to the current computation would not have sufficient justification, according to the commentors. Any change to the geographic area from which producers' milk is ineligible to receive credits was opposed by Barber and Dairy Fresh because restrictions would be placed on producer milk which would not apply to milk from other order plants.

In their brief, Barber and Dairy Fresh also opposed decreasing the amount of credits available as the distance increases. This, it was argued, would force the uneconomical movement of milk. Any increase in the assessment rate was opposed by the commentors also. They maintain that producers also must share some responsibility for supplying the Class I milk needs of the markets. Finally, Barber and Dairy Fresh suggest that a net shipment provision be incorporated in the orders to prevent milk from being brought into one order for the transportation credit, while simultaneously milk is being shipped by the same handler to another market. According to the commentors, the Florida markets are benefiting from the transportation credit provisions at the expense of the 4 southeastern markets.

Gold Star Dairy also submitted a post-hearing brief opposing any assessments on Class I prices in order to fund transportation credits under Order 7 and maintains its position as stated in its brief following the May 1996 hearing. Gold Star Dairy also opposes any modifications of the orders regarding

the interim amendments claiming that proper notice had not been given.

Select Milk Producers, Inc., submitted a brief in support of the continuation of transportation credits without modification. In addition to reiterating its position from an earlier brief submitted after the May 1996 hearing, Select stated that proposals to limit transportation credits based on distance would result in an inequitable situation by placing the burden of transporting milk from further distances on cooperatives servicing the southeast markets. Additionally, Select maintained that the small reduction in producer pay prices resulting from the credits will end once the funds in the transportation credit balancing funds are built up; therefore, these past reductions do not justify changing the current provisions. Select also argued that proper notice had not been given to interested parties prior to the reopened hearing.

A brief was also filed by a producer from Tennessee who expressed concern that transportation credits place southeastern producers at a competitive disadvantage. In his brief, he also questioned why southeast producers have been paying to have distant milk hauled into their markets.

Conclusion

Testimony and exhibits introduced at both sessions of the hearing indicate that the Southeastern United States has a chronic shortage of milk for fluid use in the summer and fall months, which often extends into the winter months. This shortage has been worsening over time as milk production has declined and population has increased. This trend is likely to continue, exacerbating the problem of obtaining a sufficient supply of milk for fluid use in an orderly and equitable manner.

Under the arrangements that existed in these markets prior to the adoption of the interim amendments, the costs of obtaining an increasing supply of supplemental milk were not being borne equally by all handlers and producers in each of the 4 orders. The record indicates that disorderly marketing conditions existed because of the significantly different costs that were incurred by handlers who provide the additional service versus those who do not. It also indicates that the disproportionate sharing of costs was jeopardizing the delivery of adequate supplies of milk for fluid use. Thus, based upon the record of the first session of the hearing in these matters, interim amendments were adopted to restore stability and order in providing adequate supplies of milk for fluid use. The reasons for adopting the interim amendments were thoroughly explained in the tentative decision and the provisions that were adopted have been summarized above. Therefore, the discussion that follows will not reiterate the reasons for adopting the interim amendments, but instead will focus on the reasons for changing them based upon the new information presented at the December hearing.

The interim amendments provided for transportation credits during the months of July through December and included all of the months of January through June in a "discretionary transportation credit period." Under those provisions, a handler may request that transportation credits be extended to any of the months of January through June by filing such a request with the market administrator 15 days prior to the beginning of the month for which the request is made. After providing notice of such a request to interested parties and conducting an independent study of the situation, the market administrator has the ultimate authority to grant or deny the request but must notify handlers of the decision by the first day of the month. The complete procedure to be followed is described in § 100X.82(b) of the order language.

This final decision changes the discretionary period from the months of January through June to January and June only. Outside of the July through December period, January and June are likely to be the months when these markets are most in need of supplemental milk for fluid use. Class I utilization generally begins to drop in February and milk supplies are usually adequate for fluid use until June.

The reasons for changing these discretionary months are twofold. First, including all of the months of January through June in the discretionary period could result in a situation where transportation credits are provided on nearly a year-round basis. Were this to happen, it would destroy the concept of a supplemental producer because a dairy farmer conceivably could be shipping milk to one of these markets on a year-round basis. Moreover, under the provisions provided in this decision, if a dairy farmer were to supply milk for more than 2 months of the January through June period, the producer's milk would be ineligible for transportation credits beginning in July. Hence, these provisions would be in conflict with each other. A second reason for restricting the discretionary period to January and June is to give the transportation credit balancing fund a chance to build up so that funds will be available when the markets are most in need of supplemental milk starting in July.

The interim amendments provided for a transfer of funds from the producer-settlement fund to the transportation credit balancing fund when the latter fund had an insufficient balance to pay the month's transportation credits. When this provision was adopted, it was assumed that it would only be needed for the first year that these provisions were in effect and that, thereafter, the transportation credit balancing fund would maintain a sufficient balance to preclude such a transfer of funds. Experience has indicated otherwise, particularly with respect to the Southeast and Carolina markets. Data introduced by the market administrators' offices show that all 4 orders had an insufficient balance in the transportation credit balancing fund during every month that transportation credits have been in effect, with the exception of Order 46 in November 1996. The data also show that the transfer of funds from the producer-settlement fund to the transportation credit balancing fund reduced blend prices to producers by varying amounts during the 4-month period of August through November 1996, ranging from 1 cent for Order 46 to as much as 21 cents in October for Order 7.

To cope with the milk shortage of the past year, action had to be taken to provide handlers with adequate milk supplies to meet their fluid needs as equitably as possible. Since the transportation credit provisions did not become effective until August 10, 1996, there was no opportunity to accumulate funds with which to pay all of the transportation credits. Therefore, as a short-term measure, provision was made for taking funds from the producer-settlement fund. The logic behind this provision was that if transportation credits could not be paid fully from funds collected from handlers, the next best alternative was to have all of a market's producers contribute to making up the difference; otherwise, certain producers (i.e., members of cooperative associations) would bear a disproportionate share of the cost of bringing in supplemental milk.

Based on the experience with transportation credits during the past 4 months, it can be concluded with some certainty that, under present conditions, the transportation credit balancing fund of Orders 5 and 7 would contain insufficient funds to pay for all of the transportation credits that are likely to be accrued during the months of July through December 1997 and that, based upon the current 6-cent assessment rate, funds would have to be transferred from

the producer-settlement fund to the transportation credit balancing fund by fall 1997 if these provisions remain unchanged.

We agree with the proponents of transportation credits that the cost of bringing supplemental milk to a market generally should be shared among all of a market's handlers. However, from the data for the last 4 months, it can now be concluded with reasonable certainty that to fully cover handlers' costs for the Southeast and Carolina markets under the present provisions, the assessment rate would have to be raised significantly. A better approach, we believe, is to address the revenue problem from both ends: slightly increase revenue, but more significantly reduce payouts. This would ensure that only necessary imports are made, and would encourage the most cost effective methods of procurement. At the same time, it would provide handlers with significant, if not total, recoupment of costs.

In particular, based upon the record of this hearing and the experience with transportation credits during the months of August through November 1996, several changes should be made to the transportation credit provisions to correct certain problems that have become evident.

First, the transfer of funds from the producer-settlement fund to the transportation credit balancing fund should be eliminated. This temporary measure is no longer needed. Transportation credits should be paid out each month to the extent possible from the available funds in the transportation credit balancing fund. If the credits exceed the balance in the transportation credit balancing fund, the available funds should be prorated to handlers based upon the transportation credits that are due to each handler.

Second, the per mile transportation credit rate should be reduced to 0.35 cent per hundredweight per mile from the present level of 0.37 cent. This reduction is consistent with the testimony of several witnesses who warned during the course of the hearings that it is better to under-compensate handlers for supplemental milk costs rather than overcompensate them. In this way, handlers will only import milk that is truly needed because their costs may not be fully covered. This argument makes sense and, in view of the need to conserve funds, this suggestion should be adopted.

Third, the proposal by Mid-Am to exclude 85 miles from the mileage when computing credits for supplemental producer milk should be adopted. Mid-Am is correct in arguing that producers should be expected to bear their normal farm to plant hauling cost, and the 85-mile figure proposed appears to be a reasonable approximation of the distance used in computing such cost. This modification will also help significantly to reduce transportation credits.

Fourth, certain changes should be made in the proportion of supplemental producer milk eligible for transportation credits and in the formula for computing those credits. These changes are explained below.

Finally, the maximum assessment for the transportation credit balancing fund should be increased slightly for Orders 5 and 7. It is likely that, even with the changes adopted above and others yet-to-be discussed, there will be a shortfall in funds to pay for all of the projected transportation credits if production patterns continue as they have for the past 3 years. A modest rate increase will help narrow this gap. Therefore, the maximum assessment rate for Order 5 should be increased to 6.5 cents per hundredweight of Class I producer milk and the rate for Order 7 should be increased to 7 cents per hundredweight. The rate should remain at 6 cents per hundredweight for Orders 11 and 46, however.

This modest increase in the assessment rates for Orders 5 and 7 will help to avoid having to prorate available funds to handlers in these markets. It should be kept in mind that this rate is the maximum rate that can be charged. If production increases and/or supplemental milk imports decrease and less money is needed for the transportation credit balancing fund, these changes will trigger an automatic reduction in this assessment.

The current 6-cent assessment for Orders 11 and 46 is likely to meet all of the anticipated transportation credits for 1997. In fact, by the first half of 1998 it may be possible to maintain a sufficient balance in the transportation credit balancing fund with a rate below 6 cents per hundredweight for these 2 markets.

In conjunction with the limit on the disbursement of transportation credits, as explained above, a new procedure should be implemented for receiving the required information, computing the credits to be disbursed, and making final settlement for appropriate adjustments.

Experience with the transportation credit provisions during the months of August through December 1996 has demonstrated a handler/cooperative association problem in getting complete and accurate transportation credit documents to the market administrator by the 7th day of the month, when such information must be received for purposes of computing the uniform price. Because of difficulties in obtaining timely information, the market administrators have accepted late submissions of supplementary information.

Now that the possibility exists that transportation credits may have to be disbursed on a prorata basis, fixing the time for the final submission of requests and for final payment based upon such requests is even more of a necessity. If the submission of supplemental information were left open-ended, the procedure for prorating credits could get hopelessly complicated with endless recalculations based on tardy information. Therefore, the procedure should be clear, reasonable, and unalterable once in place.

When the market administrator receives handlers' reports of receipts and utilization by the 7th day of the month, the market administrator will determine whether there are sufficient funds in the transportation credit balancing fund to cover the requests for transportation credits. If there is not a sufficient balance, the market administrator will compute a preliminary proration percentage by dividing the balance in the fund by the total amount of transportation credits requested. The prorated credits so computed will be disbursed along with any payments from the producer-settlement fund on or before the 13th day of the month with respect to Orders 5, 7, and 11 (16th day of the month in the case of Order 46).

Handlers will be given the opportunity to correct and file complete documentation of their initial transportation credit requests for the preceding month by filing updated information with the market administrator by the 20th day of the month. After such date, the market administrator will conduct a preliminary audit of the requests and will then compute a final proration percentage based upon the revised numbers. Handlers then will be notified of any additional credits due them or of any payments due from them and such payments will be completed the following month when payments are next due.

At the May 1996 hearing, Mid-Am proposed permitting transportation credits for bulk transfers of milk for Class I use from any other order plants. The interim amendments restricted such transfers to plants regulated under Federal orders other than Orders 5, 7, 11, and 46. The reason for excluding plants under these 4 orders from transportation credits was to avoid

potential abuses from undue movements of milk among the orders to take advantage of transportation credits. In particular, handlers were concerned that milk could be stair-stepped from Order 46 to Order 7, for example, thereby creating a shortage of milk in Order 46. Order 46 handlers then would have to import replacement milk, and their assessments for transportation credits would be used to cover transportation costs for such replacement milk when, some argued, Order 7 handlers should have borne the full cost of importing milk from the ultimate source. At the reopened hearing, there were no problems mentioned in connection with the provisions applicable to plant transfers, except for concern that milk could be moved or stair-stepped among orders to obtain credits. As a result, the provisions that prohibit credits to receipts of transferred milk among the four orders should remain unchanged in the final amendments.

Currently, producer milk is eligible to receive transportation credits as discussed above. At the reopened hearing, there was no testimony suggesting that transportation credits be eliminated for producer milk. In fact, the available data shows that during the months of August through November 1996 far more supplemental milk was received directly from producers' farms than from other order plants. Several suggestions were made concerning how to compute such credits in a more equitable and efficient manner. Since most of these suggestions have merit, modifications to the interim amendments involving producer milk are provided.

The thrust of the testimony was that the present method for computing transportation credits for producer milk resulted in an overly generous credit as compared to the method used for plant milk and, therefore, provided an artificial incentive to receive producer milk directly from farms rather than milk transferred from an other order plant. The testimony, as summarized earlier, was quite convincing, with the exception of Mid-Am's proposal to exclude the milk of a producer who is within 85 miles of the perimeter of any of the 4 marketing areas from transportation credit eligibility. Such proposal should not be adopted.

In the interim amendments, producer milk was not eligible for a transportation credit if the producer's farm was located within one of the 4 marketing areas or if the farm was within 85 miles of the plant to which milk from the farm was delivered. The tentative decision concluded that it was "reasonable to conclude that the markets" regular producers are located reasonably close to the plants receiving their milk. Thus, such producers' farms are likely to be within the geographic marketing areas defined in each order."

At the reopened hearing, Mid-Am proposed expanding this restriction to include producers whose farms are: (a) Within the States of Florida, Georgia, Alabama, Louisiana, Mississippi, Arkansas, Tennessee, South Carolina, North Carolina, or Kentucky; or (b) within 85 miles of the City Hall in the nearer of Lake Charles or Shreveport, Louisiana; Little Rock, Arkansas; Evansville, Indiana; Fulton, Louisville, or Lexington, Kentucky; Bristol, Tennessee; or Reidsville, or Roanoke Rapids, North Carolina.

Mid-Am's 10-state exclusion area would randomly exclude many counties in Arkansas and Kentucky that are outside of any of the 4 marketing areas and should not be adopted. It would be difficult to justify the exclusion of a county from transportation credits simply because of its location within a particular state. For example, under the Mid-Am proposal, many counties in northwest Arkansas and northeast Kentucky would be excluded from transportation credits. These counties may or may not be part of the regular supply for the 4 markets. By randomly excluding all territory within a state, certain counties outside of the 4 marketing areas may be unfairly excluded. The exclusion of territory from transportation credits should be based upon whether that territory is a regular source of supply for the markets involved in this proceeding. It must be noted, however, that simply because a county is within one of the 4 marketing areas does not necessarily make it a regular source of supply for these 4 markets. By the same token, simply because a county is just outside these marketing areas does not mean it is not a regular source of supply either. However, it is reasonable and appropriate to use such marketing area boundaries to define the exclusionary area since it is apparent that most of the producers located within these areas supply plants regulated under these orders. Furthermore, other performance measures are used to distinguish between producers who are or who are not regular suppliers of these markets. Thus, the exclusionary area need not be overly restrictive as proposed by Mid-Am.

The interim amendments excluded the area within the 4 marketing areas from transportation credits. However, the use of the marketing area definition failed to exclude several unregulated counties within the State of Kentucky where producers are located and who could qualify for transportation credits. These counties are completely encircled by the Order 7 and Order 46 marketing areas and are an integral part of the milk supply for those 2 markets. There can be no doubt that these counties-- Allen, Barren, Metcalfe, Monroe, Simpson, and Warren—clearly should be part of the area excluded from transportation credits because the surrounding markets are clearly the regular outlets for this milk. Accordingly, the order language should be modified to include these 6 counties in § 100X.82(c)(2)(iii).

The proposal of Mid-Am to exclude the territory within 85 miles of the cities mentioned above should not be adopted. This proposal would exclude many producers who are located in counties adjacent to the 4 marketing areas. These producers may, for the most part, be regular suppliers of other markets. For example, there may be dairy farmers in East Texas who are within 85 miles of Lake Charles or Shreveport, Louisiana, from whose farms milk is delivered on a supplemental basis to other plants within the Southeast market that may be hundreds of miles away. It would make no sense to exclude these farms from transportation credits and thereby force cooperative associations and plant operators to bring in supplemental milk from even farther distances when this closer milk is available.

Not all of the pool distributing plants regulated under these orders are located within the 10-state area specified above. For example, a pool distributing plant regulated under Order 5 is located in Lynchburg, Virginia. The interim amendments dealt with this problem by specifying that a farm had to be more than 85 miles from the plant to be eligible for a transportation credit. This provision was based upon a suggestion made by MMI at the May 1996 hearing restricting supplemental producers to those who are more than 85 miles from Louisville or Lexington, Kentucky, or Evansville, Indiana.

As explained above, the amendments provided in this decision would subtract 85 miles from the transportation credit computation for producer milk. In view of this adjustment, it is no longer necessary to specify that a producer must be more than 85 miles from the plant because a transportation credit would not be given for that distance anyway. In effect, the origination point for producer milk has to be at least 85 miles from the plant of receipt before milk from that point would receive a transportation credit. Thus, the language now contained in § 100X.82(c)(2)(ii) of the interim

amendments referring to 85 miles has not been carried forward to the comparable revised paragraph, § 100X.82(c)(2)(iii), of the attached final amendments.

Mid-Am also proposed certain changes to the way transportation credits are computed for producer milk. As provided in the interim amendments, all producer milk classified as Class I milk is eligible for the credit. At present, the proportion of such milk that receives a Class I classification is approximately equal to the utilization of the plant receiving the milk. Receipts of transferred milk from other order plants, on the other hand, are allocated to Class I based upon the lower of the receiving handler's Class I utilization or the marketwide Class I utilization. This difference in classifying supplemental milk, according to Mid-Am, has provided an incentive for a high Class I utilization handler to receive supplemental producer milk rather than supplemental milk transferred from an other order plant in order to receive credits on a greater proportion of the supplemental milk.

To correct this bias, Mid-Am proposed that supplemental milk from producers should be assigned to Class I in the same proportion as other order supplemental milk to determine the proportion of such milk that is eligible for the transportation credit. This modification should be adopted. Supplemental producer milk should be assigned to Class I, for transportation credit purposes, by adding a paragraph—(c)(2)(i)—to Section 82 ("Payments from the transportation credit balancing fund"). This new paragraph states that the quantity of producer milk that is eligible for the transportation credit shall be determined by multiplying the total pounds of supplemental producer milk received at the plant by the lower of the marketwide Class I utilization of all handlers for the month or the Class I utilization of the pool plant operator receiving the milk after all of the handler's receipts have been allocated to classes of utilization in Section 44 of the respective order.

Another change that should be made to the transportation credit for producer milk has to do with the way the gross credit is adjusted by the difference in Class I price at the receiving plant and the origination point for the load of milk. At the present time, even though a farm and an other order plant may be identically located in another order's marketing area, there may be a difference in the transportation credit that would apply to milk coming from those identically-located points under the provisions of Orders 5, 11, and 46. The Class I price, adjusted for location, under Orders 5, 11, and 46, applicable to a plant in the marketing area of some other order is not necessarily the same as the Class I price, adjusted for location, applicable to that plant pursuant to the provisions of that other order. For example, the Class I price to any plant under the Eastern Ohio-Western Pennsylvania order is $2.00 plus the basic formula price under the provisions of the Eastern Ohio-Western Pennsylvania order, but the Class I price that would apply to a plant located in the Eastern Ohio-Western Pennsylvania marketing area under the provisions of the Carolina order would be based upon mileage from specified basing points in North Carolina; it could be greater or less than $2.00 plus the basic formula price. Under the Southeast order, by contrast, the Class I price applicable to a plant that is located in the marketing area of some other order is the Class I price that would apply to that plant under the provisions of the order covering that marketing area. Therefore, under the Southeast order the transportation credit for a plant or farm identically located in another Federal order marketing area is the same, but for Orders 5, 11, and 46 it may not be.

In computing transportation credits for plant milk, the gross credit (i.e., the mileage times 0.35 cent) is adjusted by subtracting the Class I price applicable to the plant under the other order from the Class I price applicable to the plant receiving the milk. For producer milk, however, the gross credit is adjusted by subtracting this order's Class I price at the origination point from this order's Class I price at the receiving plant. As a result, there could be a difference in the transportation credit applicable to plant milk versus producer milk, even though the plant and farm are adjacent to each other.

This can and should be corrected for plants and farms located in Federal order marketing areas by changing the way the credit is computed for producer milk. The adjustment to the gross credit for producer milk should be computed as if the origination point for the producer milk were a plant location. Specifically, if the origination point is in another order's marketing area, the other order Class I price applicable at the origination point should be subtracted from the receiving order's Class I price at the receiving plant. This change is provided in § 100X.82(d)(3)(v) of the order language.

A complication arises in the case of an origination point that is not located within any Federal order marketing area. While the other order Class I price that would apply to an other order plant that is located in unregulated territory is known, the same cannot be said for a farm location (i.e., an origination point for a load of supplemental producer milk). In view of this uncertainty, the most reasonable treatment for such milk is to price it under the provisions of the order receiving the milk. For example, if an Order 5 plant in Raleigh, North Carolina, received supplemental producer milk from a farm in an unregulated county in central Pennsylvania, the gross transportation credit for that load of milk would be adjusted by subtracting from the credit the difference between the Order 5 Class I price at the Pennsylvania origination point and the Order 5 Class I price at Raleigh.

Another issue, not addressed at the hearing, must be discussed. It is possible that milk may be transferred from an other order plant that is located in one Federal order marketing area but is regulated under a different order. For example, a plant may be located in the Eastern Ohio-Western Pennsylvania marketing area but may be regulated under the Ohio Valley order. In such a case, a question may arise concerning which order's Class I price to use in computing the transportation credit. In this situation, the market administrator should use the Class I price that applies at that plant under the order in which the plant is regulated. Thus, in the example given, the Class I price at the plant would be the applicable Class I price under the Ohio Valley order. This treatment will ensure that the transportation credit properly reflects the difference in the Class I prices applicable to the shipping handler and the receiving handler.

In addition to considering the geographic location of a dairy farm for the purpose of determining whether milk from that farm is supplemental to a market's needs, attention should be focused on whether milk from that farm is regularly associated with the market or is shipped to the market as needed.

Since the need for supplemental milk generally drops off sharply after the month of December or January in all of these markets and does not reappear, usually, until the month of July, it is reasonable to conclude that the milk of a producer who is located outside of the exclusionary areas (the 4 subject marketing areas or the 6 Kentucky counties mentioned above) generally would not be needed during the months of January through June, but might be needed starting in July. It is also logical that the milk of a supplemental producer would not be needed each day but perhaps once or twice a week.

Accordingly, if a dairy farmer was a regular supplier of the market during January through June—i.e., a "producer" on the market for more than 2 of those months—the milk of such a dairy farmer should not be considered supplemental milk during the following months of July through December.

It would be unduly restrictive to disqualify a dairy farmer for shipping a limited amount of milk during one or two months of the January through June period, however, because even the months of January and June can be short months in the Southeast, and, in fact, these 2 months can be included in the transportation credit period. Therefore, the provision should be flexible enough to accommodate some shipments to the market during the January through June period. Specifically, a dairy farmer should not lose status as a supplemental producer if milk is shipped to a market for not more than 2 months of the January through June period. However, shipments during this period should be of a limited duration. Therefore, not more than 50 percent of the dairy farmer's production may be received as producer milk, in aggregate, during the 2 months of the January through June period in which the dairy farmer was a producer on the market. In addition, if January and/or June are months in which transportation credits are extended, those months should not be included in the 2-month limit for a supplemental producer. The transportation credits would not be extended to January or June if milk were not needed during those months, and it would be counterproductive to penalize a producer for responding to that need. Therefore, if January and June are part of the transportation credit period, a dairy farmer may be a producer during those months and, in addition, may be a producer during 2 of the months of February through May provided that the dairy farmer's producer milk during those additional 2 months did not exceed the 50 percent limit.

The interim amendments provided that 32 days' production of a dairy farmer could be delivered during January through June before the dairy farmer would lose status as a supplemental producer. This has been changed to "50 percent of the dairy farmer's production" to simplify reporting and administration of this provision.

The provisions in the interim amendments prescribing the determination of an origination point for a load of supplemental producer milk are continued in this final decision. No problems were noted with this provision and no suggestions were made for changing it at the reopened hearing or in the post-hearing briefs. The 2 alternatives provided for determining a supplemental producer milk origination point are contained in § 100X.82(d)(3)(i).

As noted earlier, there was a great deal of concern expressed at both sessions of the hearing about "stair-stepping" milk from one market to another. Suggestions were made at both sessions of the hearing to adopt a net shipment provision to offset transfers from a pool plant to other order plants against supplemental milk brought into the pool plant within a specified period of time.

This issue can be quite complex, particularly in large markets, such as the Southeast market. It may very well make economic sense to ship surplus milk from one part of a market (for example, southern Louisiana in the Order 7 marketing area) to another market that is short of milk (for example, the Florida markets) at the same time that bulk milk is imported for a handler in another part of the Order 7 marketing area (for example, a handler in Nashville). Also, it is entirely possible that milk may be needed at the beginning of a month, while by the end of the month milk must be exported out of the market for surplus disposal. Finally, since fluid milk processors have different bottling needs, extra milk may be needed on certain days but not on other days within the same week.

In response to concerns expressed at both sessions of the hearing, the 4 orders should contain a net shipment provision to prevent the type of abuses feared by proponents of such a provision. However, in view of the varying circumstances surrounding the fluid needs of these markets, the provision should be flexible enough to accommodate these varying needs. To be effective, the net shipment provision should apply to all supplemental milk received, either by transfer or directly from producers' farms as producer milk.

In applying the net shipment provision, bulk transfers to nonpool plants that were made on the same day that supplemental milk was received at a pool plant should be subtracted from the total receipts of supplemental milk for which the pool plant operator or cooperative association is requesting a credit. In reducing the supplemental milk eligible for the credit pursuant to this net shipment provision, the market administrator should first subtract the loads of milk that were most distant from the plant and then continue in sequence with less distant loads. This procedure, which is described in § 100X.82(d)(1) of the orders, will minimize the depletion of funds from the transportation credit balancing fund resulting from unwarranted receipts of supplemental milk.

The net shipment provision will require accurate accounting and reporting on the part of handlers. Specifically, each pool plant operator applying for transportation credits will be required to maintain accurate accounting records of daily transfers of bulk milk from the plant to nonpool plants. This is provided in § 100X.30(a)(7) of the order language for Orders 5, 7, and 46, and § 100X.30(a)(8) for Order 11.

Although specific proposals were made to net outgoing shipments from incoming shipments within a 24-hour period, this suggestion could prove to be tedious for handlers, as well as for the market administrator. Therefore, the attached amendments provide for netting based on receipts and shipments occurring the same calendar day.

The diversion of producer milk to a nonpool plant was not addressed at great length at either session of the hearing, although AMPI did state in its brief that diversions to nonpool plants should also be included in a net shipment provision.

It is certainly a fact that milk is diverted from pool plants in these 4 markets to nonpool plants for Class II and Class III use. Each pool plant operator has a regular supply of producer milk for its Class I needs and that milk should be utilized to the full extent before importing supplemental milk. While diversions could have been incorporated into the net shipment provision, as suggested by AMPI, there would be numerous obstacles to overcome in doing so. Therefore, we concluded, on balance, that any possible benefit of including diverted milk would be outweighed by the problems caused by such a complicated provision.

To illustrate one type of problem, for example, not all supplemental milk may be needed at a pool plant every day; some days it may be diverted to a nonpool plant close to the farm where produced and hundreds of miles away from the pool plant where it is received on a supplemental basis some of the time. If diversions were included in the net shipment provision, the milk that is not needed—i.e., it is diverted to a nonpool plant—would have to be subtracted from the supplemental milk that was needed that day, which could result in the handler getting no transportation credit for supplemental milk received on that day. While a provision undoubtedly could be written to distinguish "regular" or "close-in" producer milk that is diverted from

"supplemental" or "distant" producer milk in an attempt to overcome these problems, it would likely be a very cumbersome provision. If, at some point, it becomes obvious that handlers are diverting local milk for manufacturing use while importing supplemental milk for Class I use within the same 24-hour period, appropriate action should be taken to stop this abuse of the transportation credit provisions. In the meantime, however, handlers should be given as much freedom as possible to move milk according to their needs.

At the reopened hearing, Mid-Am proposed an amendment to that section of the orders dealing with overdue accounts. Specifically, it proposed adding overdue payments to the transportation credit balancing fund in the list of late payments to which a late payment charge would apply.

This proposal should be adopted. Although handler compliance with the transportation credit balancing fund assessment has been excellent thus far, it is possible that late payments may occur in the future. Were this to happen, one handler could gain an advantage over competing handlers by using money that should have been paid to the market administrator. To discourage this from happening, and to rectify the situation when it does happen, a late payment charge should apply to delinquent payments to the transportation credit balancing fund.

A conforming change should be made in Order 46 with respect to the payment of assessments for the transportation credit balancing fund and the payment of transportation credits to handlers. In the interim amendments, assessments for the transportation credit balancing fund were uniformly due on the 13th day of the month for all 4 orders and, similarly, payment of transportation credits to handlers was uniformly set at the 12th day of the month for all 4 orders. However, Order 46 differs from the other 3 orders with respect to payments to and from the producer-settlement fund. Under Order 46, payments to the producer-settlement fund are due on the 15th day of the month and payments from the producer-settlement fund are due on the 16th day of the month. For the other 3 orders, however, payments into the producer-settlement fund must be made by the 12th day of the month and payments out of the producer-settlement fund must be made by the 13th day of the month. To facilitate the payments of transportation credit assessments and payouts under Order 46, the dates in §§ 1046.81(a) and 1046.82(a) should be changed from the 12th and 13th, respectively, to the 15th and 16th, respectively, to coincide with payments in and out of the producer-settlement fund for that order.

A conforming change also should be made in § 100X.81 with respect to how the assessment for the transportation credit balancing fund is to be determined. In the interim amendments, the standard used for determining how much the handler assessment would be each month was based upon the credits disbursed during the preceding July through December period or during the immediately preceding 6-month period. This paragraph was worded that way because transportation credits theoretically could have been in effect every month of the year. However, as modified in this final decision, transportation credits can only be effective during the months of June through January and the months of June and January are subject to a finding by the market administrator that supplemental milk is needed for fluid use.

In view of the change in months for which transportation credits may be effective, it is also appropriate to change the benchmark for determining the level of such assessments. Specifically, § 100X.81(a) should be modified to read "the total transportation credits disbursed during the prior June–January period." However, in the event that the funds disbursed are prorated based on the available funds, the assessment should be based upon the total amount of credits that would have been disbursed as determined by the market administrator. Although the yardstick for the balance in the fund can now be raised to 8 months instead of 6, this change is necessary to maintain a balance in the transportation credit balancing fund that is sufficient to cover the transportation credits to be disbursed in the following short production period. In other words, if the months of January and/or June were included in the prior transportation credit period, the amount of credits given during these months should also be included in the calculation of the assessment rates for the 4 orders.

Section 100X.77, adjustment of accounts, of the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville orders should also be amended to conform with the changes adopted above. Presently, the orders lack any instruction pertaining to the adjustment of accounts in the event that an error has been made either involving payments into the transportation credit balancing fund by handlers or payments to handlers by the market administrator from such fund. Therefore, it is necessary to include such language in section 100X.77 of these 3 orders to avoid any ambiguity concerning these matters. In particular, transportation credit balancing fund adjustments should be handled in the same manner as adjustments to the producer-settlement fund, except that additional transportation credits due handlers should be made as soon as transportation credit funds become available and not necessarily within 15 days of the time that this adjustment is discovered. A similar conforming change is not necessary for the Southeast order because the language contained in § 1007.77 of that order is general enough to accommodate adjustments related to the transportation credit balancing fund.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first 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) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) 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, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements and the orders, as hereby

proposed to be 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; and

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Marketing Agreement and Order

Annexed hereto and made a part hereof is an Order amending the orders regulating the handling of milk in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. A marketing agreement that reflects the attached order verbatim is available upon request from the market administrator.

It is hereby ordered that this entire decision and the order amending the orders be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

February 1997 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas is approved or favored by producers, as defined under the terms of the individual orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

It is hereby directed that a referendum be conducted to ascertain producer approval in the Louisville-Lexington-Evansville marketing area. The referendum must be conducted and completed on or before the 30th day from the date that this decision is issued in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended, and as hereby proposed to be amended, regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the marketing area.

The agent of the Secretary to conduct such referendum is hereby designated to be Arnold M. Stallings.

List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046

Milk marketing orders.

Dated: May 12, 1997.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Orders Regulating the Handling of Milk in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first 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 of 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 aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest;

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

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

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 orders' marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended.

Accordingly, the interim rule amending 7 CFR Parts 1005, 1007, 1011, and 1046, which was published at 61 FR 41488 on August 9, 1996, is adopted as a proposed rule with the following changes:

1. The authority citation for 7 CFR parts 1005, 1007, 1011, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

§ 1005.30 [Amended]

2. In § 1005.30, paragraphs (a)(7) and (a)(8) are redesignated, respectively, as paragraphs (a)(8) and (a)(9), new paragraph (a)(7) is added, and paragraphs (a)(5), (a)(6), and (c)(3) are revised to read as follows:

§ 1005.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, for which a transportation credit is requested pursuant to § 1005.82, including the date that such milk was received;

(6) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

EXHIBIT D

2005 Milk Production and Population in 12 Southeastern States: Projected 1996 and Actual

Source:
As published
61 Fed. Reg. 37632
(July 18, 1996)
(Tentative Partial Decision, Emergency Basis)

TABLE 1.—MILK PRODUCTION AND POPULATION IN 12 SOUTHEASTERN STATES 1988–2010

Year	Population	Production (lbs.)
1988	57,961,000	15,432,000,000
1989	58,732,000	15,356,000,000
1990	59,266,000	15,505,000,000
1991	60,265,000	15,362,000,000
1992	61,090,000	15,499,000,000
1993	61,926,000	15,310,000,000
1994	62,767,000	14,994,000,000
1995	63,573,000	14,554,000,000
2000	66,876,000	13,114,000,000
2005	70,471,000	11,603,000,000
2010	74,066,000	10,092,000,000

Source: Population—U.S. Bureau of the Census.
Milk Production—*Milk Production*, NASS, USDA, Washington, DC.

	2005 Actual	
	Milk Prod (million lbs)	Population
Alabama	224	4,557,808
Arkansas	297	2,779,154
Florida	2,271	17,789,864
Georgia	1,398	9,072,576
Kentucky	1,371	4,173,405
Louisiana	433	4,523,628
Mississippi	381	2,921,088
North Carolina	1,005	8,683,242
South Carolina	290	4,255,083
Tennessee	1,102	5,962,959
Virginia	1,784	7,567,465
West Virginia	194	1,816,856
12 State Total	10,750	74,103,128
1996 Projection	11,603	70,471,000
Difference	-7.35%	5.15%

Sources: (Official Notice requested)
Population: U.S. Bureau of Census, web site.
Milk Production: USDA, NASS, Milk Production (2/17/06)(2005 Annual data).