

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

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In the Matter of:

**MILK IN THE APPALACHIAN AND) DOCKET NOS. AO-388-A17 and
SOUTHEAST MARKETING AREAS) AO-366-A46; DA-05-06**

**BRIEF AND PROPOSED FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

SUBMITTED BY

DEAN FOODS COMPANY

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March 21, 2006

I. INTRODUCTION

This Brief is filed on behalf of Dean Foods Company regarding proposed amendments to the Tentative Marketing Orders for milk marketed in the Southeast and Appalachian marketing areas. The underlying proceeding is yet another on-the-record United States Department of Agriculture, Agricultural Marketing Service rule-making proceeding in a long series of hearings or rule-makings dealing with the chronically milk deficit markets in the southeastern United States. In this instance, proponent cooperatives once again seek an increase from the Secretary of Agriculture of the amount paid into and out of a transportation fund for supplemental milk and establishment of a long sought intra-market transportation credit account, also mostly funded by fluid milk handlers. As on prior occasions, the cooperatives correctly point out the obvious – that there is a growing deficit of milk for fluid use in the Southeast and that there is an unequal sharing of the costs and burdens associated with paying for services rendered in securing the needed fluid milk supply. Indeed no one (and certainly no witness) disagrees that the patient (southeastern dairy industry) is sick, if not deathly ill. Like the 19th century's "Sick Man of Europe"¹, the dairy industry in the southeastern United States is perennially in decline and in dire need of significant medicine to "bring forth an adequate supply of milk for fluid needs." However, the medicine prescribed over the past 10+ years has not worked and has perhaps made the situation worse. It is time to examine seriously alternatives, especially those that have worked in the past.

In the late 18th and early 19th centuries, sick patients were often bled as a source of "cleansing" the body. Sometimes this bleeding helped the patient, sometimes the patient

¹ Coincidentally the term applied then to the Ottoman Empire in southeastern Europe.

became sicker. It is past time we stopped simply bleeding the patient here. Dean Foods has suggested in the course of this proceeding, that the same old formulas (in the form of medicines that have largely resulted in depleted Class I utilizations and thus depleted blend prices paid to local dairy farmers) ought to be modified or limited in order to restore a balance between the constant need to bring in additional supplies of milk from outside the region and the negative impacts such activities have had on the local blend price paid to dairy farmers in the region who deliver milk every day. This situation results from handlers using various forms of subsidy (in the forms of transportation credits) to pool significant quantities of milk typically delivered to distant manufacturing facilities, thus depressing the blend price paid on milk that regularly serves the market.

The solutions proposed by Dean are hardly exploratory surgery. Instead Dean proposes a mix of rules once in use by the Secretary and industry (zoned out pricing for milk diverted outside the marketing area) and a limitation on the payments of credits when there are market excess diversions. We urge the Secretary to review both the long history of these marketing orders and the results obtained from the attempts to fix the problems over at least the past 11 years. In doing so, Dean is confident that the Secretary will conclude as we do, that "more of the same" is not in order, rather a modest change of course and return to past fundamentals could well stem the tide and prevent the Sick Man of the Dairy Industry from further decline.

II. HISTORICAL PERSPECTIVE

While no one is going to say that the situation pre-1995 was perfect, an examination of federal milk orders in the Southeast, the order provisions, and the

functions and effects compared to today is instructive. The changes that have been made should be examined for effectiveness before we simply follow the same-old medicine careening down a path that is in reality a cliff for the southeastern dairy industry. By late 1990, there were 11 federal milk marketing orders covering virtually the same territory now covered by the two federal milk marketing orders at issue today (Orders 5 and 7). The 11 orders were: Carolina (new in September 1990); Louisville-Lexington-Evansville; Paducah; Tennessee Valley; Memphis; Nashville; Georgia; Alabama-West Florida; Central Arkansas; Greater Louisiana; and New Orleans-Mississippi. Federal Milk Marketing Order Statistics ("FMMOS") 1990, Table 18.

There were two critical features of these smaller orders that need to be examined in light of later events. First, the Class I utilizations of these markets were relatively high ranging from a low in 1991 of 68% for New Orleans-Mississippi to 80.3% and 80.4% for Greater Louisiana and Alabama-West Florida respectively. FMMOS 1991, Table 18. In 1994, the year before critical changes first occurred in these orders, these Class I utilization percentages ranged from a low of 62.5% for New Orleans-Mississippi to 87.9% for Paducah. FMMOS 1994, Table 18. These Class I utilization percentages are significant for two reasons: (1) the differences in blend prices that existed between and among these 11 orders (and also the three Florida orders to the south) created real economic incentives to move milk to where it was needed; and, all other things being equal (Sims, Tr. 1/11/2006, p. 92), a lower Class I utilization yields a lower blend price payable to the producers pooled on the marketing order. Since the principal problem in the Southeast is thought to be that blend prices are not yielding enough money to pay

dairy farmers in the Southeast to remain or grow in the dairy industry, any solution that further lowers blend prices in order to save the patient is suspect.

The second significant factor pre-1995, was that milk pooled on the order but diverted to plants outside the marketing area was priced differently than from today. Such diverted milk was “zoned out” based upon a mileage factor (usually 2.2 to 2.5 center per cwt per ten miles) and a distance from the county seat that was the principal pricing location for an order. Thus, milk received, for example, at a plant 300 miles from New Orleans and pooled on the New Orleans-Mississippi order would be priced at the New Orleans price less 66 to 75 cents per cwt ($300/10 * 2.2$ or 2.5 cents). Milk pooled and delivered (the idea behind federal orders after all) had a greater value (and cost associated with that value) than milk pooled that stayed home.

All this changed in mid-1995 with adoption of the merged Southeastern Order, early 1996 amendments to the Carolina Order², the adoption of transportation credits to bring in supplemental milk during the short months, and the eventual adoption of further order consolidation as a result of the 1996 Farm Bill’s mandated “Federal Order Reform.” The results of these reforms has been lower Class I utilizations as more milk has been pooled on these orders without actually serving the markets, fewer and larger

² At the January 2006 hearing, it was unclear when a provision was adopted regarding the location adjustment for a plant located in old federal order 4 relative to milk pooled on old Order 5. Further research after the hearing reveals that the provision in question was adopted January 17, 1996 (61 Fed. Reg. 1148) as discussed in a Final Decision published December 18, 1995 (60 Fed. Reg. 65023) (official notice requested at January 12 hearing although citation was unavailable at that time). The fact that this change to location pricing was adopted after the change in the Southeast had been adopted is more than simply interesting. The policy development in the Southeast hearing is thus the first time this procedure was adopted. While there is discussion in the underlying decisions, there appears to be little or no recognition of the implications (discussed in this brief) of that policy change.

orders negating difference in blend prices that could and did create economic incentives to move milk, and changes in location pricing for milk that stays home outside the marketing area, further destabilizing the blend price payable to producers actually serving the fluid milk market.³ The patient may not be dead yet, but she certainly is on life support and continuing to bleed.

By creating (admittedly partly at the behest of Congress, but also partly on the dairy industry's independent initiative as in the Southeast) fewer and larger orders, the Secretary (with assistance from industry) removed many incentives to move milk between and among orders based upon different blend prices developed through different pricing and different Class I utilizations. One response by industry in the Southeast was to request transportation credits for moving supplemental milk into the Southeast precisely because the blend price incentive had been removed. See e.g. Southeast and other related Federal Order decisions and discussion of what industry asserted: 61 Fed. Reg. 37628 (July 18, 1996); and 62 Fed. Reg. 27525 (May 20, 1997).

However, another change (largely overlooked by some in the industry for its impacts) exacerbated the problem. Where in the past, milk diverted to plants outside the marketing area had a location price zoned out from the central pricing zone of the order, the 1995 Southeast merger and later Federal Order Reform adopted a new and radical approach to pricing that altered pooling economics considerably. The price is no longer zoned out, but is instead set based upon the Class I differential for the local market from which the milk comes. This change means that whereas before milk pooled on Southeast

³ The role of premiums both in increasing payments to producers regularly supplying the market and in order to purchase supplemental supplies may also have decreased over time.

but diverted to a New Mexico location would have had a substantially lower price (using the old 2.2 or 2.5 cents per cwt), it now has a price (never higher nor lower) based upon a \$2.10 Class I differential. So for instance, milk from New Mexico that is pooled on a plant in New Orleans but diverted to a plant near Roswell, will now draw \$1.50 less than the blend price at New Orleans out of the pool (\$3.60 location adjustment for New Orleans less \$2.10 location adjustment for Roswell). Under the old rule (without adjusting as the Proponents would in their own calculations to 4.0 cents per cwt per ten miles), the 1012 miles from New Orleans to Roswell would have resulted in a price \$2.22 (2.2 cents per cwt per ten miles times 101 ten mile segments) under blend versus today receiving \$1.50 lower (3.60 less \$2.10).

All of these changes have created new economic opportunities to pool additional supplies of milk that then draw money out of the pool when the milk is used in manufacturing at vast distances from the marketplace. First, the supplemental milk that is pooled and delivered draws a transportation credit that pays part of the cost (and if proponents' proposal is adopted an even greater share of that cost) of transporting the milk. Second, having increased the ability to bring the milk in order to achieve touchbase requirements, this increases handlers' ability to pool additional milk without delivering all of the milk to pool distributing plants every day. Finally, we have simultaneously increased the value of the milk that stays home. What a deal! What a deal for everyone other than the local dairy farmers who are struggling to stay in business. What a deal, except for the regulated Class I handler is always asked to pony up more money for transportation credits so that milk can move farther distances which can pool more milk that moves no distance at all, but draws money out of the pool.

So Dean suggested a couple of proposals to deal with this problem, except the opponents of dealing with this festering problem first say, “what problem – show us the evidence that what you say is happening.” Beyond the economic logic, here it is.

After years of stable Class I utilization, what happened after adoption of these changes is instructive. Fortunately, the Secretary published combined Southeast order data for 1995 so that we can examine the changes over time more clearly as to that order. We also have percentages for the orders now making up the Appalachian order, but it is not weighted and thus is less perfect. Nonetheless, the results are clear. In January 1995 before adoption of the merged Southeast Order with the change in location pricing for diverted milk, the combined Order Class I utilization was 73.8%. FMMOS 1995, Table 18. By January 2000 the Class I utilization percentage had dropped to 62.24% (<http://www.ams.usda.gov/dyfmoms/mib/fmoms.htm>). For December 1995 (shortly after adoption of the merger and related amendments), the Class I utilization was 73.2%. FMMOS 1995, Table 18. The Class I utilization of 73.2% for December dropped to 65.47% in December, 2000 and further to 57.25% in December, 2001. (Class I utilization percent AMS website— (www.ams.usda.gov_usdamib/PreparedReports/SelectPreparedReports.as.px). While the Class I utilization erosion has stabilized (January 2005 was 61.83% compared to 62.24% in January 2000 – Exhibit 12, p. 2 and December 2005 was 62% compared to 65.47 and 57.25 for December 2000 and 2001 – AMS website, *supra*).

While we have less fulsome data for Order 5 (Appalachian) because in the mid-1990's we have no combined market data, we know that in January 1994 the Class I utilizations were: Carolina - 77.8%, Louisville-Lexington-Evansville - 74.3%, and

Tennessee Valley 85.1%. FMMOS 1994, Table 18. Given the relative sizes of these markets, it is reasonable to conclude that the overall Class I utilization was in the range of 77-78%. In January 2000 the first month of application of federal order reform, the merged market and general application of the changed diversion pricing rule, the Class I utilization for the market was 76.26%. For January 2005, it was down to 66.06%. (AMS website, *supra*).

So all other things being equal, these lower Class I utilizations mean that blend prices have been lower than they would otherwise have been. Sims, Tr. 1/11/2006, p. 92.⁴ Lower Class I utilization percentages must mean that more manufacturing milk is being associated with this market. The problem that is thus identified above is magnified by the fact that the manufacturing milk is staying home at long distances, but as a result of the change in the zone out for diversions that stay-at-home milk is now drawing a larger share of the pool from local dairy farmers.

We also know that producer milk from a number of very distant states is being pooled on these Orders. Some of the Market Administrator data corroborates the issues raised by Dean. First, Exhibit 16A establishes that the most distant (restricted) states actual deliveries to the market are often less than half of deliveries from other

⁴ The discussion above actually understates the scope of the problem as it relates to payments to dairy farmers regularly supplying the market. During this same time period we also know from the market administrator data (both historical and that admitted as exhibits) that local milk production is down. With lower local milk production and a lower Class I utilization, the only conclusion must be that ever greater supplies of milk that are being used in manufacturing are being processed at ever greater distances from these markets. With the present system of location pricing, this increased out-of-area manufacturing milk (both in absolute and relative terms) simply depletes payments to dairy farmers regularly supplying the market.

jurisdictions. Second, the list includes milk from California⁵, New Mexico, Nebraska and Kansas. The extent of the problem becomes clear when one reviews Exhibit 13J, the list of plants to which milk has been diverted. These plants include plants in Arizona (location adjustment of \$2.35 compared to closest plant's adjustment of \$2.80 even though distance is 1,143 miles), California (location adjustment of \$1.60 compared to closest plant's adjustment of \$2.80 even though distance is 1,589 miles), Las Vegas, NV (location adjustment of \$2.00 compared to closest plant's adjustment of \$2.80 even though distance is 1,294 miles), New Mexico (a location adjustment of \$2.10 compared to closest plant's location adjustment of \$2.80 even though distance is 541 miles), and Utah (location adjustment of \$1.90 compared to closest plant's location adjustment of \$2.20 even though the closest plant distance is 1,265).

The proponents correctly point out that the cost of fuel and transportation has risen. They ask for transportation credit payment increases in order to cover a significant portion of that increased cost. What they never say or acknowledge is that if you can pool milk from New Mexico or Nebraska but ship it to Utah where the price difference is only 30 cents less per cwt than if one ships it 1,000 miles, why bother shipping it 1,000 miles even with the credit? The proof is in the numbers and the history. By adopting a combination of larger and fewer orders, adopting transportation credits and changing the principle of zoning out, the Secretary inadvertently (and the industry with or without

⁵ In a number of other orders industry and USDA have dealt with an issue known as "double dipping". To the extent relevant here, Dean asks for official notice of the Secretary's decisions regarding "double dipping" – the ability of handlers of milk to pool milk simultaneously on a state and federal milk marketing order. To the extent such ability remains and the diverted milk price is also higher, the economics of such a transaction are beneficial only to the handler engaged in it and there is likely a cost to the pool.

knowledge) has created a vicious cycle that has lowered blend prices in the Southeast, causing more local dairy farmers to go out of business, further increasing the need to rely on outside milk supplies, thus increasing the need for more transportation credits, thus increasing reliance on outside milk but giving that outside milk undue price incentives to stay home, collect the blend price and thus reduce the blend price further to local dairy farmers. We respectfully suggest that further bleeding the patient cannot help.

III. WHAT'S PAST IS PROLOGUE⁶

It should come as no surprise to anyone involved with the regulation of the U.S. dairy industry that we have been here before. Over 35 years ago, as a result of regulatory policy requested by the industry, there were significant volumes of milk pooled on southern and western milk orders, when much of that milk was not serving the fluid market. A number of federal milk orders prior to 1970 contained terms that priced diverted milk based upon the location of the plant “from which diverted” rather than at the plant location “to which diverted.” This inflated the value of manufacturing milk that was received at locations distant from the marketing area, but close to the dairy farm. Some predecessors of proponents of Proposals 1, 2 and 3 and opponents of Proposals 4 and 5 sought at that time to expand the “from which diverted” pricing rule to (at least) the Georgia federal order. Their effort was rejected. This history must be read in the context of the then existing “zone out” rules which would significantly discount the value of that milk if it pooled in the south, but stayed home in the north.

⁶ William Shakespeare, *The Tempest* [1611-1612], Act II, sc. i, l. 261.

Over a period of at least a year, the Secretary formally amended at least one Order (North Texas), suspended the “from which diverted” rule in another four federal Orders (Nashville, Mississippi, Red River Valley, and Oklahoma Metropolitan), and refused to implement the rule elsewhere. As quoted from the Secretary’s decisions at the time, below, that form of diverted pricing contributed to the pooling of distant milk with little service to the fluid market. USDA policy changed (eventually universally) because the “plant from which diverted” pricing rule failed to protect the uniform price for regular producer suppliers.

In the 1970 North Texas proceeding the Secretary’s entire discussion of this issue follows:

16. Pricing of diverted milk (North Texas order). Milk diverted from a pool plant to a nonpool plant should be priced at the location of the plant to which diverted rather than the plant from which diverted.

The order now specifies that milk diverted from a pool plant to a nonpool plant shall be priced at the location of the plant from which diverted. Under such provision, however, milk of a producer distant from the market can be briefly associated with a pool plant in the marketing area and then be diverted to a nonpool manufacturing plant relatively near to the producer’s farm. This milk obviously does not incur the transportation cost it would if moved to the marketing area at all times, but the producer nevertheless receives the marketing area uniform price designed to compensate for the delivery of milk to the marketing area.

This reduces the money to be paid to other producers whose milk is delivered to the marketing area as compared to the situation where the producer is paid on the basis of his actual point of delivery. The present arrangement encourages distant producers to have their milk delivered to a manufacturing plant near their farms rather than to the marketing area, since they nevertheless do receive the marketing area uniform price. The change as herein adopted will prevent the dissipation of pool

35 Fed. Reg. 18287-18292 (Dec. 1, 1970) (official notice requested).⁷

⁷ For the convenience of the Secretary and the Parties, this 35 year-old Partial Decision is attached as Appendix II.

The Secretary also rejected efforts by cooperatives to expand the “plant from which diverted rule” in a 1971 Georgia order rule-making:

2. Pricing point on diverted milk. No change should be made in the current Georgia order with respect to the pricing point on diverted milk. Milk diverted from a pool plant to a nonpool plant should continue to be priced at the location of the plant to which diverted rather than the pool plant from which diverted, as proposed.

The purpose of the location adjustment is to reflect the value of the milk at the point of receipt. The uniform price for base milk paid to producers for diverted milk in this market should be the price applicable at the plant of physical receipt, not the price applicable at the plant where the milk was received prior to diversion. When producer milk is moved from the farm to a nonpool plant at which no location adjustment applies, the producer pays the cost of moving his milk to such plant. When milk is diverted to a nonpool manufacturing at which a location adjustment is applicable, it is appropriate that the difference in the price at such location be reflected in the uniform price received by the producer.

Proponents of the change in the pricing point on diverted milk contended that in the Georgia market, most manufacturing plants are located a considerable distance from the market and that the cost of moving milk from the producers’ farms to such plants sometimes exceeds the cost of moving milk to the pool distributing plants. However, when milk is priced at the plant from which diverted, this cost is borne instead by all producers on the market since the amount of the location adjustment applicable at the point of receipt otherwise would enhance the uniform price for base milk.

Pricing the milk at the point of receipt will insure that milk will not be moved uneconomically or undue distances at other producers’ expense. It will further protect the uniform price for regular producer suppliers by eliminating the incentive to associate with a plant in the central market dairy farmers whose milk usually is received at a distant point, and then to divert such milk to the plant of usual receipt while drawing from the Georgia pool the applicable uniform price f.o.b. central market.

36 Fed. Reg. 18413-18425 (at 18414-18415) (September 14, 1971).⁸

Dean Foods submits that the industry has forgotten the past, and is thus doomed to repeat its past failures. The logic that led the Secretary to move away from pricing based upon the plant from which diverted is identical to the logic and policy arguments

⁸ Also attached for the convenience of the Secretary and the parties as Appendix III. The suspension of order provisions for the four orders mentioned can be found at 36 Fed. Reg. 10775-10777 (June 3, 1971), attached as Appendix IV.

that Dean makes here for returning to orderly marketing conditions by returning to zoned out pricing for out-of-area diverted milk and limiting transportation credits when excess milk is associated with these markets.

IV. DISORDERLY MARKETING CONDITIONS

Dean Foods agrees with proponents that there is a problem in these orders. Dean Foods agrees that the current situation falls under the term “disorderly marketing conditions” – that is the Secretary is to maintain orderly marketing conditions. 7 U.S.C. 602. Dean Foods agrees that these markets are chronically deficit in nature and that the costs of supplying these markets are not equally borne by market participants.⁹ But the disorderly marketing conditions that are identified also include incentives to pool milk that is not delivered when that pooling is occurring for the benefit of the party pooling the milk and not the benefit of the market.

The disorderly marketing conditions include pricing milk diverted from this order to plants located over 1,200 miles from the closest distributing plant, but “giving up” only 30 cents on the price of that milk. The disorderly marketing conditions include pooling milk not delivered on this order on a state order (or getting whatever regulatory treatment may be available even if that milk is not pooled on that state order but the milk is delivered to plants on that order), getting a great diverted price and some form of state pool or blend price on the same milk. The reality is that if a pooling game exists,

⁹ Nothing in the testimony or this Brief may be taken as indicating that Dean believes that merging these two orders is in any way a solution (rather than yet another move in the wrong direction) to the disorderly marketing conditions identified or the solutions proposed.

someone will play it. And pooling games are not played to the advantage of the southeastern dairy farmer struggling to provide milk to its local market.

V. THE PROPOSED SOLUTION – BACK TO THE FUTURE

A. Purpose of Dean Proposals

Dean seeks to restore some order to the functions of the Southeast and Appalachian milk marketing orders through two different proposals. Proposal 4 would simply cap the use of the transportation credit funds if an entity requesting such funds delivers an insufficient percentage of the milk under its control that it chooses to pool on the orders to distributing plants operating on either order.¹⁰ Proposal 5 would reverse the industry suggested ill-conceived notion that first eliminated division zone out pricing in the mid-1990's. As to this proposal 5, Dean believes that proponents' evidence of costs for transportation and their proposal for cost recovery ought to be used as a basis for setting the zone-out rate (e.g. if the transportation credit payment is to be based on 3.6 cents per cwt per ten miles then the zone out should be also 3.6 cents per cwt per ten miles). Dean also endorses the use of the proposed fuel adjuster both for the calculation in the transportation credit fund calculation, but also for the zoning out provision.

Dean does not mean to say that all the changes in federal milk order regulation in these markets have been "bad" since the mid-1990's. However, it is important that both the industry and the Secretary from time to time reexamine what has been done through regulation and perform some form of reality check to see whether the goals of an

¹⁰ Dean at the hearing expressly requested that application of Proposal 4 apply to both forms of transportation credits including the newly proposed intra-market transportation proposal in Proposal 2 if it is also adopted.

amendment to the regulation have actually been met. The goals of merging these orders from 11 down to two, establishing transportation credits and changing the zone out have been to achieve orderly marketing. But orderly marketing conditions have not been achieved.

A number of witnesses (other than Dean) recognized the need to consider alternatives to the present order provisions. These ranged from support from another dairy farmer cooperative (Pittman, Tr. 1/11/2006, p. 281) to individual dairy farmers who recognize that some controls are needed on the transportation credit funds and the outside milk that is pooled as a result of the existing program. Summers, Tr. 1/12/2006, pp. 174-175. These proposals should be given serious consideration and weight.

B. Mechanics of Dean Proposals

1. Proposal 4

This proposal seeks to reduce a handler's ability to utilize transportation credits to help broaden the number of producers that touch base. The discussion above shows that a combination of changes in these markets, including the provision of transportation credits has made it more economically feasible to pool additional milk even though much of that milk (and an increasing percentage) does not regularly serve the market.

If adopted, Proposal 4 simply acts as a potential cap on receipts of transportation credits by a given handler. The point is that transportation credits are necessary because otherwise not enough milk is available through the federal order for fluid use without subjecting individual parties to costs associated with serving the market that are not borne by all. But the flip side of that is that individual dairy farmers are asked to pay for these credits in two ways. First, when and if under the new proposals the handler funded

portion of the account is insufficient to pay the requested credits, the blend price can be reduced in order to make up some or all of the deficit. This effectively means that dairy farmers regularly serving the market will be asked to share the burden of these credits through a reduction in their blend price. Second, if excess milk is associated with these orders because the use of transportation credits makes it ever more economically feasible to associate additional supplies of milk regardless of whether it regularly serves the market, the blend price is reduced and local dairy farmers regularly serving the market pay again. Proposal 4 then is a modest counterweight designed to insure that those receiving the credits exercise some control (and this is fully within their control) over how much milk they associate with the market relative to how much they actually deliver – but only if they want to receive the maximum available transportation credits. This proposal ties payment of transportation credits more directly to service to the market. This is not the same thing as a diversion limitation, but rather is a percentage cap on how much an individual handler may be eligible for from a special fund to pay for transportation.

The proposal is actually quite simple. Any handler delivering on a monthly (not individual day's) basis at least 70% of the producer milk¹¹ it pools on one order to either Order 5 or 7 pool distributing plants would receive 100% of its otherwise eligible credits. The ability to deliver to plants on either order gives a handler much more leeway than simply delivering to plants on one of the two orders. This ability to deliver to either order alone should be sufficient to overcome the objections that the limitation is too low.

¹¹ As stated clearly at the hearing, Dean formally adopts the use of the 30% standard for Proposal 4 (as used here 70% is simply looking at the equation from the perspective of how much milk is actually delivered to pool distributing plants).

2. Proposal 5

This proposal seeks to reduce the amount paid to a producer for milk diverted to an out-of-area plant. Proposal 5 is the “rollback” of the elimination of zone out for diverted milk provisions. The market administrator can publish based upon mileage data the diversion price (or if necessary for any new supply plant located outside the marketing and as discussed below the non-Class I price) for milk at any location for which there are or have been diversions. One objection can be dealt with here rather than in a separate section. Opponents raised a legitimate concern that the opening or closing of a distributing plant could alter the price surface for diverted milk. Dean believes that this can be addressed by using the county seat for the county closest to a plant outside the marketing area, rather than a pool distributing plant. This should result in some reductions in the zoning out that would otherwise result since every county along the borders of these orders will become eligible for the calculation. With such a modification, only an amendment (or perhaps a suspension with notice and opportunity to be heard by the industry) could result in a change to the diversion price structure.

Also to clarify yet again, the intention is that for the two orders there would be one diversion price per plant regardless of whether the milk was being diverted off of Order 5 or Order 7. By using the county seat of each county along the borders of the orders as the “basing point”, only one price per out of area marketing plant would exist.

C. The Remaining Objections to the Dean Proposals Have No Merit or Are Easily Addressed

Not surprisingly, the proponents of proposals 1 and 2 evinced no support for Proposals 4 and 5. In the face of some apparent recognition by a Secretary representative

that the Dean historical perspective may have merit (Tosi, Tr. 1/12/206, pp. 253-256), the opponents of Proposals 4 and 5 simply threw down the gauntlet and said “no” and “no compromise.” This surprises Dean because Dean is not openly disavowing what proponents seek, rather Dean is attempting to redress the most significant issue – every time industry asks the Secretary to take action in the Southeast in the past decade, we have succeeded all too well in depressing the local blend price. Why shouldn’t we consider options?

The objections of opponents of proposals 4 and 5 come in three guises: (1) the proposals are allegedly too difficult to administer; (2) the proposals will add costs to transactions; and (3) the proposals might if not enacted with care result in uneconomic movements of milk. The objections are without merit. While the proposals might not have been intuitively obvious to all, the market administrator offices both understood how the proposals worked and correctly applied the intent of the proposals in preparing informative data for the industry. Moreover, the testimony of the principal proponent witness, Evan Kinser, for Dean Foods, addressed each and every concern and question. There appeared to be a basic misunderstanding on the part of one questioner as to how Proposal 4 would work even though Mr. Kinser described it in detail. One objection here confused the issue of reporting handlers. The questions concerned how the market administrator would allocate a reduced credit if one handler reported the credit, but another handler was by private contract going to share in the credit. As there can only be one reporting handler for the milk the goal here is to address reporting handlers. And if handlers have engaged in contractual deals to share transportation credits, the Secretary should not and need not be looking behind those transactions. The parties involved can

and should deal with that issue through complete communication. The bottom line is that this red herring cannot provide a reason to deny the proposal.

In objecting to Proposal 4 (which would limit the transportation credits paid to a handler delivering less than 30% of milk under its control to pool distributing plants), opponents asserted that the Proposal established “a high standard to meet based on that kind of relationship between relative days. It would almost be important to note that the suppliers of the milk don’t know when the high day is coming; they have no advanced notice. They – the orders typically are put in the week ahead, so they’ve got to not only be prepared theoretically for the high day any time, they also need a reasonable reserve over and above that high day.” (Sims, Tr. January 12, 2006, p. 243)

But Proposal 4 has no impact on the “relationship between relative days.” Instead the proposal is intended to be read and applied on a full month’s basis for milk pooled, thus acknowledging these day-to-day problems. In Appendix I, pages 3 and 4, Dean has dealt with the data as presented in Exhibit 43. Exhibit 43 focused on the ratio between the high and low days, but the data in Appendix I focuses on the exact calculation performed by the market administrator in applying Proposal 4. Thus, Appendix I illustrates the effect Proposal 4 would have on different months with different reserve requirements. First, it assumes that the entire order is a single handler (so does Exhibit 43). “Milk supply” represents the volume of milk required to ensure that the required reserve is met for the highest distributing plant dairy requirement. The “Dist. Delivery” column is the daily pounds delivered to a distributing plant as provided in Exhibit 7 for Federal Order 5 and Exhibit 13 for Federal Order 7. “Non deliveries” represents the

pounds that would be considered in calculating the percent used in applying the transportation credit payment limitations of Proposal 4.

In the first box the required milk reserve is set at 10%; the result is that in none of the examples does Proposal 4 have any effect. The second box assumes the reserve milk supply is required to be at 20% over the highest day's requirements. Again, the Proposal 4 has no effect. The third box looks at requiring a 30% milk reserve over the highest milk requirement day. Assuming the order only has a single handler making all these deliveries that handler's transportation credit would be reduced very modestly; the handler's percentage transportation credits would range from 99.37% (100-0.63%) to 96.97 % (100-3.03%) of what would have been paid had Proposal 4 not been in place.

Given the history of many of many constituent portions of these Orders as ranging from above 70% to above 80% Class I utilizations, Proposal 4 does not impose an excessive burden as applied to handlers. It would reduce their transportation credit by 3.03% in the worst case (based on the examples provided). However, this scenario assumes that the market should carry a 30% reserve over the highest amount of milk needed in a single day in that month, as opposed to the average. Clearly the market needs a reserve, that is why Dean Foods offered 30 percent as opposed to just using the ratio of distributing plant deliverers and non-distributing plant deliverers. However to believe that the market needs 30% over the highest day is simply excessive. Proposal 4 allows for a reasonable reserve and is an attainable hurdle for those handlers working to serve the market. It should be adopted.

Another objection suggested that adoption of Proposal 5 would mean added costs to handlers procuring milk from outside the marketing order because the diverted value

of pooled milk would be less and touch-base requirements to return to the local market would be a burden. Dean notes (and the Secretary in 1970-1971 agreed) that it is more important to maintain the blend price for the dairy farmer shipping (see Exhibits 16, 17 and 18) every day or nearly every day to this market than creating economic value for milk to be pooled but left at home almost 70% of the time. Ex. 16, June, 2004 data. Why should that every day dairy farmer subsidize the pooling of milk that delivers only occasionally? If that assembly or other cost (note this is NOT a transportation cost) must be borne, why should it deplete the blend price in the form of milk pooled, but not delivered?

Finally, opponents suggested (after much checking they came up with one example for the record) that milk near Rennselear, Indiana could choose to move to a small non-pool plant in Litchfield, Kentucky rather than to one in Goshen, Indiana based upon zoned out pricing. There was also the suggestion that new plants might be built even though the situation described will only occur in times of surplus milk supply in markets with too much milk capacity already. Besides the question of whether the Litchfield plant is large enough to handle much milk or whether Goshen as a much more substantial facility (Sims, Tr. 1/12/2006, pp. 246-247) to which the milk would go to anyway, if the milk is closer to where it is needed then why shouldn't it be drawn to this market? If the milk were scheduled to be processed at Litchfield and the need arises for that milk in fluid use, it will be more available heading to Litchfield than if it is headed in the wrong direction to Goshen. Finally, this so-called uneconomic movement of milk will not really be costing the pool what opponents' claim it is costing. Without Proposal 5, the milk would be pooled. With Proposal 5, the milk may still be pooled at a hauling

cost savings, but only if the plant actually can handle the load and only if Goshen's needs don't outweigh the so-called hauling cost advantage. The point is that if this milk is going to ride the pool based upon a \$175 cost savings then it is going to ride the pool with or without Proposal 5. Proposal 5 does not cost anything.

As to the possibility that adoption of Proposal 5 would create incentives for non-existent supply plants outside the marketing order to become supply plants or to have new plants built, Dean believes the Secretary can and should adequately address that issue. There are no such plants today and have been none (to our knowledge) for many years. Dean proposes to eliminate this problem with a simple clause inserted into proposed revised §§ 1005.13(d)(6) and 1007.13(d)(6) between the words "the marketing area" and "described in either §§ 1005.2 or 1007.2": "or received and classified as other than Class I by supply plants (that qualify as supply plants on or after February 1, 2006) located outside the marketing area". This will prevent someone from creating such a supply plant expressly to abuse this provision.¹²

As further justification, we attach as Appendix VI, a reworking of Exhibit 33 prepared by the Market Administrator that shows the impact on the need for listed handler charges of adopting Dean's proposals. The result is a higher probability that the handler assessment can be somewhat lower, and there is a reduced risk of further depressing the blend price to regular market suppliers. Appendix VI was prepared by Dean Foods using the Market Administrator Data in Exhibit 33, adjusted precisely as discussed with the witness during the Hearing. Niesman, Tr. 1/11/2006, pp. 242-243.

D. The Secretary's Decision

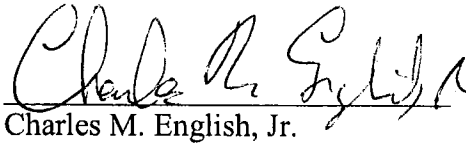
¹² Appendix V, for the convenience of the Secretary and the parties, contains the proposals as revised at the hearing.

We urge the Secretary to adopt the proposals as presented and modified at the hearing and upon brief. They are reasonable and provide limits that are based in history or cap a credit program that historically has had limits.

VI. CONCLUSION

Dean Foods Company does not oppose proponents' proposals as such, unless limits as suggested by Dean are not adopted.¹³ The history of the Sick Man of the Dairy Industry clearly indicates that the time has come to alter the form, kind and dose of medicine delivered by the Secretary in dealing with acknowledged disorderly marketing conditions in the southeastern United States by including modified Proposals 4 and 5 in any hearing decision.

Respectfully submitted,



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¹³ Dean reiterates its concern expressed during the Hearing that the intermarket credits as proposed would impose costs without providing any benefits to some handlers located along the borders of Orders 5 and 7 (e.g. Mt. Crawford).

APPENDIX I

Appendix 1

Daily impact of Proposal #4 with different Required Milk Reserves for Oct 04

Oct-04			
Required Milk Reserve	Milk supply	Dist Deliveries	non deliveries
1	17,440,155	15,239,593	2,200,562
2	17,440,155	12,852,371	4,587,784
3	17,440,155	11,642,459	5,797,696
4	17,440,155	15,184,439	2,255,716
5	17,440,155	14,780,650	2,659,505
6	17,440,155	15,281,611	2,158,544
7	17,440,155	14,957,892	2,482,263
8	17,440,155	13,734,381	3,705,774
9	17,440,155	12,966,985	4,473,170
10	17,440,155	12,587,386	4,852,769
11	17,440,155	13,906,149	3,534,006
12	17,440,155	14,530,055	2,910,100
13	17,440,155	15,053,825	2,386,330
14	17,440,155	15,371,398	2,068,757
15	17,440,155	15,511,068	1,929,087
16	17,440,155	12,725,761	4,714,394
17	17,440,155	13,372,520	4,067,635
18	17,440,155	15,029,093	2,411,062
19	17,440,155	14,444,701	2,995,454
20	17,440,155	15,359,810	2,080,345
21	17,440,155	15,269,188	2,170,967
22	17,440,155	15,420,468	2,019,687
23	17,440,155	12,974,507	4,465,648
24	17,440,155	12,291,842	5,148,313
25	17,440,155	15,801,241	1,638,914
26	17,440,155	15,067,949	2,372,206
27	17,440,155	14,923,782	2,516,373
28	17,440,155	15,854,686	1,585,469
29	17,440,155	15,417,658	2,022,497
30	17,440,155	12,748,874	4,691,281
31	17,440,155	12,920,990	4,519,165
TOTAL	540,644,793	443,223,332	97,421,461

Proposal #4 Ratio 18.02%
 Proposal Result None

Oct-04			
Required Milk Reserve	Milk supply	Dist Deliveries	non deliveries
1	19,025,623	15,239,593	3,786,030
2	19,025,623	12,852,371	6,173,252
3	19,025,623	11,642,459	7,383,164
4	19,025,623	15,184,439	3,841,184
5	19,025,623	14,780,650	4,244,973
6	19,025,623	15,281,611	3,744,012
7	19,025,623	14,957,892	4,067,731
8	19,025,623	13,734,381	5,291,242
9	19,025,623	12,966,985	6,058,638
10	19,025,623	12,587,386	6,438,237
11	19,025,623	13,906,149	5,119,474
12	19,025,623	14,530,055	4,495,568
13	19,025,623	15,053,825	3,971,798
14	19,025,623	15,371,398	3,654,225
15	19,025,623	15,511,068	3,514,555
16	19,025,623	12,725,761	6,299,862
17	19,025,623	13,372,520	5,653,103
18	19,025,623	15,029,093	3,996,530
19	19,025,623	14,444,701	4,580,922
20	19,025,623	15,359,810	3,665,813
21	19,025,623	15,269,188	3,756,435
22	19,025,623	15,420,468	3,605,155
23	19,025,623	12,974,507	6,051,116
24	19,025,623	12,291,842	6,733,781
25	19,025,623	15,801,241	3,224,382
26	19,025,623	15,067,949	3,957,674
27	19,025,623	14,923,782	4,101,841
28	19,025,623	15,854,686	3,170,937
29	19,025,623	15,417,658	3,607,965
30	19,025,623	12,748,874	6,276,749
31	19,025,623	12,920,990	6,104,633
TOTAL	589,794,319	443,223,332	146,570,987

Proposal #4 Ratio 24.85%
 Proposal Result None

Oct-04			
Required Milk Reserve	Milk supply	Dist Deliveries	non deliveries
1	20,611,092	15,239,593	5,371,499
2	20,611,092	12,852,371	7,758,721
3	20,611,092	11,642,459	8,968,633
4	20,611,092	15,184,439	5,426,653
5	20,611,092	14,780,650	5,830,442
6	20,611,092	15,281,611	5,329,481
7	20,611,092	14,957,892	5,653,200
8	20,611,092	13,734,381	6,876,711
9	20,611,092	12,966,985	7,644,107
10	20,611,092	12,587,386	8,023,706
11	20,611,092	13,906,149	6,704,943
12	20,611,092	14,530,055	6,081,037
13	20,611,092	15,053,825	5,557,267
14	20,611,092	15,371,398	5,239,694
15	20,611,092	15,511,068	5,100,024
16	20,611,092	12,725,761	7,885,331
17	20,611,092	13,372,520	7,238,572
18	20,611,092	15,029,093	5,581,999
19	20,611,092	14,444,701	6,166,391
20	20,611,092	15,359,810	5,251,282
21	20,611,092	15,269,188	5,341,904
22	20,611,092	15,420,468	5,190,624
23	20,611,092	12,974,507	7,636,585
24	20,611,092	12,291,842	8,319,250
25	20,611,092	15,801,241	4,809,851
26	20,611,092	15,067,949	5,543,143
27	20,611,092	14,923,782	5,687,310
28	20,611,092	15,854,686	4,756,406
29	20,611,092	15,417,658	5,193,434
30	20,611,092	12,748,874	7,862,218
31	20,611,092	12,920,990	7,690,102
TOTAL	638,943,846	443,223,332	195,720,514

Proposal #4 Ratio 30.63%
 Proposal Result -0.63%

Appendix 1

Daily impact of Proposal #4 with different Required Milk Reserves for Oct 05

Oct-05			
Required Milk Reserve	10%		non deliveries
	Milk supply	Dist/Deliveries	
1	17,666,740	13,756,980	3,909,760
2	17,666,740	12,222,463	5,444,277
3	17,666,740	14,927,789	2,738,951
4	17,666,740	15,374,138	2,292,602
5	17,666,740	15,102,683	2,564,057
6	17,666,740	14,829,944	2,836,796
7	17,666,740	16,060,673	1,606,067
8	17,666,740	11,712,031	5,954,709
9	17,666,740	12,488,609	5,178,131
10	17,666,740	15,023,437	2,643,303
11	17,666,740	14,844,180	2,822,560
12	17,666,740	15,268,437	2,398,303
13	17,666,740	15,100,130	2,566,610
14	17,666,740	14,604,280	3,062,460
15	17,666,740	11,529,867	6,136,873
16	17,666,740	12,464,061	5,202,679
17	17,666,740	14,952,226	2,714,514
18	17,666,740	14,923,078	2,743,662
19	17,666,740	14,686,726	2,980,014
20	17,666,740	14,772,487	2,894,253
21	17,666,740	14,067,138	3,599,602
22	17,666,740	11,479,966	6,186,774
23	17,666,740	11,353,893	6,312,847
24	17,666,740	13,952,701	3,714,039
25	17,666,740	15,272,527	2,394,213
26	17,666,740	15,021,950	2,644,790
27	17,666,740	15,232,494	2,434,246
28	17,666,740	15,325,563	2,341,177
29	17,666,740	11,779,956	5,886,784
30	17,666,740	12,165,858	5,500,882
31	17,666,740	14,305,440	3,361,300
TOTAL	547,668,949	434,601,705	113,067,244

Proposal #4 Ratio 20.65%
 Proposal Result None

Oct-05			
Required Milk Reserve	20%		non deliveries
	Milk supply	Dist/Deliveries	
1	19,272,808	13,756,980	5,515,828
2	19,272,808	12,222,463	7,050,345
3	19,272,808	14,927,789	4,345,019
4	19,272,808	15,374,138	3,898,670
5	19,272,808	15,102,683	4,170,125
6	19,272,808	14,829,944	4,442,864
7	19,272,808	16,060,673	3,212,135
8	19,272,808	11,712,031	7,560,777
9	19,272,808	12,488,609	6,784,199
10	19,272,808	15,023,437	4,249,371
11	19,272,808	14,844,180	4,428,628
12	19,272,808	15,268,437	4,004,371
13	19,272,808	15,100,130	4,172,678
14	19,272,808	14,604,280	4,668,528
15	19,272,808	11,529,867	7,742,941
16	19,272,808	12,464,061	6,808,747
17	19,272,808	14,952,226	4,320,562
18	19,272,808	14,923,078	4,349,730
19	19,272,808	14,686,726	4,586,082
20	19,272,808	14,772,487	4,500,321
21	19,272,808	14,067,138	5,205,670
22	19,272,808	11,479,966	7,792,842
23	19,272,808	11,353,893	7,918,915
24	19,272,808	13,952,701	5,320,107
25	19,272,808	15,272,527	4,000,281
26	19,272,808	15,021,950	4,250,858
27	19,272,808	15,232,494	4,040,314
28	19,272,808	15,325,563	3,947,245
29	19,272,808	11,779,956	7,492,852
30	19,272,808	12,165,858	7,106,950
31	19,272,808	14,305,440	4,967,368
TOTAL	597,457,036	434,601,705	162,855,331

Proposal #4 Ratio 27.26%
 Proposal Result None

Oct-05			
Required Milk Reserve	30%		non deliveries
	Milk supply	Dist/Deliveries	
1	20,878,875	13,756,980	7,121,895
2	20,611,092	12,222,463	8,388,629
3	20,611,092	14,927,789	5,683,303
4	20,611,092	15,374,138	5,236,954
5	20,611,092	15,102,683	5,508,409
6	20,611,092	14,829,944	5,781,148
7	20,611,092	16,060,673	4,550,419
8	20,611,092	11,712,031	8,899,061
9	20,611,092	12,488,609	8,122,483
10	20,611,092	15,023,437	5,587,655
11	20,611,092	14,844,180	5,766,912
12	20,611,092	15,268,437	5,342,655
13	20,611,092	15,100,130	5,510,962
14	20,611,092	14,604,280	6,006,812
15	20,611,092	11,529,867	9,081,225
16	20,611,092	12,464,061	8,147,031
17	20,611,092	14,952,226	5,658,866
18	20,611,092	14,923,078	5,688,014
19	20,611,092	14,686,726	5,924,366
20	20,611,092	14,772,487	5,838,605
21	20,611,092	14,067,138	6,543,954
22	20,611,092	11,479,966	9,131,126
23	20,611,092	11,353,893	9,257,199
24	20,611,092	13,952,701	6,658,391
25	20,611,092	15,272,527	5,338,565
26	20,611,092	15,021,950	5,589,142
27	20,611,092	15,232,494	5,378,598
28	20,611,092	15,325,563	5,285,529
29	20,611,092	11,779,956	8,831,136
30	20,611,092	12,165,858	8,445,234
31	20,611,092	14,305,440	6,305,652
TOTAL	639,211,629	434,601,705	204,609,924

Proposal #4 Ratio 32.01%
 Proposal Result -2.01%

Appendix 1

Daily impact of Proposal #4 with different Required Milk Reserves for Feb-05 FMMO #5 -- Compares to Exhibit #43 page 2

Feb-05						
Required Milk Reserve	10%		20%		30%	
	Milk supply	Dist Deliveries	non deliveries	Milk supply	Dist Deliveries	non deliveries
1	16,025,640	13,868,718	2,156,922	17,482,517	13,868,718	3,613,799
2	16,025,640	13,952,369	2,073,271	17,482,517	13,952,369	3,530,148
3	16,025,640	14,065,022	1,960,618	17,482,517	14,065,022	3,417,495
4	16,025,640	14,568,764	1,456,876	17,482,517	14,568,764	2,913,753
5	16,025,640	12,281,329	3,744,311	17,482,517	12,281,329	5,201,188
6	16,025,640	12,128,702	3,896,938	17,482,517	12,128,702	5,353,815
7	16,025,640	13,066,895	2,958,745	17,482,517	13,066,895	4,415,622
8	16,025,640	13,680,691	2,344,949	17,482,517	13,680,691	3,801,826
9	16,025,640	14,225,957	1,799,683	17,482,517	14,225,957	3,256,560
10	16,025,640	12,724,561	3,301,079	17,482,517	12,724,561	4,757,956
11	16,025,640	11,645,947	4,379,693	17,482,517	11,645,947	5,836,570
12	16,025,640	10,990,515	5,035,125	17,482,517	10,990,515	6,492,002
13	16,025,640	11,001,798	5,023,842	17,482,517	11,001,798	6,480,719
14	16,025,640	12,795,008	3,230,632	17,482,517	12,795,008	4,687,509
15	16,025,640	13,036,060	2,989,580	17,482,517	13,036,060	4,446,457
16	16,025,640	12,790,690	3,234,950	17,482,517	12,790,690	4,691,827
17	16,025,640	12,160,073	3,865,567	17,482,517	12,160,073	5,322,444
18	16,025,640	12,538,531	3,487,109	17,482,517	12,538,531	4,943,986
19	16,025,640	11,272,482	4,753,158	17,482,517	11,272,482	6,210,035
20	16,025,640	10,947,395	5,078,245	17,482,517	10,947,395	6,535,122
21	16,025,640	13,238,549	2,787,091	17,482,517	13,238,549	4,243,968
22	16,025,640	13,090,817	2,934,823	17,482,517	13,090,817	4,391,700
23	16,025,640	12,950,191	3,075,449	17,482,517	12,950,191	4,532,326
24	16,025,640	13,262,161	2,763,479	17,482,517	13,262,161	4,220,356
25	16,025,640	12,941,266	3,084,374	17,482,517	12,941,266	4,541,251
26	16,025,640	11,478,822	4,546,818	17,482,517	11,478,822	6,003,695
27	16,025,640	11,387,712	4,637,928	17,482,517	11,387,712	6,094,805
28	16,025,640	13,062,387	2,963,253	17,482,517	13,062,387	4,420,130
29						
30						
31						
TOTAL	448,717,931	355,153,412	93,564,519	489,510,470	355,153,412	134,357,058

Feb-05						
Required Milk Reserve	10%		20%		30%	
	Milk supply	Dist Deliveries	non deliveries	Milk supply	Dist Deliveries	non deliveries
1	18,939,393	13,868,718	5,070,675	18,939,393	13,868,718	5,070,675
2	18,939,393	13,952,369	4,987,024	18,939,393	13,952,369	4,987,024
3	18,939,393	14,065,022	4,874,371	18,939,393	14,065,022	4,874,371
4	18,939,393	14,568,764	4,370,629	18,939,393	14,568,764	4,370,629
5	18,939,393	12,281,329	6,658,064	18,939,393	12,281,329	6,658,064
6	18,939,393	12,128,702	6,810,691	18,939,393	12,128,702	6,810,691
7	18,939,393	13,066,895	5,872,498	18,939,393	13,066,895	5,872,498
8	18,939,393	13,680,691	5,258,702	18,939,393	13,680,691	5,258,702
9	18,939,393	14,225,957	4,713,436	18,939,393	14,225,957	4,713,436
10	18,939,393	12,724,561	6,214,832	18,939,393	12,724,561	6,214,832
11	18,939,393	11,645,947	7,293,446	18,939,393	11,645,947	7,293,446
12	18,939,393	10,990,515	7,948,878	18,939,393	10,990,515	7,948,878
13	18,939,393	11,001,798	7,937,595	18,939,393	11,001,798	7,937,595
14	18,939,393	12,795,008	6,144,385	18,939,393	12,795,008	6,144,385
15	18,939,393	13,036,060	5,903,333	18,939,393	13,036,060	5,903,333
16	18,939,393	12,790,690	6,148,703	18,939,393	12,790,690	6,148,703
17	18,939,393	12,160,073	6,779,320	18,939,393	12,160,073	6,779,320
18	18,939,393	12,538,531	6,400,862	18,939,393	12,538,531	6,400,862
19	18,939,393	11,272,482	7,666,911	18,939,393	11,272,482	7,666,911
20	18,939,393	10,947,395	7,991,998	18,939,393	10,947,395	7,991,998
21	18,939,393	13,238,549	5,700,844	18,939,393	13,238,549	5,700,844
22	18,939,393	13,090,817	5,848,576	18,939,393	13,090,817	5,848,576
23	18,939,393	12,950,191	5,989,202	18,939,393	12,950,191	5,989,202
24	18,939,393	13,262,161	5,677,232	18,939,393	13,262,161	5,677,232
25	18,939,393	12,941,266	5,998,127	18,939,393	12,941,266	5,998,127
26	18,939,393	11,478,822	7,460,571	18,939,393	11,478,822	7,460,571
27	18,939,393	11,387,712	7,551,681	18,939,393	11,387,712	7,551,681
28	18,939,393	13,062,387	5,877,006	18,939,393	13,062,387	5,877,006
29						
30						
31						
TOTAL	530,303,010	355,153,412	175,149,598	530,303,010	355,153,412	175,149,598

Proposal #4 Ratio 20.85%
 Proposal Result None

Proposal #4 Ratio 27.45%
 Proposal Result None

Proposal #4 Ratio 33.03%
 Proposal Result -3.03%

Appendix 1

Daily impact of Proposal #4 with different Required Milk Reserves for Feb-05 FMMO #7 -- Compares to Exhibit #43 page 3

Feb-05				
Required Milk Reserve	Milk supply	Dist Deliveries	non deliveries	
1	17,764,616	15,955,924	1,808,692	
2	17,764,616	15,541,706	2,222,910	
3	17,764,616	15,232,148	2,532,468	
4	17,764,616	14,997,809	2,766,807	
5	17,764,616	13,606,167	4,158,449	
6	17,764,616	12,647,206	5,117,410	
7	17,764,616	16,140,263	1,624,353	
8	17,764,616	14,042,890	3,721,726	
9	17,764,616	15,336,608	2,428,008	
10	17,764,616	15,818,712	1,945,904	
11	17,764,616	16,149,651	1,614,965	
12	17,764,616	13,473,451	4,291,165	
13	17,764,616	12,225,020	5,539,596	
14	17,764,616	15,754,499	2,010,117	
15	17,764,616	15,380,370	2,384,246	
16	17,764,616	15,692,733	2,071,883	
17	17,764,616	15,313,449	2,451,167	
18	17,764,616	14,327,692	3,436,924	
19	17,764,616	13,320,311	4,444,305	
20	17,764,616	15,143,487	2,621,129	
21	17,764,616	14,291,238	3,473,378	
22	17,764,616	14,945,577	2,819,039	
23	17,764,616	14,845,652	2,918,964	
24	17,764,616	14,020,811	3,743,805	
25	17,764,616	12,696,817	5,067,799	
26	17,764,616	12,694,316	5,070,300	
27	17,764,616	14,091,061	3,673,555	
28	17,764,616			
29				
30				
31				
TOTAL	497,409,251	406,338,454	91,070,797	

Proposal #4 Ratio 18.31%
 Proposal Result None

Feb-05				
Required Milk Reserve	Milk supply	Dist Deliveries	non deliveries	
1	19,379,581	15,955,924	3,423,657	
2	19,379,581	15,541,706	3,837,875	
3	19,379,581	15,232,148	4,147,433	
4	19,379,581	14,997,809	4,381,772	
5	19,379,581	13,606,167	5,773,414	
6	19,379,581	12,647,206	6,732,375	
7	19,379,581	16,140,263	3,239,318	
8	19,379,581	14,042,890	5,336,691	
9	19,379,581	15,336,608	4,042,973	
10	19,379,581	15,818,712	3,560,869	
11	19,379,581	16,149,651	3,229,930	
12	19,379,581	13,473,451	5,906,130	
13	19,379,581	12,225,020	7,154,561	
14	19,379,581	15,754,499	3,625,082	
15	19,379,581	15,380,370	3,999,211	
16	19,379,581	15,692,733	3,686,848	
17	19,379,581	15,313,449	4,066,132	
18	19,379,581	14,327,692	5,051,889	
19	19,379,581	12,652,886	6,726,695	
20	19,379,581	13,320,311	6,059,270	
21	19,379,581	15,143,487	4,236,094	
22	19,379,581	14,291,238	5,088,343	
23	19,379,581	14,945,577	4,434,004	
24	19,379,581	14,845,652	4,533,929	
25	19,379,581	14,020,811	5,358,770	
26	19,379,581	12,696,817	6,682,764	
27	19,379,581	12,694,316	6,685,265	
28	19,379,581	14,091,061	5,288,520	
29				
30				
31				
TOTAL	542,628,274	406,338,454	136,289,820	

Proposal #4 Ratio 25.12%
 Proposal Result None

Feb-05				
Required Milk Reserve	Milk supply	Dist Deliveries	non deliveries	
1	20,994,546	15,955,924	5,038,622	
2	20,994,546	15,541,706	5,452,840	
3	20,994,546	15,232,148	5,762,398	
4	20,994,546	14,997,809	5,996,737	
5	20,994,546	13,606,167	7,388,379	
6	20,994,546	12,647,206	8,347,340	
7	20,994,546	16,140,263	4,854,283	
8	20,994,546	14,042,890	6,951,656	
9	20,994,546	15,336,608	5,657,938	
10	20,994,546	15,818,712	5,175,834	
11	20,994,546	16,149,651	4,844,895	
12	20,994,546	13,473,451	7,521,095	
13	20,994,546	12,225,020	8,769,526	
14	20,994,546	15,754,499	5,240,047	
15	20,994,546	15,380,370	5,614,176	
16	20,994,546	15,692,733	5,301,813	
17	20,994,546	15,313,449	5,681,097	
18	20,994,546	14,327,692	6,666,854	
19	20,994,546	12,652,886	8,341,660	
20	20,994,546	13,320,311	7,674,235	
21	20,994,546	15,143,487	5,851,059	
22	20,994,546	14,291,238	6,703,308	
23	20,994,546	14,945,577	6,048,969	
24	20,994,546	14,845,652	6,148,894	
25	20,994,546	14,020,811	6,973,735	
26	20,994,546	12,696,817	8,297,729	
27	20,994,546	12,694,316	8,300,230	
28	20,994,546	14,091,061	6,903,485	
29				
30				
31				
TOTAL	587,847,296	406,338,454	181,508,842	

Proposal #4 Ratio 30.88%
 Proposal Result -0.88%

APPENDIX II

(4) Where the farm operator is a corporation, it shall have no major corporate purpose other than operation and ownership, where applicable, of the farm. The officers and general manager of the corporation shall expect to obtain more than 50 percent of their income, including dividends and salary, from farming.

(5) Where the farm operator is a trustee under a trust arrangement for a farm, the trustee and the beneficiary of the trust each shall expect to obtain during the current year more than 50 percent of his income from farming.

Signed at Washington, D.C., on November 24, 1970.

KENNETH E. FRICK,
Administrator, Agricultural Sta-
tization and Conservation
Service.

[F.R. Doc. 70-16048; Filed, Nov. 30, 1970;
8:46 a.m.]

Consumer and Marketing Service
17 CFR Parts 1120, 1121, 1126, 1127,
1128, 1129, 1130]

[Docket No. AO-364-A3, etc.]

MILK IN SOUTH TEXAS AND CERTAIN
OTHER MARKETING AREAS

Partial Decision on Proposed Amend-
ments to Marketing Agreements
and to Orders

7 CFR

Part	Market	Docket No.
1121	South Texas	AO-364-A3
1126	North Texas	AO-231-A35
1127	San Antonio	AO-232-A21
1128	Central West Texas	AO-238-A24
1129	Austin-Waco	AO-256-A17
1130	Corpus Christi	AO-259-A21
1120	Lubbock-Plainview	AO-328-A11

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in each of the marketing areas heretofore specified.

The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Dallas, Tex., June 23-25, 1970, pursuant to notice thereof issued on June 12, 1970 (35 F.R. 10022).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on October 7, 1970 (35 F.R. 16000), filed with the Hearing Clerk, U.S. Department of Agriculture, his partial recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. Under Issue No. 2 subheading (a) *Location adjustments—South Texas*, seven new paragraphs are inserted fol-

lowing the second paragraph after the table, the next four paragraphs are modified, the last paragraph is deleted and five new paragraphs added.

2. In Issue No. 2 subheading (b) *Zone II—North Texas*, a new paragraph is inserted after the fourth paragraph.

3. Under Issue No. 5 a new paragraph is added.

The material issues on the record relate to:

Issues affecting North Texas and South Texas orders:

1. Class I price levels.
2. Location adjustments.
3. Method of paying producers through the market administrator.
4. Interest on overdue obligations.
5. Request for emergency action with respect to Issue No. 2.
6. Applicable order to regulate a plant qualified as a fully regulated plant under more than one order.

Issues affecting several orders:

7. Class I prices and basic formula price (Lubbock-Plainview, Central West Texas, San Antonio, Austin-Waco, and Corpus Christi orders).

8. Cheese price to be used in establishing certain class prices (Central West Texas, North Texas, Austin-Waco, and San Antonio).

9. An appropriate limit on location adjustments applied to the Class I price in computing the obligation of a pool plant for receipts of unregulated milk, or in computing the obligation of a partially regulated plant (Lubbock-Plainview, Central West Texas, North Texas, San Antonio, South Texas, and Corpus Christi).

10. Appropriate application of the order to milk received at a pool plant from an unregulated supply plant which in turn receives milk from a fully regulated plant where such milk has been priced and pooled (Lubbock-Plainview, Central West Texas, North Texas, San Antonio, South Texas, and Corpus Christi).

11. Criteria for excluding a handler's milk from computation of the uniform price (Lubbock-Plainview, Central West Texas, North Texas, San Antonio, South Texas, and Corpus Christi).

Other issues affecting only North Texas order:

12. Definitions of "producer" and "producer milk."

13. Definition of pool plant.

14. Classification of transfers from pool plants to other plants.

15. Shrinkage regarding fortified milk products.

16. Location at which diverted milk should be priced.

Issue affecting the San Antonio order only:

17. Classification of dumped milk.

This decision deals only with the following issues: Class I prices (Issue No. 1) and location differentials (Issue No. 2) in the North Texas order and South Texas order; location at which diverted milk should be priced pursuant to the North Texas order (Issue No. 16); and the request for emergency action on a proposed change in the South Texas order location differentials (Issue No. 5).

All other issues are reserved for a later decision, including the issue of limitation on location adjustments applied to the value of Class I milk in the obligation for receipts of unregulated milk at a pool plant or in the computation of the obligation of a partially regulated plant.

FINDINGS AND CONCLUSIONS

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

NORTH TEXAS AND SOUTH TEXAS ORDERS

1. *Class I price levels.* No change should be made in the Class I prices for the North Texas and South Texas orders at the basing points in Dallas and Houston, respectively.

The North Texas order establishes a Class I price per hundredweight in Zone I (24 counties generally comprising the western half of the marketing area) which is the basic formula price plus \$2.12, plus 20 cents. In Zone II which includes the remainder of the marketing area plus Bowie and Cass Counties, Tex., and the city of Texarkana, Ark., the Class I price is 10 cents higher than in Zone I. Similarly the uniform price in Zone II is 10 cents higher than in Zone I.

The South Texas order establishes a Class I price at Houston which is the basic formula price plus \$2.48, plus 20 cents. Since the basic formula price in both the South Texas and North Texas orders is the price for manufacturing grade milk in Minnesota and Wisconsin for the prior month, the South Texas order Class I price at Houston is 36 cents per hundredweight above the North Texas order Class I price at Dallas.

A handler proposal favoring reduction of the South Texas Class I price was based in part on the relative distances of the South Texas and North Texas markets from Chicago. Proponent testified that this relationship would justify a Class I price difference between North Texas and South Texas markets of only 23 cents per hundredweight instead of the present 36 cents.

An alternative handler proposal presented, in which the above handler joined, assumed that a proper intermarket relationship could be determined based on the relative distances from Hopkins County, Tex., an area of high milk production, to Dallas and to Houston. By this method, proponents stated, a difference of not more than 26 cents per hundredweight in Class I prices would be proper between these two cities. A transportation cost at a rate of 1.5 cents per 10 miles was applied to distances from Sulphur Springs in Hopkins County to Houston and Dallas to arrive at the intermarket difference.

It was contended by a cooperative association in the market, however, that since similar proposals had been recently heard in a hearing held January 6, 1970, in Houston (34 F.R. 19985) and on the basis of that record denied, therefore there could be no basis for adopting them at this time.

The notice of the January hearing did not allow a full review of Class I prices at

PROPOSED RULE MAKING

all plant locations for the two markets. Such hearing considered, only the South Texas order Class I price level and the North Texas Zone II Class I price. The current hearing notice is broader in scope in that it provides for a review of pricing at all locations in the two markets. The notice of the current hearing states "In view of the several proposals to modify location differentials to handlers pursuant to the North Texas and South Texas orders, consideration will be given to appropriate adjustment of the North Texas order and South Texas order Class I prices and location differentials at any point as may be necessary to coordinate the pricing at various locations pursuant to the two orders."

Official notice is taken of the decision issued August 8, 1968, by the Under Secretary (33 F.R. 11486) in which the South Texas order Class I price at Houston was established by adding to the North Texas price a differential based on distance (approximately 240 miles) from Dallas to Houston. A mileage rate of 1.5 cents per 10 miles was applied to result in an intermarket price difference of 36 cents per hundredweight. Such calculation followed the pricing pattern used previously in several other Texas Federal orders generally south of the North Texas market in establishing intermarket relationships.

The South Texas order Class I price was reviewed in the decision of the Assistant Secretary issued March 17, 1970 (35 F.R. 4866) of which official notice is taken. In that decision the following findings and conclusions were stated:

It is concluded herein that the South Texas order Class I price should continue to be the basic formula price plus \$2.48, and plus 20 cents. Such price will tend to maintain producer milk supplies now associated with the market. Within the framework of the existing procurement system which includes the regular receipt of supplementary supplies from other order markets, this price will assure an adequate supply for the market.

Throughout the effective period of the order the sources of milk supply for the market have been in most respects the same as before the order. The principal part of the supply is milk received from producers' farms. Producer milk alone, however, has not been enough to supply all of handlers' Class I sales. During the first 14 months of order regulation (October 1968 through November 1969) Class I sales of handlers averaged 55 million pounds per month while producer milk supplies averaged 53 million pounds. In only 2 months have the producer milk supplies exceeded handlers' Class I use, and then by less than 2 percent, in February and November 1968. For the entire period of October 1968 through November 1969 producer receipts were 4 percent less than Class I uses of handlers. This situation resembles that which existed prior to issuance of the order. Then, also it was necessary for local handlers to receive shipments from northern Texas and Kansas areas because of the deficit of locally produced supplies.

Much of the milk production for each of the markets continues to be produced within the respective marketing areas which, in each case, includes extensive territory. Further, in the case of the

South Texas market, the deficit in local farm production necessarily requires extension of the procurement area well beyond the limits of the marketing area.

Supplementary supplies for the South Texas market must be obtained from areas generally to the north of the market rather than from areas south. Additional supplies cannot be obtained economically in substantial amounts from areas to the south of the marketing area in view of the procurement competition from a higher-priced market, Corpus Christi.

In December 1969, production within the South Texas marketing area amounted to 33 million pounds. Handlers' Class I disposition, however, was 56 million pounds. About 10 million pounds of additional milk were obtained directly from farms located in the North Texas marketing area. To further fill out supply needs, South Texas market procurement of producer milk extended to dairy farmers in Arkansas, Kansas, Missouri, and Oklahoma, making total supplies of producer milk 57.7 million pounds for the month. In total, this amount only slightly exceeded handlers' Class I disposition.

For January 1970 supplies were less than Class I use, and for the following months through April 1970 producer milk receipts at South Texas plants were generally little more than handlers' Class I sales. While there was a moderately greater supply in relation to Class I utilization compared to previous periods, the data do not reflect a substantially different supply situation in this period than that at the time of the January 1970 hearing.

The South Texas market has continued to depend also on bulk receipts of other Federal order milk in the amount of 4 to 7 million pounds monthly for Class I use. A main source of other order milk has been the North Texas market. Also, route disposition from North Texas order plants into the South Texas marketing area in April 1970 was 5.5 million pounds.

While data for May 1970 show a substantial increase in producer milk in the South Texas market such data are not comparable with data previously cited for other periods. The change in May was the direct result of designation by a cooperative association in the market of two cooperative reserve plants to be pooled under the South Texas order rather than under the North Texas order or San Antonio order, respectively, where they had been previously pooled. The additional quantities of milk thus included in the market data therefore do not represent an increase in production in the region, or any basic change in the availability or cost of obtaining milk in the region for the South Texas market. As mentioned previously, supplementary supplies have been available from the North Texas and other markets in previous periods as interorder shipments.

Class I price levels in Federal orders north of Houston are generally less than the South Texas Class I price. The South

Texas order f.o.b. market Class I price in the present relationship to the North Texas f.o.b. market order price, after allowance of reasonable transportation cost described elsewhere in this decision, provides a reasonable price parity between the two markets in procurement areas where the two markets both compete for milk supplies. This is principally within the North Texas marketing area where more than 100 million pounds of milk per month are produced.

For the reasons stated above and in light of the further considerations stated below in the discussion of appropriate location adjustments, the proposals of certain South Texas handlers to modify the intermarket relationship between the Dallas and Houston markets are denied.

2. *Location adjustments.*¹ The location adjustment schedule under the South Texas order should be modified. The North Texas order should be modified to remove the present 10-cent higher minimum Class I price level effective throughout Zone II and to provide in lieu thereof that the price level at any plant located in such zone shall be the Zone I class I price except that at any plant location where the South Texas order Class I price is higher, the North Texas Class I price shall be adjusted to equal the South Texas level for such location.

Location adjustments in each of the orders reasonably should reflect the cost involved in moving milk from outlying supply plants to the central market area for fluid processing and disposition. In some situations, however, the economic value of the milk to the producer at a particular location will be affected not only by transportation cost to move the milk to a regulated plant under one order, but also by his "opportunity cost", i.e., the price he can obtain by shipping to an alternative market. Unless the latter is taken in account, the milk so located may not be available to the former plant.

(a) *Location adjustments — South Texas.* Testimony at the current hearing generally supports a location adjustment rate of 1½ cents per 10 miles for the South Texas market. A milk hauler operating a fleet of tank trucks testified that his charge for transporting milk is 88 cents per mile for a truck of 40,500 pounds capacity. This is equivalent to 1.46 cents per 10 miles, thus closely approximating the rate of 1½ cents per 10 miles. Handlers and a cooperative also contracting for hauling bulk milk likewise testified that 1.5 cents per 10 miles is representative of their experience although some parties claimed higher costs had been experienced in some instances. A location adjustment rate of 1.5 cents per 10 miles is representative of economical transportation on milk moved between plants in these markets.

¹ As used herein, the term "location adjustment" refers to an adjustment to the Class I price to the handler, and to the uniform price to the producer, in recognition of the "place" utility of milk when received at plants at various distances from the market center. It is not a "nearby farm differential."

While under the North Texas order 1½ cents per 10 miles is currently the rate of minus location adjustments for distance by shortest hard-surfaced highway from Dallas, under the South Texas order a different rate now applies at certain locations. At those points where minus location adjustments apply, the present adjustments under the South Texas order are stated for zones in terms of distance from the city hall in Houston, as follows:

Miles from city hall in Houston:	Rates per hundred weight (cents)
60 miles but less than 100	12
100 miles but less than 140	18
140 miles but less than 180	22
180 miles but less than 225	26

The rates of adjustment at the midpoints of the brackets for the 140-180 mile and 180-225 miles currently are somewhat less than 1½ cents per 10 miles.

As previously stated, the location adjustment rate under the South Texas order should be changed to 1½ cents per 10 miles for distance from Houston city hall. Location adjustments computed at this rate for plants lying generally north of Houston will reflect the lesser place value of milk for this market as received at more distant plants than for plants in or near Houston, and will assist in assuring uniform pricing to handlers for milk received at the market from different plant locations and in reflecting the appropriate economic value of milk to producers in consideration of the point of delivery of their milk.

Producer exceptions expressed concern, however, that the changed location adjustments proposed in the recommended decision would seriously limit the availability of milk to the South Texas market as compared to the North Texas market at the Sulphur Springs, Tex., location which is in a heavy production area. The exception claims that the new adjustments would reduce the South Texas price at this location in the common supply area of the two markets to an extent which "would eliminate the economic incentive for this milk to be attracted to the South Texas market where it is required for Class I utilization."

At Sulphur Springs there is a milk plant operated by the exceptor cooperative which has been pooled variously under the North Texas or South Texas order since the latter order was issued. The location adjustment proposed in the recommended decision for Sulphur Springs would result in an effective South Texas order Class I price at this location 3 cents per hundredweight less than under the North Texas order.

Because of the regional and overlapping character of the available supplies for both these markets, it is concluded that the price under the South Texas order should be adjusted to be the same as under the North Texas order at such location. Similarly, throughout Zone I of the North Texas order the South Texas order Class I price as adjusted should be not less than the North Texas order price. This change will as-

sure equal opportunity for supplies in this production area to be shipped to either market as needed, insofar as location pricing is concerned. To the extent that at times the South Texas market, for instance, has greater need for the milk supply than the North Texas market, this will be reflected in the relative uniform prices of the two orders and provide an incentive for the milk to move to the market where most needed.

A cooperative association and a handler took exception also to the modified South Texas order location differentials as applied at locations in the southeastern part of the North Texas marketing area which adjoins the South Texas marketing area. The cooperative stated that because of the extensive overlapping of procurement and distribution areas of milk distributing plants located at Marshall and Tyler, Tex., the different Class I prices to producers at the two locations which would result from the differentials are not justified. Although the plants in question are regulated by the North Texas order, the pricing under the latter order at such locations, as explained under later findings and conclusions, would depend on the South Texas order Class I price level as adjusted to the same location.

Within the area referred to in the exceptions are three milk distributing plants, one at Marshall and two at Tyler. These two cities constitute the eastern and western ends, respectively, of a substantial concentration of population which includes also the cities of Longview and Kilgore.

The location value of milk in this general area (Gregg, Harrison, and Smith Counties) for the South Texas market depends principally upon the price obtainable for delivery in the central market, less cost of delivery. Local conditions of extensive procurement competition and overlapping distribution patterns of plants there located, however, tend to establish a continuity of value for milk throughout the three-county area. Further, Marshall at the eastern end of the three-county area and Tyler at the western end are about equidistant from the corresponding eastern and western ends of the large central population area of the South Texas market, the distance from Marshall to Beaumont and Fort Arthur and the distance from Tyler to Houston, respectively, being less than 10 miles different. Thus there is no significant difference in location value of milk for the South Texas market with respect to all locations within this three-county area.

For these reasons it is concluded that the amount of the South Texas order location differential should be the same for all points throughout the Gregg-Harrison-Smith three-county area. Based on the distance from the general population centers of the market the adjustment should be minus 30 cents.

The described method of computing adjustments will eliminate the broad mileage zones which now apply at certain distances beyond the inner zone (not more than 60 miles from the city halls in

Houston and Beaumont, Tex.). No location adjustment applies within this latter zone which includes the densely populated areas of Houston and Beaumont where the wholesale and retail route distribution systems of major handlers extensively overlap.

Also no location adjustments apply in the areas south of U.S. Highway 90 in the counties of Colorado, Fayette, Gonzales, Lavaca, and Wharton. (See decision of March 17, 1970, previously cited.) The reason stated in such decision for making no adjustments to the price at such locations continue to apply. Although the order language to accomplish this is modified in this decision, the same effect is retained.

The plus location adjustments which apply under the South Texas order at locations south of U.S. Highway 90 are for the purpose of reflecting the higher value of milk at such locations than at Houston because of the alternative market outlets available to South Texas producer milk delivered to such locations. Milk delivered to a South Texas order plant located between Houston and Corpus Christi, for instance, has an available alternative market (Corpus Christi) with a 30-cent per hundredweight higher Class I price, f.o.b. Corpus Christi.

Currently, the plus location adjustments in this area are based on the distance of the plant from the city hall in Houston. Such plus adjustments, however, are not designed primarily to reflect the value of the milk based on delivery to Houston since milk from this area normally is not shipped to Houston for processing. Rather, its economic value to the producer is determined by the available alternative and higher-priced market outlet and if this value is not reflected in the price at such location the milk likely will not be available to a South Texas plant so located. Accordingly, the location prices under the South Texas order generally in the direction of the Corpus Christi market should result in a Class I price at any given location which is the same as the Class I price pursuant to the Corpus Christi order for the same location. To appropriately reflect the value in producer returns a similar adjustment must also be applicable to the uniform price at such locations.

An exceptor argued that the plus adjustments as provided in the recommended decision for all areas south of U.S. Highway 90 except the designated counties (Colorado, Fayette, Gonzales, Lavaca, and Wharton) would be inconsistent with the San Antonio order Class I price if a plant were located in the San Antonio marketing area but regulated by the South Texas order. Then the proposed adjustment would result in a South Texas order Class I price 7 cents per hundredweight higher within the San Antonio marketing area than the San Antonio order price.

There is no need for the South Texas order to establish a Class I price higher at the South Texas plant located in the San Antonio marketing area than the San Antonio order price. For the purpose of procuring a supply for the South

Texas market, milk is available in supply areas to the north at a lesser price level than the price prevailing at San Antonio.

The problem presented by the exceptor may be dealt with by defining in a different manner the area within which the plus differentials apply. The area in which dairy farmers are affected by the alternative opportunity to obtain the higher returns available in the Corpus Christi market includes counties directly between the South Texas and the Corpus Christi markets as well as the southern portion of the State within which the latter market is located. Accordingly the plus differentials should apply in the area south of the northern boundaries of the Texas counties of Matagorda, Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit.

The exceptor further hypothesized that a plant in Houston could become regulated under the San Antonio order and thus have a Class I price 24 cents per hundredweight less than South Texas order plants in the same city.

The exceptions do not show this to be an imminent problem. Marketing conditions described in the record establish that a Class I price not less than the South Texas order price is needed to obtain a supply at the Houston location.

(b) *Zone II—North Texas.* The Zone II Class I price of the North Texas order should be the same as the Zone I Class I price, except that at any specific plant location it should be not less than the applicable Class I price for such location pursuant to the South Texas order. At present the Zone II price is the Zone I price, plus 10 cents.

As previously indicated, Zone II, in addition to being part of the North Texas marketing area, also includes important, common procurement areas for both the North Texas and South Texas markets. Plants regulated by both orders receive substantial volumes of milk from farms in Zone II. One North Texas order plant located in Zone II regularly ships milk in bulk to Houston. Several milk processing plants in Zone II regulated by the North Texas order have route distribution extending into the South Texas marketing area and in the southern portion of Zone II there is overlapping distribution by plants under both orders.

While there is substantial competition between the two markets for milk supplies produced in Zone II, these conditions do not justify a Class I price level throughout Zone II 10 cents per hundredweight higher than the Class I price level in Zone I. On the other hand, it must be recognized that without any price adjustment the South Texas market would be a preferential outlet for milk supplies produced in Zone II, particularly in the central and southern portions of the zone.

North Texas order plants at the latter locations, to be assured of a supply, must pay an equivalent price since nearby producers shipping to such plants have the opportunity to shift their deliveries to the South Texas market at any time. The North Texas order accordingly should provide that for Zone II the Class

I price shall be adjusted by any amount by which the applicable South Texas order Class I price at the location of the plant exceeds the North Texas Zone I price.

The modification in this decision of the South Texas order location differentials applicable in Gregg, Harrison, and Smith Counties would similarly modify the North Texas order Class I price at these locations.

In the northern part of Zone II the applicable South Texas order Class I price adjusted at the rate of location adjustments as herein adopted would be either equal to or less than the North Texas Zone I Class I price. At such locations, therefore, no adjustment would be applicable.

Prices determined for Zone II in this manner will tend to insure an orderly flow of milk to plants in both markets and insure sufficient supplies for distributing plants irrespective of their location within the widespread North Texas marketing area.

One handler proposed that location adjustments under the North Texas order be related to additional basing points at Marshall and Tyler, Tex. The purpose of the handler was to provide a lower price than presently for his partially regulated plant located in Texarkana, Tex.

The partially regulated plant of the handler is located in Zone II. The pricing changes herein adopted will result in a reduction of 10 cents per hundredweight in the effective Class I price at Texarkana compared with the price which now applies. No further adjustment of the price at this location would be appropriate on this record.

5. *Request for emergency action.* A handler requested on the record that emergency procedure be used to effectuate his proposal to amend the South Texas order. Certain other parties at the hearing opposed the adoption of such proposal.

The request for emergency action and omission of the recommended decision was appropriately denied in the recommended decision. The proposal of the handler related closely to material considerations affecting other handlers in both markets. It was thus necessary that all interested parties be given the opportunity to have notice of a recommended decision and opportunity to submit exceptions thereto.

16. *Pricing of diverted milk (North Texas order).* Milk diverted from a pool plant to a nonpool plant should be priced at the location of the plant to which diverted rather than the plant from which diverted.

The order now specifies that milk diverted from a pool plant to a nonpool plant shall be priced at the location of the plant from which diverted. Under such provision, however, milk of a producer distant from the market can be briefly associated with a pool plant in the marketing area and then be diverted to a nonpool manufacturing plant relatively near to the producer's farm. This milk obviously does not incur the transportation cost it would if moved to the

marketing area at all times, but the producer nevertheless receives the marketing area uniform price designed to compensate for the delivery of milk to the marketing area.

This reduces the money to be paid to other producers whose milk is delivered to the marketing area as compared to the situation where the producer is paid on the basis of his actual point of delivery. The present arrangement encourages distant producers to have their milk delivered to a manufacturing plant near their farms rather than to the marketing area, since they nevertheless do receive the marketing area uniform price. The change as herein adopted will prevent the dissipation of pool money for transportation not performed.

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 are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations 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 proposed 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 be 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, a marketing agreement upon which a hearing has been held.

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENTS AND ORDER

Annexed hereto and made a part hereof are documents entitled marketing agreement regulating the handling of milk in the South Texas marketing area, marketing agreement regulating the handling of milk in the North Texas marketing area, and an order amending the order regulating the handling of milk in the South Texas and North Texas marketing areas which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreements are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

DETERMINATION OF PRODUCER APPROVAL AND REPRESENTATIVE PERIOD

September 1970 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 South Texas and North Texas marketing areas are approved or favored by producers, as defined under the terms of the orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the specified marketing areas.

Signed at Washington, D.C., on November 27, 1970.

RICHARD E. LYNG,
Assistant Secretary.

Order¹ Amending the Order, Regulating the Handling of Milk in the South Texas and North Texas Marketing Areas

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings

¹ 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.

and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations 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 specified 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 et seq.), 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 with respect to each of the orders regulating the handling of milk in the North Texas and South Texas marketing areas 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 affect 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;

(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 a hearing has been held;

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 each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending each of the specified orders contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on October 7, 1970, and published in the FEDERAL REGISTER on October 10, 1970 (35 F.R. 16000) shall be and are the terms and provisions of this order, amending the orders, as are set forth in full herein subject to the following modifications:

Amendment to the South Texas order. In § 1121.53, new language is added at the end of paragraph (a), and paragraph (b) is modified.

PART 1121—MILK IN THE SOUTH TEXAS MARKETING AREA

1. Section 1121.53 is revised as follows:
§ 1121.53 Location adjustments to handlers.

(a) For that milk which is received from producers at a pool plant located

(1) in Fayette County, Tex., or (2) north of U.S. Highway 90 and 60 miles or more from the nearer of the city halls in Beaumont and Houston, Tex., by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is classified as Class I milk subject to the limitations of paragraph (c) of this section, and for other source milk for which Class I location adjustment credit is applicable, the price specified in § 1121.51(a) shall be reduced 1.5 cents per 10 miles of distance or fraction thereof that such plant is located from the Houston city hall by shortest hard-surfaced highway distance as determined by the market administrator: *Provided*, That the location adjustment at a plant located in Gregg, Harrison, or Smith Counties, Tex., shall be minus 30 cents and that the location adjustment pursuant to this paragraph for any plant located in Zone I as defined in the North Texas order, Part 1126 of this chapter, shall not result in a price less than the applicable Class I price at such plant location pursuant to the North Texas order.

(b) For that milk which is received from producers at a pool plant which is beyond 60 miles from the nearer of the city halls in Beaumont and Houston, Tex., by the shortest hard-surfaced highway distance, as determined by the market administrator, and south of the northern boundaries of the Texas counties of Matagorda, Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit and which is classified as Class I milk subject to the limitations of paragraph (c) of this section, and for other source milk for which a Class I location adjustment is applicable, the price specified in § 1121.51(a) shall be increased by any amount by which such price is less than the applicable Class I price at the same location pursuant to Part 1130 of this chapter regulating the handling of milk in the Corpus Christi marketing area.

(c) For purposes of calculating such location adjustments transfers between pool plants shall be assigned Class I disposition at the transferee plant, in excess of the sum of 95 percent of receipts at such plant from producers and cooperative associations pursuant to § 1121.12 (d), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor plants having the same Class I price, next to transferor plants having a higher Class I price, and then in sequence to plants having a power Class I price beginning with the plant at which the highest Class I price would apply.

PART 1126—MILK IN THE NORTH TEXAS MARKETING AREA

2. Section 1126.53 is revised as follows:
§ 1126.53 Location adjustments to handlers.

(a) For that milk which is received from producers at a pool plant outside the marketing area or Bowie or Cass

Counties, Tex., or the city of Texarkana, Ark., and 110 miles or more from the city hall in Dallas, Tex., and which is classified as Class I milk subject to the limitation of paragraph (c) of this section and for other source milk for which a Class I location adjustment credit is applicable, the price specified in § 1126.51 (a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is located from the Dallas city hall by shortest hard-surface highway distance as determined by the market administrator:

(b) For that milk which is received from producers at a pool plant within Zone II, and which is classified as Class I milk subject to the limitations of paragraph (c) of this section and for other source milk for which a Class I location adjustment is applicable, the price shall be the Zone I Class I price plus any amount by which the applicable Class I price at such location pursuant to Part 1121 of this chapter regulating the handling of milk in the South Texas marketing area exceeds the Zone I Class I price; and

(c) For purposes of calculating such location adjustments transfers between pool plants shall be assigned Class I disposition at the transferee plant, in excess of the sum of 95 percent of receipts at such plant from producers and cooperative associations pursuant to § 1126.12 (c) and (d), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor plants having the same Class I price, next to transferor plants having a higher Class I price and then in sequence to plants having a lower Class I price, beginning with the plant at which the highest Class I price would apply.

3. Section 1126.55 is revised as follows:
§ 1126.55 Pricing zones.

(a) *Zone I.* Zone I shall include all territory within the following Texas counties in the marketing area:

Bosque.	Hood.
Cooke.	Hopkins.
Collin.	Hunt.
Dallas.	Johnson.
Delta.	Kaufman.
Denton.	Lamar.
Ellis.	Limestone.
Erath.	Navarro.
Fannin.	Parker.
Freestone.	Rockwall.
Grayson.	Somervell.
Hill.	Tarrant.

(b) *Zone II.* Zone II shall include all territory in the marketing area outside of Zone I and all territory in Bowie and Cass Counties, Tex., and the city of Texarkana, Ark.

4. In § 1126.91 paragraph (b) is revised as follows:

§ 1126.91 Butterfat and location differentials to producers.

(b) *Location adjustments.* (1) In making payments to producers pursuant to § 1126.90 (a) or (c) the applicable uniform price computed pursuant to

§ 1126.72 to be paid for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rate set forth in § 1126.53.

(2) For purposes of computation pursuant to §§ 1126.93 and 1126.94 the uniform prices shall be adjusted at the rates set forth in § 1126.53 applicable at the location of the nonpool plant from which the milk was received.

5. In § 1126.13 *Producer*, paragraph (a) (2) is revised to read as follows:

§ 1126.13 *Producer.*

(a) * * *

(2) Diverted by a handler for his account from a pool plant to a nonpool plant on any day during the months of January through July and on not more than half of the days of delivery during any other month. Such diverted milk shall be deemed to have been received by the diverting handler at the location of the plant to which it was diverted.

[F.R. Doc. 70-16149; Filed, Nov. 30, 1970; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 81]

CERTAIN AIR QUALITY CONTROL REGIONS

Proposed Designation and Redesignation of Regions; Consultation With Appropriate State and Local Authorities

Pursuant to authority delegated by the Secretary and redelegated to the Commissioner of the National Air Pollution Control Administration (33 F.R. 9909), notice is hereby given of a proposal to designate Intrastate Air Quality Control Regions in the State of Arkansas as set forth in the following new §§ 81.138-81.140 inclusive which would be added to Part 81 of Title 42, Code of Federal Regulations. It is proposed to make such designations effective upon republication.

In addition to the proposal to designate the new Intrastate Air Quality Control Region, it is proposed to revise the boundaries of the presently designated Metropolitan Fort Smith Interstate Air Quality Control Region (Arkansas-Oklahoma) (§ 81.63), as provided for in section 107(a) (2) of the Clean Air Act, as amended.

Interested persons may submit written data, views, or arguments in triplicate to the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17-82, 5600 Fishers Lane, Rockville, MD 20852. All relevant material received not later than 30 days after the publication of this notice will be considered.

Interested authorities of the States of Arkansas, Missouri, Louisiana, Okla-

homa, Tennessee, Mississippi, and Texas and appropriate local authorities, both within and without the proposed regions, who are affected by or interested in the proposed designations and redesignation, are hereby given notice of an opportunity to consult with representatives of the Secretary concerning such designations and redesignation. Such consultation will take place at 10 a.m., December 10, 1970, in the Courtroom of Judge J. Smith Henley, U.S. Post Office and Courthouse, Capitol and Gaines Streets, Little Rock, AR 72203.

Mr. Doyle J. Borchers is hereby designated as Chairman for the consultation. The Chairman shall fix the time, date, and place of later sessions and may convene, reconvene, recess, and adjourn the sessions as he deems appropriate to expedite the proceedings.

State and local authorities wishing to participate in the consultation should notify the Chairman, Mr. Doyle J. Borchers, National Air Pollution Control Administration, Parklawn Building, Room 17-82, 5600 Fishers Lane, Rockville, MD 20852, of such intention at least 1 week prior to the consultation.

In Part 81 the following new sections are proposed to be added to read as follows:

§ 81.138 Central Arkansas Intrastate Air Quality Control Region.

The Central Arkansas Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Arkansas:

Chicot County.	Hot Spring County.
Clark County.	Jefferson County.
Cleveland County.	Lincoln County.
Conway County.	Lonoke County.
Dallas County.	Ferry County.
Desha County.	Pope County.
Drew County.	Pulaski County.
Faulkner County.	Sallis County.
Garland County.	Yell County.
Grant County.	

§ 81.139 Northeast Arkansas Intrastate Air Quality Control Region.

The Northeast Arkansas Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)), geographically located within the outermost boundaries of the area so delimited):

In the State of Arkansas:

Arkansas County.	Monroe County.
Clay County.	Phillips County.
Craighead County.	Poinsett County.
Cross County.	Prairie County.
Greene County.	Randolph County.
Independence County.	Saint Francis County.
Jackson County.	Sharp County.
Lawrence County.	White County.
Lee County.	Woodruff County.
Mississippi County.	

APPENDIX III

State allotment to adjust county allotments for trends in acreage, for counties adversely affected by abnormal conditions, or for small or new farms, or to correct inequities in farm allotments and to prevent hardships.

The following determinations will be made pursuant to the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1421 et seq.):

(d) *Loan level and 2-year average world market price.* Section 103(e) (1) of the act requires the Secretary to determine and announce the loan level for the 1972 crop by November 1, 1971. Such loan level must reflect—for Middling 1-inch cotton, micronaire 3.5 through 4.9 at average location in the United States—90 percent of the average world price for such cotton for the 2-year period August 1, 1969, through July 31, 1971, except that, following 1 or more years of excessively high prices, adjustments may be made in the loan level in order to keep U.S. cotton competitive and to retain an adequate share of the world market. Section 103(e) (1) further requires the Secretary to determine the 2-year average world price annually pursuant to a published regulation specifying the procedures and factors to be used in making the determination. Such regulation was published in the FEDERAL REGISTER on December 12, 1970 (35 F.R. 18913).

(e) *Cropland set-aside percentage.* Section 103(e) (4) (A) requires the Secretary to provide for a set-aside of cropland if he determines that the total supply of agricultural commodities will, in the absence of such a set-aside, likely be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. If a set-aside of cropland is in effect, then as a condition of eligibility for loans and payments on cotton, producers must set aside and devote to approved conservation uses an acreage of cropland equal to such percentage of the farm base acreage allotment as the Secretary determines (not to exceed 28 percent), in addition to the soil-conserving base established for the farm.

(f) *Unrestricted use sales policy.* Section 407 provides that the sales price cannot be less than 110 percent of the loan rate for Middling 1-inch cotton (micronaire 3.5 through 4.9), adjusted for such current market differentials reflecting grade, quality, location, and other value factors determined appropriate, plus reasonable carrying charges, except that a quantity of cotton equal to the "shortfall" (amount by which 1972 production is less than estimated requirements for domestic use and for export for 1972-73 marketing year) must be made available at current market prices.

Prior to making any of the foregoing determinations, consideration will be given to any data, views, and recommendations which are submitted in writing to the Director, Cotton Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. In order to be

sure of consideration, all submissions must be postmarked not later than October 8, 1971. All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Signed at Washington, D.C., on September 9, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-13508 Filed 9-13-71;8:49 am]

Consumer and Marketing Service
[7 CFR Part 929]

CRANBERRIES GROWN IN CERTAIN STATES

Notice of Proposed Free and Restricted Percentages for 1971-72 Fiscal Period, Standard of Grade for Withheld Cranberries and Ending Date for Compliance With Withholding Requirements

Consideration is being given to a proposal to establish, for the 1971-72 fiscal period beginning September 1, 1971, free and restricted percentages which percentages shall be applied to all cranberries acquired during such fiscal period, to establish the standard of grade that withheld cranberries shall meet and to fix the date by which all handlers shall have met their withholding requirements.

The proposed percentages, minimum grade, and ending date, which were recommended by the Cranberry Marketing Committee at its meeting on September 2, 1971, would be established in accordance with the provisions of the marketing agreement and Order No. 929 (7 CFR Part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The recommendation by the Cranberry Marketing Committee reflects its appraisal of the available supply of cranberries and the current and prospective market conditions. The fixing of the free and restricted percentages as specified herein is designed to establish and maintain orderly marketing conditions, provide the market with an adequate supply of cranberries, and to prevent the chaotic marketing conditions which would likely result if all of the available supplies of cranberries were marketed during the current fiscal period.

The minimum grade requirement for withheld cranberries specified herein is designed to effect a desirable reduction in the marketable supply of cranberries by preventing handlers from using lower quality berries, normally eliminated, to

meet a part of their withholding (restricted percentage) requirement.

The ending date of February 1, 1972, is designed to provide ample opportunity for each handler to meet his withholding obligations before completion of the marketing season by permitting maximum flexibility in scheduling requests for inspection and certification of cranberries for withholding, while engaging in normal shipping operations.

The proposal is as follows:

§ 929.303 Free and restricted percentages for the 1971-72 fiscal period, standard of grade for withheld cranberries and ending date for compliance with the withholding requirements.

(a) The free percentage and restricted percentage applicable to all cranberries acquired during the fiscal period September 1, 1971, through August 31, 1972, shall be 88 percent and 12 percent, respectively.

(b) Each lot of cranberries withheld pursuant to paragraph (a) above shall grade at least U.S. No. 1 grade, as set forth in the U.S. Standards for Fresh Cranberries for Processing (§§ 51.3030-51.3037 of this title) except that, for the purposes of this regulation, cranberries infested with worms shall be scored against the grade under the 5 percent tolerance provided for cranberries which are soft or affected by decay (see § 51.3031(b) (3) of this title).

(c) Each handler shall meet his withholding requirements, as provided in § 929.54, not later than February 1, 1972.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112A, Washington, D.C. 20250, not later than the 15th day after the publication of this notice in the FEDERAL REGISTER. 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)).

Dated: September 8, 1971.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-13488 Filed 9-13-71;8:48 am]

[7 CFR Part 1007]

[Docket No. AO 366-A7]

MILK IN GEORGIA MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Georgia marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20260, by the 20th day after publication of this decision in the *FEDERAL REGISTER*. The exceptions should be filed in quadruplicate. 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 above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at East Point, Ga., on April 27-29, 1971, pursuant to notice thereof of which was issued April 5, 1971 (36 F.R. 6930).

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

1. Pooling standards for a plant operated by a cooperative association.
2. Pricing point on diverted milk.
3. Adoption of a Class I base plan.

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. *Pooling standards for a plant operated by a cooperative association.* Provision should be made in the Georgia order for pooling a supply plant operated by a cooperative association on the basis of the cooperative's overall performance in the market rather than solely on shipments from the plant.

The proponent cooperative association representing producers in the market operates a milk receiving and storage facility at Eatonton, Ga. The cooperative plans to use the Eatonton receiving facility (1) to balance supplies of handlers whose direct receipts from farms may be less than their current needs, and (2) to assemble milk supplies in excess of handlers' needs for disposal to manufacturing outlets. These are primary functions of proponent cooperative association.

The principal manufacturing outlets for Georgia reserve supply are located outside the State of Georgia. In some cases, diversion of milk directly to such nonpool plants provides the most efficient handling of the milk in excess of handlers' needs. Because of the long distances usually involved, it is frequently more economical, however, to receive the milk first at Eatonton where the milk from small pickup tank trucks is reloaded into large over-the-road tankers. Receiving and assembling the milk at Eatonton

results in a substantial reduction in the cost of moving such reserve milk.

Pool plants under the Georgia order are scattered over a wide area. In many instances the distributing plant may be nearer to a producer's farm than the Eatonton receiving facility. Therefore, since all producer milk in the market is delivered in bulk tanks, it normally is more economical to move the milk directly from the farm to a handler's plant than it is to haul the milk to Eatonton, receive it at the cooperative plant for purposes of qualifying the plant, reload it and then haul it back to a distributing plant which is closer to where the milk was produced. Consequently, very little milk actually is moved through the Eatonton facility to supply Georgia distributing plants even though it provides a supply-balancing function for the Georgia market.

If the Eatonton plant were not a pool plant, at least some of the reserve supply of the market received at Eatonton still could retain pool status as diverted milk. The order requires, however, that 10 days' production of each producer must be received at a pool plant during each month to be eligible for diversion on the remaining days of the month. Since it is not economical to receive at the Eatonton facility each day the milk located nearest the plant, it would be necessary on at least 10 days during the month to haul substantial amounts of milk from farms close to Eatonton to more distant pool plants and then return the milk to Eatonton. Qualifying the Eatonton plant as a pool plant will eliminate a substantial amount of uneconomic hauling otherwise necessary.

A cooperative plant such as that at Eatonton therefore can serve the market more efficiently if it is a pool plant, but, in view of the nature of the operation as described, the market performance required for pooling such a supply plant operated by a cooperative association must be somewhat different from that of other supply plants. The conditions for pooling such a plant should be that: (1) The plant is not a distributing plant; (2) two-thirds or more of such cooperative's total member producer milk (including such milk delivered directly from farms and from the association's plant(s)) is received during the month as producer milk at pool distributing plants; and (3) such plant meets the order's minimum shipping requirements for supply plants generally, subject to the conditions set forth below. These conditions will insure that undue quantities of milk not regularly serving the Georgia fluid milk market will not be associated with the Georgia pool.

In view of the fact that the Georgia market is one which is frequently relatively short on supply (and the fact that there is some seasonal variation in supplies), the cooperative in order to qualify a supply plant on terms somewhat different from those applicable to other supply plants, should have a high proportion of its producer-member milk regularly sup-

plying the market. A supply plant, other than one operated by a cooperative as described herein, must deliver at least 50 percent of its receipts to pool distributing plants. When the milk of member-producers which is delivered directly from the farm to other pool plants, is considered as having been first received at the plant of the cooperative it is reasonable to require as a basis for such plant qualification that not less than two-thirds of a cooperative's member-producer milk be received at pool distributing plants.

In determining whether such cooperative plant meets the minimum 50 percent shipping requirement generally applicable to supply plants in this market, all deliveries by the cooperative (noting as a bulk tank handler) on milk delivered to pool distributing plants would be considered as having been received first at the association's plant qualifying under this provision. If the cooperative were to operate more than one supply plant all such direct deliveries of member producer milk to pool distributing plants would be assigned for this purpose to the supply plant nearest Atlanta.

At the hearing, a proprietary handler representative expressed concern that large volumes of distant milk could be associated and pooled under the order if a provision of this kind were adopted. However, it is concluded that the conditions for pool participation set forth herein will insure that only the regular reserve supply for the Georgia market will be pooled.

Additional supply plants of the cooperative could qualify, of course, for pool supply plant status on the basis of actual shipments from the plant to pool distributing plants under the 50 percent rule.

2. *Pricing point on diverted milk.* No change should be made in the current Georgia order with respect to the pricing point on diverted milk. Milk diverted from a pool plant to a nonpool plant should continue to be priced at the location of the plant to which diverted rather than the pool plant from which diverted, as proposed.

The purpose of the location adjustment is to reflect the value of the milk at the point of receipt. The uniform price for base milk paid to producers for diverted milk in this market should be the price applicable at the plant of physical receipt, not the price applicable at the plant where the milk was received prior to diversion. When producer milk is moved from the farm to a nonpool plant at which no location adjustment applies, the producer pays the cost of moving his milk to such plant. When milk is diverted to a nonpool manufacturing at which a location adjustment is applicable, it is appropriate that the difference in the price at such location be reflected in the uniform price received by the producer.

Proponents of the change in the pricing point on diverted milk contended that in the Georgia market, most manufacturing plants are located a considerable distance from the market and that

the cost of moving milk from the producers' farms to such plants sometimes exceeds the cost of moving milk to the pool distributing plants. However, when milk is priced at the plant from which diverted, this cost is borne instead by all producers on the market since the amount of the location adjustment applicable at the point of receipt otherwise would enhance the uniform price for base milk.

Pricing the milk at the point of receipt will insure that milk will not be moved uneconomically or undue distances at other producers' expense. It will further protect the uniform price for regular producer suppliers by eliminating the incentive to associate with a plant in the central market dairy farmers whose milk usually is received at a distant point, and then to divert such milk to the plant of usual receipt while drawing from the Georgia pool the applicable uniform price f.o.b. central market.

At the hearing and also in its brief, the proponent cooperative association indicated that the proposal to change the pricing point on diverted milk should be adopted to make it clear that diverted milk may qualify as base milk under the Class I base plan. The Georgia order, as amended herein, makes it clear that a producer will receive credit under the Class I base plan for all his producer milk deliveries whether such milk is received at a pool plant, or is diverted therefrom to a nonpool manufacturing plant under the rules for diversion.

3. *Adoption of a Class I base plan.* Producers supplying plants regulated by the Georgia Federal order should have the opportunity to decide whether the proceeds from the sale of their milk should be distributed among them by means of a Class I base plan issued in conformity with the Agricultural Act of 1970.

At the present time, producers under the Georgia order are paid in accordance with the terms of a 12-month seasonal base-excess plan.

The purpose of the Class I base plan is to provide a method for producers regulated by the Georgia order individually to adjust production to meet the Class I needs of the market. Cooperative organizations representing a majority of the producers on the Georgia market presented all the testimony in favor of the proposed base plan. There was no opposition to the proposed base plan. However, a proprietary handler representative suggested modifications regarding certain aspects of the proposal.

The proposed base plan is designed to adapt to changing supply-demand conditions. Under it new producers coming on the market would be able to earn, over a reasonable period of time, bases comparable to those of other producers. Similarly, it would provide a means whereby any producer desiring to increase his production and thus earn additional base may do so.

Under the plan proposed herein producer bases would be adjusted annually to reflect changing supply-sales conditions. While the plan provides a means

whereby new producers may earn bases and established producers may increase their bases, it also provides that base-holding producers who reduce their marketings will not be adversely affected. This would be accomplished by providing that a producer's production history would not be reduced as long as he markets a volume of milk at least equal to his Class I base.

In its brief, the proponent cooperative organization stated that a number of producers had purchased 1970-71 bases under the seasonal base plan. In order to provide an equitable transition from the base-excess plan, presently a part of the Georgia order, proponent stated that all transfers of 1970-71 base under the present plan, purchased by producers between March 1971 and the effective date of this order, should be assigned to them under the new base plan. There is no basis, however, for such a transfer of production history. The Agricultural Act of 1970 does not provide that a producer be credited with production history associated with a seasonal base purchased prior to the effective date of the new Class I base plan. Consequently, producers who purchased 1970-71 base under the present seasonal base plan will not receive credit for production history associated with such bases. All bases issued under the present plan must terminate on the effective date of a Class I base plan, and production history associated with such bases earned under the present plan may not be transferred.

The only exception would be in the case of an intrafamily base transfer which occurred prior to the effective date of the new plan, in which the herd and farm were transferred with the base and there was an uninterrupted continuation of the same dairy operation. In such case the production of the transferor producer would be considered as having been delivered by the transferee producer.

To alleviate this situation, it is proposed that the Class I base plan provisions be made effective on March 1, 1972. This would permit producers who purchased base under the current seasonal base plan, in the expectation that they would enjoy the benefit of such base until February 29, 1972, to gain a full return on their investment.

Proponents of the Class I base plan expressed the view that delaying the effective date until March 1 would provide an incentive to farmers to increase their production during the coming September-January period in order to take advantage of the new plan. We cannot agree with this argument. Producers who increase their production, or who become producers, during the coming base-forming period will receive approximately the same monetary returns for their milk and earn the same production history for future base computations' regardless of whether the present seasonal plan or the new Class I base plan is in effect.

A producer who increases production will receive only the excess price for his additional production regardless of which plan is in effect. Similarly, a dairy farmer who begins production on September 1, will receive the base price for

50 percent of his deliveries regardless of which plan is in effect.

When Class I bases are computed on March 1, 1972, the producer will receive the same credit toward computing his new production history and Class I base under either plan. Thus, a delay until March 1, 1972, will afford no incentive for a so-called "race for base", nor will it affect the monetary returns of producers. Such a delay, however, will permit those producers who, in good faith, acquired seasonal base by transfer to avoid the financial loss they would incur if the Class I base plan were made effective at an earlier date.

(2) *A description of the Class I base plan adopted herein—(a) A summary of the basic features of the Class I base plan.* The new Class I base plan adopted herein generally follows the form of base plan proposed by producer representatives.

Class I bases would be assigned to eligible producers on the effective date of the base plan and would be updated on March 1 of each year thereafter.

The total Class I bases to be assigned would equal 115 percent of the average daily producer milk used in Class I during the previous September-January period. For the purpose of allocating Class I bases to producers, such quantity would be prorated to the production history of each producer.

New producers coming on the market would be assigned Class I bases or base milk at a time and in an amount depending on the circumstances of their entry into the market. The various categories of new producers and the manner in which their base assignments would be made are specified in subsequent findings and conclusions.

(b) *Representative period.* With respect to the representative period and computation of production history, the Agricultural Act of 1970 provides: "and (1) a further adjustment, equitably to apportion the total value of milk purchased by all handlers among producers on the basis of their marketings of milk which may be adjusted to reflect the utilization of producer milk by all handlers in any use classification or classifications, during a representative period of 1 to 3 years, which will be automatically updated each year."

The representative period for the computation of production histories and Class I bases would be a 3-year period consisting of three 12-month periods extending from March of one year through February of the next year. The production of each producer to be credited to his production history each year would be his average daily deliveries during the months of September through January in each such 12-month period. These are the months in which Class I sales by handlers regulated by the Georgia Federal order are the highest relative to the market supply. Use of these 5 months will create production incentives consistent with Class I sales patterns of handlers regulated under the Georgia order.

In addition, this particular 5-month period was chosen by producers because

It is the base-forming period for the seasonal base-excess plan now effective in the current Georgia order. Since Georgia order producers have conducted their entire dairy operations including feeding, breeding, and farm management with this 5-month period as the base forming months, it would be desirable to continue with the same September-January period under the Class I base plan.

There are 153 days in the 5-month period. However, dividing a producer's total deliveries during the representative period by 153 creates inequities when most producers are on every-other-day delivery.

For the most part, the milk of Georgia order producers is picked up on an every-other-day basis. Producers delivering milk on the first day of September and every other day thereafter through January 31 would have delivered 154 days' production during the 5-month period. Producers picked up on September 2, and each succeeding alternate day thereafter, would have delivered only 152 days' production during the 5-month period. If the total volume of milk delivered during such period is divided by 153, one producer's base is enhanced and the other producer's base is reduced as a result of the use of this common divisor.

To illustrate—in the case of two producers, each producing exactly 1,000 pounds per day, one whose milk is received on September 1, and on each alternate day thereafter, would have delivered 154,000 pounds of milk and would receive a base of 1,007 pounds. The other producer would deliver only 152,000 pounds of milk and would receive a base of only 993 pounds. Since each produced 153,000 pounds during the 153-day period, each should receive a base of 1,000 pounds.

In addition, the use of a common divisor of 153 would work a hardship on a producer who may be off the market for a few days through no fault of his own. A producer's health permit may be suspended temporarily because pesticide residues are found in milk even though the source of that residue may have been purchased hay. A dairy farmer may intend to begin shipping milk to the market as a producer on September 1, but his actual entrance on the market, for one reason or another, may be delayed a few days. Other producers may have milk rejected for high acidity resulting from a power failure, or other circumstances over which the producer has no control.

The proponent cooperative organizations recognized these problems and incorporated a provision in the Class I base plan which would allow a producer 8 days to correct the situation without penalty to the producer with respect to his Class I base. The 8-day grace period is adequate and reasonable. Any producer problem covering failure of delivery of more than 8 days' production should be considered by the hardship committee.

Accordingly, it is provided, that, in determining a producer's average daily deliveries during the September-January period, his total deliveries will be divided by the number of days of production represented by such deliveries or by 145, whichever is greater.

(c) *Production history period.* The base plan provides for a 3-year rolling average to determine the production history of each producer for use in assigning him a Class I base. In each such year (the 12-month period of March through February), the average daily deliveries of the producer during the months of September through January would be used to establish his production history for that year. His 3-year production history base would be the simple average of his daily producer milk deliveries during the September-January period of each of the 3 years.

In addition to providing a method for each producer to share in the Class I milk of the market in relation to his marketing over a period of 3 years, the order must provide for the assignment of bases to producers with a production history of less than 3 years.

The Agricultural Act of 1970 provides that a new dairy farmer, upon becoming a producer under the order, will be assigned a base consistent with the supply and demand conditions on the market, the development of orderly and efficient marketing conditions and the interests of producers under the order, other dairy farmers and the consuming public. The Act further provides that bases so assigned shall, for a period of not more than 3 years, be reduced by not more than 20 percent.

In view of the current and anticipated supply-demand situation in the market, it is provided that the production history base of a new producer shall be reduced only for his first year on the market.

(d) *Initial production history.* Following the adoption of the base plan the market administrator will compute and assign a production history for each eligible producer. The production history for each producer will be computed on an average daily basis.

Producers delivering producer milk on not less than 100 days in the immediately preceding September-January period who have been delivering producer milk under the Georgia order continuously since September 1969 would be credited with their producer milk deliveries in the higher of the 2 prior years (September 1969-January 1970 or September 1970-January 1971) at the outset of this base plan. In computing an initial production history for such producers, each producer's milk deliveries in the higher of the two periods would be averaged with his average daily production during the period September 1971-January 1972.

Proponents proposed that if the Class I base plan were made effective in the fall of 1971, the initial production history to be used should be the average daily production of a producer during the period September 1969-January 1970, or September 1970-January 1971, whichever is

higher. Use of the alternative periods would afford relief to producers who had reduced production in the latter period. Even though the plan will not be made effective until March 1, 1972, producers should have the opportunity to use either period in conjunction with their production in the September 1971-January 1972, period in determining their initial production history. Use of the alternative periods should result in greatly reduced application for relief from hardship on the effective date of the plan.

Producers delivering producer milk on not less than 100 days during the September 1971-January 1972 period and no milk in the previous September-January periods would be assigned an initial production history base by the market administrator. Such production history base would be computed by multiplying his average daily deliveries during the 5-month period by 0.80.

A producer who delivered less than 100 days during the September-January period, but had delivered for at least 90 days on the effective date of the order would have a production history base equal to 80 percent of his deliveries during his first 3 months of delivery, adjusted to reflect the seasonality of production on the market.

Producers delivering producer milk for less than 90 days on the effective date of the base plan would have no initial production history. Such producers would be assigned a Class I base in accordance with the provisions applicable for new producers.

As earlier stated, initially a producer's production history base will be determined by dividing his deliveries during specified months in the representative period by two. Were this method applied to producers with a 1-year production history, the production history base of the producer would equal only 50 percent of his average deliveries during the months used in computing his production history base.

In view of the current and anticipated supply-demand situation in this market, however, producers with less than a 2-year production history should be assigned a larger production history base which would result from the above computation. The 80 percent figure adopted herein for use in the assignment of initial production history to a producer, both on the effective date of the order and on the occasion of subsequent updating of production history, will contribute to orderly and efficient marketing conditions. It will afford reasonable opportunity for the establishment of new production units, yet will not displace the market for established producers.

(e) *Annual update of production history.* Following the computation of an initial production history on the effective date of this base plan the market administrator would update the production history for each eligible producer on March 1 of each year thereafter.

The basic mathematical computation used to update the production history of

each eligible producer is made by the market administrator prior to March 1 each year. The computation involves dividing each producer's deliveries during the immediately preceding September-January period by the number of days represented by such deliveries or 145, whichever is greater.

Producers who were assigned an initial production history on the effective date of this base plan who continued to deliver to the Georgia market would have accumulated a 3-year production history on March 1, 1973. On that date, the market administrator would update the production history for such producers. This would be accomplished by computing the average daily delivery for each producer during the September 1972-January 1973 period. This quantity would be added to the producer's initial production history and the result would be divided by three. This figure would represent the 3-year production history for each producer for the next year under this base plan. This production history would be effective from March 1, 1973, through February 1974.

On March 1 of each year thereafter the average daily computation for the most recent September-January period would be added and the oldest data would be deleted in computing the 3-year rolling average production history for each producer.

A producer who had not been assigned a production history previously but who had delivered at least 90 days' production prior to March 1 would be assigned a production equal to his average daily deliveries during such period. The production history base assigned to such producer would be 80 percent of his production history. This initial allotment would be updated by including his average daily deliveries in two subsequent September-January periods until a 3-year rolling average production history is established for such producer. After a 3-year production history is established, the data for the most current September-January period would be added and the oldest deleted.

(f) *Factors to be considered in updating production history.* The basic factors to be considered in updating each producer's production history on March 1 each year are: (1) His average daily production during the most recent September-January period; and (2) his production history subject to adjustments for underdelivery, transfers, and hardship.

The Act of 1970 provides that a producer may retain his previously assigned production history even though he reduces his marketings, unless his marketings fall below the level of his Class I base.

In updating the production history of each producer with regard to underdelivery, these rules would be applicable. If a producer delivers an amount equal to his Class I base times the number of days in the months of September through January, his production history for the next year would not be reduced. If a producer delivers less than his daily

average Class I base during the most recent September-January period, then such producer's production history would be reduced in proportion to the amount his average daily Class I base exceeds his average daily delivery during the immediately preceding September through January.

In effect, a producer who is assigned a Class I base assumes the duty of supplying the market with a certain volume of milk. When he fails to deliver that amount it is fitting that his assigned share of the market be reduced by the amount of his underproduction. This is accomplished by reducing his production history base in proportion to his underdelivery of Class I base milk. Proponents proposed that the production history base be reduced by the amount that the producer underdelivered his base.

Since Class I bases are a percentage of a producer's production history, only by reducing his production history base in proportion to his underdelivery of base milk, will the producer receive a new Class I base on the same basis as all other producers on the market.

It is provided, however, that in no event shall a producer's production history base be reduced by more than 25 percent in any one year as a result of underdelivery. Proponents requested such a modification on the basis that a producer's deliveries could not fall below 25 percent of his base, except in the case of some catastrophe. Limiting production history reductions to 25 percent will limit the number of hardship claims which will be submitted for review by the hardship committee.

If a producer's average daily milk delivery increases during any September-January period to a production level above that from which his previous Class I base had been computed, the increased level would be credited towards an increase in production history.

Under the Class I base plan adopted herein, a producer could also modify his assigned production history through transfers. Thus, when a producer disposes of Class I base by transfer, he automatically transfers a proportionate amount of the production history associated with such Class I base. Accordingly, this amount of production history would be subtracted from that previously assigned to him in arriving at his updated production history. Similarly, production history associated with the acquisition of Class I base would be added to his assigned production history. Also, any adjustment for hardship or inequity would be accounted for in terms of a proportionate amount of production history. This recognizes that a producer's effective Class I base could change during the year due to transfers.

If an adjustment is necessary in a producer's production history and Class I base as a result of: (1) The acquisition or disposition of Class I base by transfer; or (2) the decision of the hardship committee, such producer's production history and Class I base would be updated immediately or as of the effective

date of the transfer or the hardship committee's action.

(g) *New producers.* The law requires that a base be assigned to a new producer who comes on the market because the nonpool plant to which he has been delivering milk becomes a fully regulated plant under the Georgia order. His production history and Class I base would be determined in the same manner as for a producer who had been on the market, depending on his average daily milk deliveries during the representative production history period. Such Class I base would be assigned to him effective on the date on which he becomes a producer under the Georgia order.

A Class I base would also be assigned to a producer who had been a producer-handler in the past. His production history and Class I base would be computed as if his milk production received at his plant had been delivered to a pool plant.

It is required under the law that a new producer who previously delivered to a nonpool plant and comes on the market as an individual (rather than because the plant to which he had been delivering becomes regulated) be assigned a base within 90 days after his first delivery under the order. Such a base would be assigned only to a producer marketing milk from the same production facilities from which he marketed milk during the representative period. Under the proposed Class I base plan, such a producer would be assigned to Class I base on the first day of the third pay period in which he began producer milk deliveries under the Georgia order. Then he would be assigned a production history and a Class I base computed from his deliveries to nonpool plants and to pool plants as if all such deliveries had been to a pool plant. For producer milk delivered in the period prior to such assignment of Class I base such a producer would receive only the Class II price.

Another category of new producers includes those who had not produced milk previously and have not acquired base by transfer.

Such new producers would be assigned base milk until a production history and Class I base can be established for such producers based on their deliveries in a subsequent September-January period. The effective date of the base assignment would vary depending upon the month in which such new producer enters the market.

Under the base plan, adopted herein, a new producer coming on the Georgia market during the September-January period when the milk is needed most because Class I sales are highest would be assigned Class I base milk immediately. A new producer coming on the market in other months when milk supplies have been more than adequate to meet fluid needs in the Georgia market would not be assigned Class I base milk until the third month of his delivery of producer milk. In the interim, such producer would receive a price reflecting the lowest use classification for all his producer milk deliveries.

A new producer making his first delivery of producer milk during the months of September through January, would be assigned Class I base milk in an amount equal to 50 percent of his producer milk deliveries each month.

A new producer coming on the market during the months of February through August would be assigned Class I base milk in an amount equal to 50 percent of his deliveries each month, effective the first day of the third pay period in which such producer delivers producer milk under the Georgia order.

This method of assigning base milk to new producers will encourage new production units to enter the market at a time when their milk will not contribute to a burdensome supply. Paying new producers for 50 percent of their milk as base milk will provide an incentive for such producers to come on the market and earn bases, rather than acquire base by transfer. This will tend to prevent bases from taking on an excessive value.

The Agricultural Act of 1970 requires that if any producer delivers a portion of his milk to plants not fully regulated by an order, his Class I base allocation should be reduced accordingly. Therefore, if a producer delivers a portion of his milk to a nonpool plant (except by diversion) during the month, he would receive no credit for base deliveries on the days on which milk was delivered to such nonpool plants. His base milk for the month would be computed by multiplying his Class I base by the number of days in the month on which his entire production was delivered as producer milk.

(h) *Allocation of Class I bases.* On the effective date of this base plan, the market administrator will compute a "Class I base" for each producer based on his initial production history. The production history for each producer will be adjusted by a ratio computed by dividing 115 percent of Class I sales in the 1971-72 September-January period by the sum of the production history assigned to all producers serving the Georgia market.

The proponent cooperative association proposed the assignment of 110 percent of the net Class I sales. However, a 10 percent reserve would not provide an adequate reserve supply to fulfill Class I needs in the market. Therefore, allocating Class I bases equal to 110 percent of Class I use would be insufficient to meet the changing day to day, weekend, and holiday supply-demand situations as well as the normal seasonal fluctuation associated with milk production.

The 115 percent figure adopted herein should provide an adequate supply to meet the fluid demand and provide the necessary reserve to allow for the changing supply-demand conditions.

This plan provides that the total of Class I bases to be assigned would be 115 percent of producer milk used in Class I by handlers in the market in the preceding period of September through January. The quantity of Class I milk used in this computation would include:

(1) Total producer milk disposed of as Class I by all regulated handlers during

the immediately preceding September-January period;

(2) Class I disposition of plants which were nonpool plants during part or all of the September-January period and which were pool plants in the second month preceding the effective date of the new plan; and

(3) The Class I disposition of persons who were producer-handlers during part or all of the September-January period, and in the second month preceding the effective date of the new plan have producer status.

The total of such Class I disposition during the September-January period would be multiplied by 115 percent and averaged on a daily basis. The resulting quantity would be prorated to the production history of individual producers. The quantity prorated to each producer will be his "Class I base."

For purposes of this proration, the relationship between Class I base and production history will be expressed as a percentage called the "Class I base percentage." The Class I base percentage would be computed by dividing the sum of the production history into the total Class I to be assigned, with the resulting ratio converted to a percentage by multiplying by 100 and rounding to the third decimal place.

Each year producers' Class I base will be updated to reflect changes in Class I sales and production history. The Class I milk quantity to be used for the updating would be that disposed of by regulated handlers in the preceding September-January together with the Class I milk of any former nonpool plant which became a pool plant and held pool plant status in January preceding the March 1 on which the new bases are to be computed. The Class I sales of former producer-handlers would likewise be included if such persons were producers in January preceding the March 1 date.

The law also provides that an order may include a provision to encourage seasonal adjustments in milk production. The base plan adopted herein would provide for a seasonal reduction of Class I bases in the summer months of June, July, and August. This reduction would reflect the decrease in the average daily Class I sales during the summer months relative to the average daily Class I sales in the other 9 months. The seasonal adjustment would encourage producers to increase production in the fall when Class I sales are highest and milk is needed and to decrease production in the summer when Class I sales are lowest and the milk supply is more than adequate to meet the fluid demand.

Thus, on March 1 of each year the market administrator would: (1) Update the production history for each producer; and (2) adjust the production history of each producer by a ratio reflecting the relationship between Class I sales and the total amount of production history allotted to producers under the Georgia order. For June, July, and August each assigned Class I base is reduced seasonally according to the relationship between Class I sales in June, July, and

August compared with Class I sales in the months of September through May on a daily average basis.

Following these three computations by the market administrator each producer would be assigned a share of the Class I sales in the Georgia market. The assigned base would be effective for 1 year from March 1 through February of the following year.

Using the most current data to make the base computation, it is estimated that for each 100 pounds of production history during the September-January period, a producer would receive a Class I base of approximately 90 pounds. This would be reduced to approximately 81 pounds for the months of June, July, and August.

(i) *Base transfers.*—(1) *The need for base transfers.* The Agricultural Act of 1970 provides that bases allocated to producers may be transferable under an order pursuant to the terms and conditions set forth in that order, including those which would prevent bases taking on an unreasonable value. Considered by proponent to be an important part of the base plan as adopted herein, the transfer provisions should be included in this order for several reasons.

Base transfers allow new producers to obtain base quickly and in a manner which would not dilute the base pool. This method promotes an orderly alternative to base building. Moreover, a producer can plan his production in accordance with his share of the Class I sales from the beginning of his dairy operation. A producer building base from his own production must develop a production history which would be in excess of his allotted Class I base. To reduce his production in accordance with his Class I base, a producer would have to reduce his operation, which, after possibly investing in expensive equipment, he would be reluctant to do. Acquiring a base by transfer, therefore, would help a producer adjust his production to his share of the market in a way which would be beneficial to him as well as to existing baseholders.

Providing for transfers of base also would help established producers to adjust the scale of their operations. An established producer could purchase Class I base to cover an increase in his milk production, thus avoiding the necessity of establishing a greater production history himself. A producer desiring to decrease the scale of his operation, perhaps as a result of ill health or a shortage of labor, would have opportunity to do so. In the absence of transfers, a producer may reluctantly continue production at the same level.

While base transfers would be permitted, the Act requires that bases should not take on an "unreasonable value." Several features of the plan adopted herein would keep bases from taking on an unreasonable value. The Class I base plan allows a new dairy farmer to establish a production history for himself and earn a full base over a 3-year period. Thus, the producer does not have to buy a base to assure the base price for a portion of his milk production. There is less incentive for a new producer to

buy base when he can earn one himself.

Similarly, an established producer may increase his Class I base by building up a greater production history through his own production. With the option of earning additional base himself, such producer will have less incentive to buy base under the Class I base plan.

(2) *The rules regarding base transfers.* Under the base plan, Class I bases established on producer milk deliveries for not less than 100 days in the preceding September-January period would be transferable. Allowing base transfers would facilitate adjustments by producers desiring to expand or contract their operations. In addition, transfers of base would provide producers an opportunity for more economical milk production and would contribute to the maintenance of an adequate supply of milk for the market. The following rules would be applicable to base transfers under the Class I base plan adopted herein.

A producer may transfer his base in its entirety or in multiples of 100 pounds. These limits are administratively practical and should be adequate.

The transfer of an entire base may be made effective as of the day on which the transfer takes place, if the market administrator receives an application for such transfer within 5 days of the transaction. Usually an entire base is transferred only in the case of death or the retirement of the producer. In the latter instance, the base transfer often is accompanied by a dispersal sale at which the herd and the base are disposed of simultaneously. When the entire herd is dispersed, the base of the selling producer should be transferable on the same date. However, if application for transfer is not made within the 5-day period, the transfer would become effective as of the first day of the following month.

Partial transfers of base, in 100-pound multiples, would be effective as of the first day of the month following that in which the application for transfer is made to the market administrator. An exception is made for the month of March because a producer does not know until March 5 of each year what his Class I base will be for the 12-month period beginning March 1.

A producer who finds that his established base exceeds his anticipated production for the year will be permitted to transfer that portion of his base in excess of his requirements to another producer effective as of March 1. For such transfer to become effective on March 1, the signed application for transfer must be received by the market administrator no later than March 15.

The dates on which notice of transfer must be filed with the market administrator are the same as those incorporated in the present seasonal base-excess plan. They are equally appropriate for the Class I base plan. The reasons for the adoption of these dates are set forth in the decision of the Assistant Secretary issued August 18, 1970 (35 F.R. 13454), which is officially noticed.

To further insure that there will be no month-to-month transfers between producers or between groups of producers to enhance unduly the returns of the producers who are parties thereto, no producer who has received base by transfer will be permitted to dispose of any base to another producer until 3 full months have elapsed. Similarly, no producer who has transferred base to another will be permitted to acquire additional base by transfer until 3 full months have elapsed. Such rules will not interfere with the acquisition of additional base by a producer who intends to increase his production on a long-term basis, nor will they adversely affect the producer who is reducing the size of his operation and desires to dispose of base in excess of his anticipated production.

In the case of jointly held bases, transfers of either the entire base or a portion thereof would be recognized only if the application for transfer is signed by each of the joint holders. In the case of bases held by estates or held in trust, the executor or trustee would have authority to sign an application for transfer of such base.

A base established by two or more persons, operating a dairy farm as joint owners or as a partnership, may be divided between the owners. Such division will be effective on the first day of the month following receipt of written notification by the market administrator indicating the agreed division and signed by each baseholder (joint owner, partner, heir, executor, or trustee).

The rules regarding base transfers discussed thus far in these findings are similar to the rules pertaining to base transfers with respect to the seasonal base-excess plan which is currently effective under the Georgia order. From an administrative point of view, these rules have worked well in the current Georgia order. Such rules would be equally applicable and effective for the Class I base plan adopted herein, and therefore should be continued.

In addition to the rules regarding base transfers, which have been discussed already, certain other conditions are necessary to discourage producers from selling their bases and earning new bases.

The base plan proposal provided that a producer transferring his entire base to another person would not be eligible to receive a base as a new producer for 3 years after the effective date of such transfer.

A producer who sells his entire base, and resumes production at a subsequent date, is not a new producer in the same sense as other nonbaseholding dairy farmers. Therefore, he need not be assigned a Class I base subject to the same terms and conditions as other dairy farmers who become producers for the first time under the order.

Obviously, a dairy farmer who disposes of his entire Class I base by transfer does so with the knowledge that he is thereby disposing of his privilege to receive returns for his milk at the minimum base

price under the order. He would be aware that under these circumstances he would be eligible to receive only the excess price as long as he has no base.

Normally, he would receive a payment in return for the sale of his base. If the payment so obtainable by sale is substantial, and the producer could get a new base assignment without delay, there would be a strong incentive for many producers to engage in milk production in large part for the returns to be obtained by the sale of Class I base. Such a situation would be contrary to the statutory requirement that bases should not take on an unreasonable value.

Thus, if a producer disposes of his entire Class I base by transfer, some time limitation on his reentry is justified. However, the 3-year restriction is unduly restrictive. It is, therefore, provided that a producer who disposes of his entire base by transfer and continues in production or subsequently resumes production will not be eligible to be assigned a base as a new producer for 1 year after the date on which such producer transferred his entire base. A similar situation and treatment should apply to a producer assigned a Class I base who ceases deliveries for a period and then returns at a later time.

The base plan proposal provided that a producer assigned a Class I base who failed to ship producer milk during the immediately preceding 12 months and has not transferred his base would forfeit such base and production history effective March 1. The 12-month period is excessive, however. Except for situations beyond his control (which are covered by the rules applicable to hardship) cessation of deliveries for as long as 90 days would indicate that a producer no longer intended to continue regular supply service to the market.

The Class I base plan should operate to encourage a steady and reliable supply for the market. It would not serve this purpose if a producer could, of his own free will, cease deliveries to the market for an extended period, and then return to the market with the privilege of receiving payment under the plan for Class I base milk in the same amount as before he left the market. Therefore, it is provided that if a producer ceases producer milk deliveries for more than 90 consecutive days under this base plan his assigned Class I base and production history will be forfeited.

There would be only one exception to this rule. A producer who enters the military service would retain his Class I base and the associated production history until 1 year after such person is released from active military service.

A time limitation on transferring base is another feature of this new Class I base plan. With the exception of intra-family transfers, Class I bases computed for producers established on deliveries of producer milk for less than 100 days during the preceding representative period, and bases computed for dairy farmers who become new producers after the effective date of this plan, may not be

transferred until 12 months after the effective date of the base assignment.

This provision will require a producer to demonstrate his ability and willingness to supply the market's needs regularly before becoming eligible to transfer base. All producers shipping to a non-pool plant which becomes a pool plant would be assigned a Class I base. Such a plant could get a short-term contract in the marketing area and lose it a short time later. However, if such producers are allowed to transfer their base immediately, the producers shipping to that nonpool plant which became pooled under the Georgia order for a short time could sell their allotted bases—thereby receiving a windfall gain—at the expense of other producers remaining on the market, since the total assigned Class I base would be unchanged but the Class I base percentage would be diluted.

A time limitation on transfer of base is needed for other types of producers also. In the absence of some limitation, a producer-handler could easily switch to producer status, be assigned a full Class I base, and then sell it. A 1-year time limitation on the transfer of base by a former producer-handler will prevent such windfalls at the expense of other producers. This 12-month waiting period would begin to run when the base is allotted to the producer-handler and would apply to any family member who receives this base via the intrafamily transfer provision.

The Class I base plan also should provide that a producer who desires to become a producer-handler must forfeit the maximum amount of Class I base and production history base held at any time during the preceding 12-month period before he can be designated a producer-handler. This provision is necessary to assure that such a person does not receive a windfall by having a Class I base available for transfer and simultaneously having exemption as producer-handler. This forfeiture should also be required if producer-handler designation is to be issued to any member of such a producer's family, any affiliate of such a producer, or any business unit of which such a producer is a part. This is necessary in order to prevent windfall benefits. The definition of producer-handler is modified, therefore, to reflect this requirement that a former producer must forfeit his base before attaining producer-handler status.

An intrafamily transfer involves the transfer of base from the baseholder to a member of his immediate family (including transfers to an estate and from an estate to a member of the family), provided that the transfer implements a continuous operation on the same farm with the same herd.

In instances where an intrafamily transfer has occurred under the present seasonal base-excess plan resulting in the maintenance of a continuing farm herd production unit, the operation shall be considered as one operation for establishing production history base under the new Class I base plan. Thus, the

production delivered by the transferor producer during base-earning periods prior to the effective date of the new Class I base plan is assumed to have been delivered by the transferee for use in computing a production history base under the new plan.

(j) *Provisions for alleviation of hardship and inequity.* The Agricultural Act of 1970 requires that provision be made for the alleviation of hardship and inequity among producers. Therefore, certain administrative guidelines should be established for review of hardship claims and the alleviation of hardship and inequities to producers under the Class I base plan adopted herein.

Certain provisions are included in the order to define circumstances for which a producer may apply for relief. A producer may apply for adjustment or alleviation of hardship or inequity if he feels his production history is not representative of his level of milk production because of conditions which are beyond his control (such as acts of God, disease, pesticide residue, and condemnation of milk). Conditions over which a producer could have exerted control through prudent precautionary measures are not cause for hardship adjustment. These conditions would include, for example, inability to obtain adequate labor or equipment failure during the representative base period.

The producer would be responsible for filing a written request for review of any hardship condition or inequity affecting him. Such request would be submitted to the market administrator for future review by the hardship committee. A claimed hardship or inequity would set forth the following: (1) Conditions that caused alleged hardship or inequity; (2) extent of relief or adjustment requested; (3) basis upon which the amount of adjustment requested was determined; and (4) reasons why the relief or adjustment should be granted. Such request must be filed within 45 days of the date on which Class I bases are issued, or of the occurrence to which it is related.

The market administrator would establish one or more "Producer Base Committees". A committee would consist of five producers appointed by the market administrator. The committee would review the requests for relief from hardship or inequity referred to it by the market administrator in a meeting called by the market administrator. The market administrator, or his designated representative, would be the recording secretary at such meeting. The committee decision must be endorsed by at least three of the five members to represent a committee quorum.

Producer Base Committee recommendations to deny any request would be final upon notification of the producer, subject only to appeal by such producer to the Director, Dairy Division within 45 days thereafter. Recommendations of the committee to grant a request, in whole or in part, would be transmitted to the Director, Dairy Division, and

would become final unless vetoed by the Director within 15 days after transmitted.

The market administrator is authorized to reimburse committee members for their services at \$30 per day, and for necessary travel and subsistence expenses incurred in carrying out their duties as committee members. Reimbursement to committee members would be from monies collected under the administrative expense fund.

At the hearing, a proprietary handler witness objected to financing the operations of the Producer Base Committee on monies collected in the Administrative Fund. In his brief, an attorney, representing six fluid milk processors regulated by the Georgia order, also objected to the use of administrative fund monies to pay for expenses associated with the function of the Producer Base Committee.

However, the monies collected in the administrative fund are to pay for the necessary expenses incurred in the administration of the order. The statute expressly requires that provision be made for the relief of hardship and inequity among producers. It has been concluded that the review of petitions for such relief can be handled most effectively by a committee of producers. Hence, the expense associated with the operation of a Producer Base Committee is one incurred in the performance of an appropriate and necessary function of the order. Therefore, the order should provide that the necessary expenses incurred by the Producer Base Committee be paid from monies collected pursuant to the administrative assessment.

(k) *Ruling on objections.* At the hearing a witness for the proponent cooperative association declined to answer certain questions on cross examination. The Hearing Examiner upon being requested to compel the witness to answer these questions ruled that he was without authority to compel this testimony. We affirm the ruling of the Hearing Examiner which has been further challenged in a brief filed in behalf of six proprietary handlers.

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 are supplementary and in addition to the findings and determinations previously made in connection

with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations 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.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Georgia marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. In § 1007.10 the introductory text is revised and a new paragraph (c) is added to read as follows:

§ 1007.10 Pool plant.

"Pool plant" means a plant specified in paragraph (a), (b), or (c) of this section that is not an other order plant, a producer handler plant, or an exempt distributing plant.

(c) For the purpose of qualifying a supply plant under paragraph (b) of this section, a cooperative association supplying pool distributing plants during the month at least two-thirds of the producer milk of its members (including both milk delivered directly from their farms and that transferred from the supply plant(s) of the cooperative) may count (irrespective of other requirements of § 1007.13(d)) as shipments from the plant to pool distributing plants the milk delivered to pool distributing plants under § 1007.13(d); in the event the cooperative operates more than one supply plant, all such deliveries shall

be assigned, for this purpose, to the supply plant nearest Atlanta, Ga.

2. In § 1007.14, a new paragraph (e) is added to read as follows:

§ 1007.14 Producer-handler.

(e) If such person had been a producer to whom a Class I base had been assigned pursuant to § 1007.114, has forfeited such Class I base in accordance with the requirement of § 1007.116(c).

§§ 1007.22, 1007.23 [Revoked]

20. Revoke §§ 1007.22 and 1007.23.

3. Revise § 1007.61a to read as follows:

§ 1007.61a Computation of uniform prices for base milk and excess milk.

The market administrator shall compute uniform prices for base milk and excess milk each month as follows:

(a) Determine the aggregate amount of producer milk in each class included in the computation pursuant to § 1007.61 and the hundredweight of such milk that is base milk and that is excess milk;

(b) Determine the value of the total hundredweight of milk of producers specified in § 1007.114 (c) and (d) to whom no base milk has been assigned by multiplying such volume by the Class II price;

(c) Determine the total value of excess milk by assigning such milk in series beginning with Class II to the hundredweight of milk in each class as determined pursuant to paragraph (a) of this section, multiplying the quantities so assigned by the respective class prices and adding together the resulting amounts;

(d) Divide the total value of excess milk in paragraph (c) of this section by the total hundredweight of such milk. The quotient, rounded to the nearest cent, shall be the uniform price for excess milk;

(e) Multiply the total hundredweight of excess milk by the uniform price for excess milk computed pursuant to paragraph (c) of this section;

(f) Multiply the hundredweight of milk specified in § 1007.61(e)(2) by the uniform price for the month;

(g) Subtract the total values arrived at in paragraphs (b), (e), and (f) of this section from the amount resulting from the computations pursuant to paragraphs (a) through (e) of § 1007.61; and

(h) Divide the amount obtained in paragraph (g) of this section by the total hundredweight of base milk determined in paragraph (a) of this section and subtract not less than 4 nor more than 5 cents per hundredweight. The resulting figure rounded to the nearest cent, shall be the uniform price for base milk.

4. In § 1007.70 paragraph (a)(2) is revised and a new paragraph (a)(3) is added to read as follows:

§ 1007.70 Time and method of payment.

(a) * * *

(2) On or before the 15th day of each month at not less than the applicable uniform prices for the quantities of base

milk and excess milk received adjusted by the butterfat differential computed pursuant to § 1007.71, and in the case of base milk by the location differential computed pursuant to § 1007.72, subject to the following:

(i) Less payments made pursuant to subparagraph (1) of this paragraph;

(ii) Less proper deductions authorized by such producer; and

(iii) If by such date such handler has not received full payment from the market administrator pursuant to § 1007.75 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator; and

(3) On or before the 15th day of the month at not less than the Class II price adjusted by the butterfat differential computed pursuant to § 1007.71 for the quantity of milk received from producers described in § 1007.114 (c) and (d) for whom no base milk has been computed.

5. The centerhead immediately preceding § 1007.110 and §§ 1007.110, 1007.111, and 1007.112 are revoked and a new centerhead and new §§ 1007.110 through 1007.117 are substituted therefor.

CLASS I BASE PLAN

§ 1007.110 Definition of terms relating to the Class I base plan.

For purposes of determination and assignment of the Class I base of each producer the following terms are defined:

(a) "Production history" means the average daily marketings of a producer during the production history period used for the determination of bases or the future updating of bases.

(b) "Production history base" means a quantity of milk in pounds per day as computed pursuant to § 1007.111.

(c) "Production history period" means the days or months to be used for the computation of the production history base of a producer.

(d) "Average daily producer milk deliveries" of any producer in any specified period used for computing a production history base means the total pounds of producer milk delivered by the producer divided by the number of days' production represented by such deliveries: *Provided*, That for any September-January period, the divisor shall be the actual days of production, or 145 whichever is greater.

(e) "Class I base" means a quantity of milk in pounds per day computed pursuant to § 1007.114 for which a producer may receive the base milk price.

(f) "Base milk" means:

(1) Milk received from a producer which is not in excess of his Class I base multiplied by the number of days of production of producer milk delivered during the month; and

(2) Milk received from a producer to whom no Class I base has been issued in

PROPOSED RULE MAKING

the amount determined for such producer pursuant to § 1004.114 (c) and (d).

(g) "Excess milk" means milk received in excess of base milk from a producer who is delivering base milk during such month.

§ 1007.111 Computation of production history base.

A "production history base" shall be determined by the market administrator for each producer eligible for such base on the effective date of this provision and on March 1 of each year thereafter. The computation of production history base shall be subject to adjustments due to acquisition or disposition by transfer of Class I base or other modifications of Class I base due to hardship or loss of Class I base because of underdelivery of base. For purposes of computation of his production history base, a producer shall be considered as having been on the market during any specified period if: As a producer he delivered milk of his own production during the designated period without interruption sufficient to cause forfeiture of base pursuant to § 1007.116(a); and during such period (after the effective date of this provision) did not dispose of all his Class I base by transfer. The production history base for each producer on the effective date of this provision shall be determined by the market administrator as follows:

(a) The market administrator shall determine for each producer who delivered at least 100 days' production in each of the preceding periods of September 1970-January 1971 and September 1971-January 1972 an initial production history base adding such producer's average daily producer milk deliveries during the period, September 1971-January 1972, to his average daily producer milk deliveries in September 1969-January 1970, or September 1970-January 1971, whichever is higher and dividing the sum thereof by two.

(b) For producers who delivered milk on not less than 100 days in the period, September 1971-January 1972, but who delivered for less than 100 days during the period, September 1970-January 1971, but for at least 90 days prior to March 1, 1971, the market administrator shall determine a production history base by computing such producer's average daily deliveries during the months in which milk was delivered prior to March 1, 1971, multiplying the resulting figure by .80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September-January period by the average daily deliveries per producer during the same months used for such producers, adding this amount to the producer's average daily producer milk deliveries during the period September 1971-January 1972 and dividing the sum thereof by two.

(c) For producers who delivered milk on not less than 100 days during the period September 1971-January 1972 and who delivered for less than 90 days prior to March 1, 1971, the market administrator shall determine a produc-

tion history base by multiplying such producer's average daily producer milk deliveries during such period by .80.

(d) For producers who delivered milk on less than 100 days during the period September 1971-January 1972, but at least 90 days prior to March 1, 1972, the market administrator shall determine a production history base by multiplying such producer's average daily producer milk deliveries during the months in which milk was delivered prior to March 1, 1972, by .80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September-January period by the average daily producer milk deliveries during the same months used for such producer.

(e) Producers who have delivered milk for less than 90 days on the effective date of this order shall have no initial production history base but shall be assigned a history of production in accordance with the provisions applicable for new producers.

(f) For each producer not subject to § 1007.114(d) who became a producer for this market subsequent to September 1, 1970, because the plant to which he regularly delivered milk became a fully regulated plant pursuant to this order, a production history base shall be determined, if possible pursuant to paragraphs (a), (b), and (c) of this section based on his deliveries of milk as if the nonpool plant to which he delivered had been a pool plant during the representative period.

(g) A producer not described in paragraph (e) of this section who delivered milk to a nonpool plant prior to becoming a producer, and who is not subject to the provisions of § 1007.114 (c) and (d) shall have a production history base determined on his average daily producer milk deliveries to the nonpool plant.

(h) For a producer who held producer-handler status at any time subsequent to September 1, 1970, a production history base shall be calculated as prescribed in paragraph (a) of this section as if the milk of his own production received at his producer-handler plant had been received at a pool plant.

(i) With respect to the computation of production history base pursuant to this section, the following rules shall apply:

(1) If a producer operated more than one farm at the same time, a separate computation shall be made with respect to the average daily producer milk deliveries from each farm except that only one computation shall be made with respect to milk production resources and facilities of a producer-handler.

(2) Only one production history base shall be allowed with respect to milk produced by one or more persons where the land, buildings, and equipment are jointly used, owned or operated.

§ 1007.112 Updating of production history bases.

The production history base for each producer who has neither disposed of his entire base by transfer nor forfeited his base pursuant to § 1007.116(a) or after

having disposed of his entire base by transfer or forfeiture, has met the delivery requirements prescribed in § 1007.113 shall be determined by the market administrator on March 1 of each year as follows:

(a) Effective March 1, 1973, the market administrator shall update the production history base for each producer as follows:

(1) For a producer who is assigned an initial history of production pursuant to § 1007.111 (a) or (b) on the effective date of this order, add the average daily milk deliveries of such producer during the period September 1972 through January 1973 to the production history bases computed for such producer on the effective date of this order and divide the result by three: *Provided*, That if during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: *And provided further*, That if during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period but in no event, shall such producer's production history base be reduced by more than 25 percent.

(2) For a producer who is assigned an initial history of production pursuant to § 1007.111 (c) or (d) on the effective date of this order, add the average daily milk deliveries of such producer during the period September 1972 through January 1973 to the production history bases computed for such producer on the effective date of this order and divide the result by two: *Provided*, That if during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: *And provided further*, That if during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period but in no event, shall such producer's production history base be reduced by more than 25 percent.

(3) For producers who had not previously been assigned a production history base, a history of production shall be determined by calculating such producer's average daily producer milk deliveries during the period September 1972 through January 1973 and multiplying the result by 0.80.

(b) Effective March 1, 1974, and on March 1 of each year thereafter the market administrator shall update the history of production for each producer as follows:

(1) For producers who have a production history base covering 3 or more years, the market administrator shall compute the average daily producer milk deliveries for such producer during the immediately preceding period of September through January and shall add such figure to the average daily producer milk deliveries of the preceding two years and divide the result by three: *Provided*, That if during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: *And provided further*, That if during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(2) For a producer who had a production history base for the two most recent periods, determine the average producer milk deliveries during the immediately preceding period September through January. Add the resulting amount to the production history base determined for each of the two most recent periods and divide the result by three: *Provided*, That if during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: *And provided further*, That if during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(3) For a producer who had a production history base for 1 year, the market administrator shall determine his average daily producer milk deliveries during the immediately preceding period of September through January and add such amount to the producer's previous production history base and divide the result by two: *Provided*, That if during the immediately preceding period of September through January a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history

base shall not be reduced: *And provided further*, That if during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(4) For producers who have not previously been assigned a production history base, the market administrator shall assign a production history equal to such producer's average daily producer milk deliveries during the immediately preceding period of September through January and multiply the result by 0.80; and

(5) On March 1 of each year of which this plan is in effect, the market administrator shall determine a production history base for producers who delivered milk for less than 100 days in the immediately preceding period of September through January but who delivered milk for at least 90 days prior to March 1 by determining such producers average daily producer milk deliveries during the first 3 months in which the producer delivered milk to the market, multiplying the result by 0.80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September-January period by the average daily deliveries per producer during the same months used for such producer.

§ 1007.113 New producers.

The market administrator shall determine a history of production for each producer for whom a production history base was not determined pursuant to § 1007.111 as follows:

(a) Any producer who during the immediately preceding September through January period delivered his milk to a nonpool plant which became a pool plant shall be assigned a history of production on the same basis as other producers under the order as though the deliveries to the nonpool plant had been deliveries to a pool plant.

(b) Effective on the first day of the third pay period in which his milk is delivered to a pool plant a producer who delivered milk to a nonpool plant prior to the effective date of this order shall be assigned a production history base on the same basis as if he had been a producer under the order and his deliveries to the nonpool plant had been deliveries to a pool plant provided that in no event shall the production history base exceed the amount of milk actually delivered by such producer under this order.

(c) A producer who delivered no milk to a nonpool plant or who delivered milk to a pool plant for less than 90 days prior to the effective date of this order and who has not acquired a history of production

by transfer shall be assigned Class I base milk pursuant to the provisions of § 1007.114(c).

§ 1007.114 Computation of Class I base or base milk for each producer.

On the effective date of this provision and on March 1 of each subsequent year the market administrator shall assign a Class I base to each producer who has a production history base. Class I bases shall be assigned to producers described in § 1007.113 when they are issued production history bases. Class I bases shall be computed as follows:

(a) Compute a "Class I base percentage" as follows:

(1) Determine the sum of Class I dispositions during the preceding period of September through January:

(i) Class I producer milk pursuant to § 1007.45(c),

(ii) The Class I disposition of plants during the period when they were non-pool plants, if such plants were pool plants in the preceding January, and

(iii) The Class I disposition of his own production of a person who was a producer-handler during a portion of the year and who held producer status in the preceding January.

Multiply the sum by 1.15 and divide the result by 153:

(2) Divide the quantity computed pursuant to subparagraph (1) of this paragraph by a quantity which is the total of production history bases computed pursuant to § 1007.111 or § 1007.112, whichever is applicable. The result shall be converted to a percentage by multiplying by 100 and rounding to the third decimal place. Such percentage shall be known as the "Class I base percentage."

(b) The Class I base of each producer with a production history base shall be determined by multiplying his production history base by the "Class I base percentage." For each of the months of June, July, and August the Class I base so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the preceding months of September through May.

(c) A producer, other than a producer pursuant to paragraph (d) of this section, who has no production history base shall be assigned base milk each month until the first March 1 on which he is eligible for a Class I base in an amount equal to 50 percent of his average daily deliveries of producer milk in such month multiplied by the number of days' production delivered by such producer during the month (1) effective with his first delivery of producer milk if he begins deliveries in the months of September through January, and (2) effective on the first day of the third month of delivery if he begins deliveries in the months of February through August.

(d) (1) A producer who, after having forfeited or disposed of all of his Class

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I base, either continues as a producer on the market or discontinues deliveries to the market and returns to the market as a producer, shall be assigned base milk equal to 50 percent of his average daily deliveries of producer milk in such month multiplied by the number of days' production delivered by such producer during the month, such assignment to be effective on the later of the following dates: the first day of the third month after the month in which he recommences deliveries of producer milk on the market, or the first day of the twelfth month after the month in which a producer who forfeits his base ceases deliveries or a producer disposes of his Class I base. The production history period of such producer shall begin on the later of the following dates: The date on which he first received payment for base milk or the first day of the first month eligible for use in a production history period pursuant to § 1007.113.

(2) In the application of this provision, use of the same production facilities by another person (or the same person under a different name) to produce milk after the above described forfeiture or transfer of base shall be considered as a continuation of the operation by the previous operator if the new operator is a member of the immediate family of the previous operator. It shall be applied also to any production facility to which a Class I base has not been assigned, wherever located, operated by a person in which the producer who forfeited or transferred his base has a financial interest if such facility commences production on or after the effective date of the transfer or forfeiture, or such producer acquired his financial interest in such person later than 3 months prior to the effective date of the base transfer or forfeiture.

§ 1007.115 Transfer of bases.

Production history and Class I base may be transferred pursuant to the following rules and conditions:

(a) A transfer of base means the transfer of both the production history base and the Class I base associated with it at the time of transfer. The percentage of Class I base transferred shall be applied to the total production history base held at the time of transfer to determine the corresponding amount of production history transferred.

(b) The market administrator must be notified in writing by the holder of Class I base of the name of the person to whom the Class I base is to be transferred, the effective date of the transfer, and the amount of base to be transferred. Application for transfer must be made to the market administrator on forms approved by the market administrator and signed by the base holder(s), his heirs, executor, or trustee and by the person to whom such base is to be transferred.

(c) A transfer of an entire base may be made effective on any day of the month if application for such transfer is filed with the market administrator

within 5 days thereafter. Otherwise, such transfer shall be effective on the first day of the month following that in which application is made.

(d) A transfer of a portion of a base shall be effective the first day of the month following that in which application for which such transfer is made to the market administrator, except that a portion of a base may be transferred to be effective on March 1 of any year if application for such transfer is filed with the market administrator no later than March 15.

(e) A producer who has received base by transfer on or after March 1 of any year may not transfer any portion of the base for 3 full months following the effective date of such transfer.

(f) A producer who has transferred base on or after March 1 of any year may not receive additional base by transfer for 3 full months from the effective date of such transfer.

(g) A base which is jointly held or in a partnership may be transferred in part or in its entirety only upon application signed by each joint holder or partner, his heirs, executors, or trustee and by the person to whom such base is to be transferred.

(h) A base which has been established by two or more persons operating a dairy farm jointly or as a partnership may be divided among the joint holders or partners if written notification of the agreed division of base signed by each joint holder or partner, his heirs, executor, or trustee, is received by the market administrator prior to the first day of the month on which such division is to be effective.

(i) It must be established to the satisfaction of the market administrator that the conveyance of such base is bona fide and not for the purpose of evading any provision of this order, and comes within the remaining provisions of this section.

(j) A transfer may be made only to a producer (a person who is currently a producer on the market or who will become a producer under the terms of the order by the last day of the month of transfer).

(k) In the case of an intrafamily transfer (including transfers to an estate and from an estate to a member of the immediate family) all restrictions on transferring base applicable to the transferor producer shall also apply to the transferee.

(l) A producer who receives a base pursuant to § 1007.111 (e) or (f) may not transfer such base, other than pursuant to paragraph (k) of this section, for 1 year from the date of receipt.

(m) A producer-handler who becomes a producer and receives a base may not transfer that base for a period of 1 year from the date of receipt, except to a member of the immediate family pursuant to paragraph (k) of this section.

(n) A base which has been computed from less than a full production history period may not be transferred, except as an intrafamily transfer pursuant to paragraph (k) of this section.

(o) If a base is held by a corporation, a change in ownership of the stock which transfers control to a new person or persons other than a member of the immediate family of the person transferring such stock will require a transfer of bases and compliance with all base rules therein.

§ 1007.116 Miscellaneous base rules.

The following base rules shall be observed in the determination of bases:

(a) A person who discontinues delivery of producer milk for a period of 90 consecutive days after a Class I base is issued to him shall forfeit his production history, together with any Class I base and production history base held pursuant to the provisions of this order, except that a person entering the military service may retain them until 1 year after being released from active military service.

(b) As soon as production history bases and Class I bases are computed by the market administrator, notice of the amount of each producer's production history base and Class I base shall be given by the market administrator to the producer, to the handler receiving such producer's milk, and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place in his plant a list or lists showing the Class I base of each producer whose milk is received at such plant.

(c) As a condition for designation as a producer-handler pursuant to § 1007.14, any person (including any member of the immediate family of such a person, any affiliate of such a person, or any business of which such a person is a part) who has held Class I base any time during the 12-month period prior to such designation shall forfeit the maximum amount of Class I and production history base held at any time during such 12-month period.

§ 1007.117 Hardship provisions.

Requests of producers for relief from hardship or inequity arising under the provisions of §§ 1007.111 through 1007.116 will be subject to the following:

(a) After bases are first issued under this plan and after bases are issued on each succeeding March 1, a producer may request review of the following circumstances because of alleged hardship or inequity:

(1) He was not issued a Class I base;

(2) His production history base is not appropriate because of unusual conditions during the base-earning period such as loss of buildings, herds, or other facilities by fire, flood or storms, official quarantine, disease, pesticide residue, condemnation of milk, or military service of the producer or his son;

(3) Loss or potential loss of Class I base pursuant to § 1007.116(a);

(4) Loss or potential loss of Class I base because of underdeliveries pursuant to § 1007.112; and

(5) Inability to transfer base due to the provisions of § 1007.115 (l), (m), and (n).

(b) The producer shall file with the market administrator a request in writing for review of hardship or inequity not later than 45 days after notice pursuant to § 1007.116 with respect to requests pursuant to paragraph (a) (1) or (2) of this section, or not later than 45 days after the occurrence with respect to request pursuant to paragraph (a) (3), (4), or (5) of this section, setting forth:

- (1) Conditions that caused the alleged hardship or inequity;
- (2) The extent of the relief or adjustment requested;
- (3) The basis upon which the amount of adjustment requested was determined; and
- (4) Reasons why the relief or adjustment should be granted.

(c) One or more Producer Base Committees shall be established and function as follows:

(1) Each Producer Base Committee shall consist of five producers appointed by the market administrator.

(2) Each committee shall review the requests for relief from hardship or inequity referred to it by the market administrator at a meeting in which the market administrator or his representative serves as recording secretary and at which the applicant may appear in person if he so requests.

(3) Recommendations with respect to each such request shall be endorsed at the meeting by at least three committee members and shall:

(i) With respect to requests pursuant to paragraph (a) (1), (3), (4), or (5) of this section, grant or adjust production history bases and average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of Class I base, restore forfeited base or reduced average daily producer milk deliveries where appropriate, and permit transfer of base not otherwise possible under the order provisions.

(ii) With respect to requests pursuant to paragraph (a) (2) of this section, either reject the request or provide adjustment in the form of additional production history base and average daily producer milk deliveries for prior years where it appears appropriate and the effective date thereof of such adjustment. In considering such requests the loss of milk production due to the following shall not be considered a basis for hardship adjustment:

(a) Loss of milk due to mechanical failure of farm tank or other farm equipment; and

(b) Inability to obtain adequate labor to maintain milk production, except that hardship adjustment may be granted in the case of a producer or the son of a producer who entered into military service directly from employment in milk production;

(4) Recommendation of the Producer Base Committee shall:

(i) If to deny the request, be final upon notification to the producer, subject only to appeal by the producer to the Director, Dairy Division, within 45 days after such notification; or

(ii) If to grant the request in whole or in part, be transmitted to the Director, Dairy Division, and shall become final unless vetoed by such Director within 15 days after transmitted.

(5) Committee members shall be reimbursed by the market administrator from the funds collected under § 1007.77 for their services at \$30 per day or portion thereof, plus necessary travel and subsistence expenses incurred in the performance of their duties as committee members.

(d) The market administrator shall maintain files of all requests for alleviation of hardship and the disposition of such requests. These files shall be open to the inspection of any interested person during the regular office hours of the market administrator.

Signed at Washington, D.C., on September 8, 1971.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.71-13487 Filed 9-13-71; 8:48 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 135]

[Docket No. 11376; Notice 71-25]

HELICOPTER EMERGENCY LANDING AREAS

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending § 135.89 of the Federal Aviation Regulations to require that helicopters have adequate areas available during takeoff or landing to allow an emergency landing to be made without undue hazard to passengers or to persons or property on the surface.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20591. All communications received on or before November 15, 1971, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket, for examination by interested persons.

Section 135.89 prohibits air taxi helicopter operations unless areas are available which allow an emergency landing to be made without undue hazard to passengers or to persons or property on the ground. Certain Part 135 helicopter

operators have objected to that section for the reason that it appears to restrict the flight of helicopters over rocky, swampy, forested, or mountainous areas more so than in the case of airplanes operated under that part. As a consequence they consider the regulation to be impracticable and unduly restrictive.

A review of the material issued prior to the adoption of § 135.89 indicates that there is no intention to provide that the availability of emergency landing areas must be continuous. Furthermore, to require emergency landing areas to be continuously available is impracticable for Part 135 helicopter operations. For these reasons, it appears that § 135.89 as presently stated is overly broad, and is not representative of the intent of the agency in the safety regulation of Part 135 helicopter operations.

Therefore, it is proposed to amend § 135.89 to require emergency landing areas to be available during approaches to landings and during takeoffs. Complementary consideration of available landing areas during the en route phase of flight would continue to be governed by § 91.79 (a) and (d), which specifies en route minimum altitudes and excepts altitudes necessary for takeoffs and landings from the minimum altitude rules.

The proposed amendment would not apply to the operation of helicopters certificated under the Transport Category A provisions of Part 29 of the Federal Aviation Regulations because of the demonstrated capability they have for safely operating with one engine inoperative.

In consideration of the foregoing, it is proposed to amend § 135.89 of the Federal Aviation Regulations to read as follows:

§ 135.89 Helicopter operations: emergency landing areas.

No person may takeoff or land a helicopter that is not certificated under the Transport Category A provisions of Part 29 of this chapter, unless areas are available from any point necessary for that takeoff or landing to allow an emergency landing to be made without undue hazard to passengers or to persons or property on the surface. For the purposes of this section, areas such as school yards, parking lots, recreation areas, highways, shopping centers, and public docks are not considered available areas for possible emergency use when they are occupied by persons or vehicles unless there are unoccupied parts thereof that are large enough to allow a landing without that hazard.

This amendment is proposed under the authority of sections 313(a) and 601 (a) of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1421(a)), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 3, 1971.

R. S. SLIFF,
Acting Director,
Flight Standards Service.

[FR Doc.71-13484 Filed 9-13-71; 8:47 am]

APPENDIX IV

(g) No provisions of this section shall supersede the restrictions or prohibitions on limes under the Plant Quarantine Act of 1912.

(h) Nothing contained in this section shall be deemed to preclude any importer from reconditioning prior to importation any shipment of limes for the purpose of making it eligible for importation.

(i) The terms used herein relating to grade and diameter shall have the same meaning as when used in the U.S. Standards for Persian (Tahiti) Limes (§§ 51.1000-51.1016 of this title). Importation means release from custody of the U.S. Bureau of Customs.

(j) Lime Regulation 4 (35 F.R. 17107 36 F.R. 7002) is hereby terminated at the effective time hereof.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective time of this regulation beyond that herein-after specified (5 U.S.C. 553) in that (a) the requirements of this import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), which makes such regulation mandatory; (b) such regulation imposes the same restrictions as are being made applicable to domestic shipments of limes under Lime Regulations 30 (§ 911.332), which becomes effective June 7, 1971; (c) compliance with this import regulation will not require any special preparation which cannot be completed by the effective time hereof; (d) notice hereof in excess of three days, the minimum that is prescribed by section 3e, is given with respect to such regulation; and (e) such notice is hereby determined under the circumstances, to be reasonable.

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

Dated May 27, 1971, to become effective June 7, 1971.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable
Division, Consumer and Mar-
keting Service.

[FR Doc.71-7731 Filed 6-2-71;8:52 am]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Orders Nos. 90, 98, 103, 104, 106, 121, 130]

MILK IN CHATTANOOGA, TENN., AND CERTAIN OTHER MARKETING AREAS
Order Suspending Certain Provisions

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), with respect to the orders regulating the handling of milk in the Chattanooga, Tenn.; Nashville, Tenn.; Mississippi;

Red River Valley; and Oklahoma Metropolitan marketing areas. This order does not suspend any provision of the orders regulating the handling of milk in the South Texas and Corpus Christi marketing areas.

Notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 7318) concerning a proposed suspension of certain provisions of the seven above-named orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that pending public hearing procedure on proposed revisions of the order in this respect, the following provisions of the orders do not tend to effectuate the declared policy of the Act:

PART 1090—MILK IN CHATTANOOGA, TENN., MARKETING AREA

1. In § 1090.11, paragraph (b)(1).
2. In § 1090.74(a), the word "pool" wherever appearing.

PART 1098—MILK IN NASHVILLE, TENN., MARKETING AREA

1. In § 1098.11, paragraph (c).
2. In § 1098.53(a) the word "pool" preceding the word "plant."
3. In § 1098.83(b), the word "pool" wherever appearing.

PART 1103—MILK IN MISSISSIPPI MARKETING AREA

1. In § 1103.11, paragraph (c).
2. In § 1103.15, in the introductory text, "Provided, That milk diverted in accordance with the provisions of said paragraph shall be deemed to have been received by the diverting handler at the location of the pool plant from which it was diverted and:"
3. In § 1103.53(a) the word "pool" preceding the word "plant."
4. In § 1103.92(a), the word "pool" wherever appearing.

PART 1104—MILK IN RED RIVER VALLEY MARKETING AREA

1. In § 1104.52(a) the word "pool" preceding the word "plant."
2. In § 1104.63, paragraphs (b) and (c).
3. In § 1104.63(d) the words "during the months of September through December."
4. In § 1104.74, the word "pool" preceding the word "plant."

PART 1106—MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

1. In § 1106.9, paragraph (c).
2. In § 1106.11, the portion of paragraph (c) which reads: "which owns or

operates a plant described in § 1106.9(c)."

3. In § 1106.12, the words appearing in the second sentence "and milk so diverted shall be deemed to have been received at the pool plant from which diverted for the purpose of determining location differentials pursuant to § 1106.81."

4. In § 1106.53(a) the word "pool" which precedes the word "plant."

5. In § 1106.81(a), the word "pool" in both instances where it precedes the word "plant."

Statement of consideration. This order suspends (1) from the Oklahoma Metropolitan, Nashville, and Mississippi orders the provisions under which cooperative associations may designate for pool plant status plants they operate without any requirement to ship milk therefrom to the market; (2) from the Oklahoma Metropolitan, Red River Valley, Nashville, Mississippi, and Chattanooga orders the provisions that provide that the pricing point for producer milk diverted from the market is the plant from which it is diverted; and (3) from the Red River Valley order the provision which allows unlimited diversion during certain months of the year.

Basically, a Federal milk order is designed to establish minimum prices to be paid to milk producers in order to insure an adequate quantity of pure and wholesome milk for a marketing area. It accomplishes this end by establishing orderly marketing conditions by classifying and pricing milk according to its use and by providing an equitable pooling of the returns among all producers for the market to provide a uniform return to all producers in the form of a uniform blend price. The types of provisions included in the various orders differ depending on the marketing conditions involved and were included in the order to assure that equity is created in the pooling of the milk of all producers. As marketing conditions change then also provisions in the orders need to be changed.

Some supplies of milk normally associated with the milk market are not needed to meet the daily fluid milk requirements of milk distributors. This is the result of daily, weekly, and seasonal fluctuation of milk supplies and milk sales. The cooperative in many markets receives at its plant much of this reserve supply not needed by the milk handlers at any particular time. This is normally called "balancing the supply" for the market. To allow the cooperative association to perform this function and at the same time guarantee its members delivering this reserve milk a market at going market prices automatic pooling status to certain cooperative milk plants as well as the privilege of the cooperative to divert milk at marketing area prices, were provided in the orders because only by that means under the marketing conditions prevailing at that time could equity between members and nonmembers of cooperatives be assured. Adequate provision was also made by other terms

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of the order for the pooling of any additional milk supplies which might actually be needed in the market.

It is now found that the automatic cooperative pool plant provisions and the provisions for the payment of the f.o.b. market prices on diverted milk are being used as the means of pooling substantial quantities of milk not previously a part of the market's supply and which in fact are not actually needed or shipped to the market.

This has been accomplished by the cooperatives shipping milk from distant sources for as little as 1 day to their plants having automatic pooling status. The milk thereafter was shipped directly from the farm to the nonpool plant from which it originated near the source of production. It was utilized in that nonpool plant for manufacturing purposes before being pooled and now continues to be used at that plant for manufacturing purposes. Nevertheless, the cooperative draws out of the pool the f.o.b. market blend price for such milk because the five orders, which are the subject of suspension action herein, provide that diverted milk is presumed to be received, for pricing purposes, at the marketing area pool plant from which it is diverted rather than the nonpool plant where it is actually received. The automatic pool plant and diverted milk pricing provisions, used together, provide the economic incentive for large quantities of milk delivered at plants in distant areas to be pooled in these orders, although not needed, without actually any milk being shipped to the market.

For example, under such provisions in the Oklahoma Metropolitan order such milk has been pooled because of as little as 1 day's delivery to a cooperative's marketing area plant having automatic pool plant status and then "diverted" to the manufacturing plant with which it had previously been associated. The milk, because it is used for manufacturing, is accounted for in the pool at the lower Class II price. As a result the average or "blend" price for all milk in the Oklahoma Metropolitan pool has been reduced. The blend price was reduced further because the milk was credited to the cooperative at the f.o.b. Oklahoma price instead of at the lower price applicable to the location of the plant at which it was actually delivered.

The situation in March 1971 is an example of how this is accomplished. Some of the distant milk supplies thus pooled in the Oklahoma market were produced and normally utilized for manufacture in central Wisconsin. The Oklahoma f.o.b. market blend price of \$5.62 per hundredweight is the price for that milk at which the cooperative is given credit in the Oklahoma pool. The Chicago blend price in the central Wisconsin area for milk being delivered to Chicago, and which can be considered a competitive price in that area, was \$5.07 per hundredweight. If this milk had actually been shipped to Oklahoma the cost of shipment would have more than offset this difference of 55 cents. But the milk was not actually shipped; therefore,

the cooperative did not have this cost. The cooperative, under the terms of the Act, is not required to pay the minimum price to its members and needed to pay only approximately the competitive price in the central Wisconsin area. Therefore, it had the advantage of approximately all of the 55 cents difference in price. The pooling of this milk and other distant milk reduced the Oklahoma blend price in March 1971 about 45 cents per hundredweight. The producer who was not a member of the cooperative received this announced price (\$5.62 per hundredweight) exclusive of any premium which his handler might have paid him. The cooperative, on the other hand, paid its member producers delivering directly to Oklahoma more than \$5.62, and this was accomplished without additional cost to the cooperative. The exact amount is difficult to determine because the cooperative pays on a base and excess plan.

Somewhat the same kind of pooling of distant and unshipped milk supplies is taking place under the Nashville and Mississippi orders with essentially the same results on the blend prices to producers in those orders. As in Oklahoma, after limited delivery to the market, the distant milk is not shipped to the marketing area but is retained in its originating area and continues to be used for manufacturing products.

Essentially the same effect was also accomplished in the Red River Valley market by the use of the provision which provides for unlimited diversion of producer milk for the months of January through August. Again, this provision was included in the order to provide the local cooperative with a means to perform the market's balancing functions. This provision is now being used to pool additional and unneeded supplies with as little as 1 day's shipment to the marketing area and then diverting the milk to plants not shipping any milk to the Red River Valley market.

It is to be noted that these five orders make adequate provision for pooling any additional milk supplies needed to supply the market's fluid needs. The provisions herein suspended are not needed for this purpose as other provisions in the orders are still available if additional supplies are required in the markets. Moreover, with today's changed marketing conditions, particularly the regionalization of cooperatives and their reblending of proceeds from the sale of milk over wide areas, the cooperatives will still be able to continue to perform the markets' balancing functions.

The above pooling practices are not limited to the examples cited but involve varying periods of time and varying quantities of milk in each of the five subject markets. The potential for their continuation would extend indefinitely unless the subject orders are modified.

It is hereby found and determined necessary, by reason of the fact that the actions previously referred to are permissible under the provisions to be suspended herein, that prompt suspension action to be taken to provide, to the extent possible by this means, relief from the adverse effects resulting from

the manner in which these provisions are presently being used. It is concluded from the data, views, and argument submitted and other available information that this suspension action will not interfere unduly with the marketing arrangements of cooperatives or the handling of normal market requirements for milk in the markets affected. Similar action will be taken in any other market or markets if and when circumstances warrant.

Action is reserved with respect to the provisions of the Corpus Christi and South Texas orders proposed to be suspended in the notice issued April 13, 1971, by the Deputy Administrator, Regulatory Programs, Consumer and Marketing Service (36 F.R. 7318). Although some additional milk supplies have been added to these markets, the shifting of supplies here may involve basically a supply adjustment to equalize the burden of the reserve milk supplies among these and other nearby markets. Similarly, no suspension action is now taken with respect to a similar provision in the Chattanooga order. Suspension action as to these orders can be reconsidered as may be necessary at a future time.

Data, views, and arguments were invited from interested parties. Suspension of these provisions from the specified orders was opposed by the regional cooperatives operating in the several markets. These cooperatives submitted few facts, data, or views with respect to conditions in the markets in question, but rather mainly raised questions of a general nature with respect to the marketing order program, contending that the provisions proposed for suspension are not significantly different from corresponding provisions in many other Federal orders where no suspension action is being considered at this time. The cooperatives also allege that any revision of these order provisions should result from formal amendatory hearing procedure. On the other hand suspension was favored in submissions by producers and handlers who asserted substantial injury by reason of conditions in their markets.

Notice has been issued to all interested parties in such markets inviting proposals for consideration at public hearings to amend the orders in relation to the milk handling problems involved here. Hearing proposals may be filed by June 1, 1971. A hearing is contemplated soon after these proposals are received.

No action need be taken to suspend a provision of the Nashville order (Part 1098) inadvertently appearing in the notice of proposed suspension or termination and reading as follows:

1. In § 1098.7 "Milk so diverted shall be deemed to have been received at the pool plant from which diverted if for the account of the handler operating such pool plant or at a pool plant at the location of the pool plant from which diverted if for the account of a cooperative association."

Such language was deleted previously by amendment action dated August 25, 1970, and published in FEDERAL REGISTER August 29, 1970 (35 F.R. 13784).

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

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing areas by providing prompt relief from the adverse effects upon producer prices pending amendment hearings;

(b) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date; and

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

Therefore, good cause exists for making this order effective June 15, 1971.

It is therefore ordered, That the aforesaid provisions of the orders are hereby suspended beginning June 15, 1971, for an indefinite period.

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

Effective date: June 15, 1971.

Signed at Washington, D.C., on May 28, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71-7730 Filed 6-2-71;8:52 am]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1971. Crop Oat Supp.]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1971 Crop Oat Loan and Purchase Program

Correction

In F.R. Doc. 71-7016 appearing at page 9236 in the issue for Friday, May 21, 1971, the following changes should be made in § 1421.274(a):

1. The Idaho county listed as "Booner" should read "Bonner".

2. The rate per bushel for Howell County, Mo., now reading "\$0.58", should read "\$0.62".

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Y]

PART 222—BANK HOLDING COMPANIES

Nonbanking Activities of Bank Holding Companies

By notice of proposed rule making published in the FEDERAL REGISTER on

January 29, 1971 (36 F.R. 1430), the Board of Governors proposed to implement its regulatory authority under section 4(c) (8) of the Bank Holding Company Act to permit holding companies to engage directly or through a subsidiary in activities that are "so closely related to banking or managing or controlling banks as to be a proper incident thereto." A hearing was held before members of the Board on April 14, 1971, regarding all issues raised by the proposals, except the extent to which data processing and insurance agency activities are closely related to banking.

Following consideration of the comments received and the record of the hearing, as its initial implementation of its authority under section 4(c) (8) of the Act as revised by the 1970 amendments to the Act, the Board has amended § 222.4 (a), (b), and (c) of Regulation Y to read as set forth below, effective June 15, 1971. (Former paragraphs (b) and (c) were nonsubstantive.) An accompanying interpretation expresses the Board's views on several questions that arose during the course of its consideration of this matter.

§ 222.4 Nonbanking activities.

(a) *Activities closely related to banking or managing or controlling banks.* In accordance with the procedures set forth in paragraphs (b) and (c) of this section, any bank holding company may engage, or retain or acquire an interest in a company that engages, solely in one or more of the activities specified below, including such incidental activities as are necessary to carry on the activities so specified. Any bank holding company that is of the opinion that other activities in the circumstances surrounding a particular case are closely related to banking or managing or controlling banks may file an application in accordance with the procedures set forth in paragraph (b) (2) of this section. As to such an application, the Board will publish in the FEDERAL REGISTER a notice of opportunity for hearing only if it believes that there is a reasonable basis for the holding company's opinion. The following activities have been determined by the Board to be so closely related to banking or managing or controlling banks as to be a proper incident thereto:

(1) Making or acquiring, for its own account or for the account of others, loans and other extensions of credit (including issuing letters of credit and accepting drafts), such as would be made, for example, by a mortgage, finance, credit card, or factoring company;¹

(2) Operating as an industrial bank, Morris Plan bank, or industrial loan company, in the manner authorized by State law so long as the institution does not both accept demand deposits and make commercial loans;

(3) Servicing loans and other extensions of credit for any person;

¹ Operating a savings and loan association is not regarded by the Board as within the description of this activity. Whether to propose expanding activity (2) to include operating that type of financial institution is under consideration by the Board.

(4) Performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company (including activities of a fiduciary, agency, or custodian nature), in the manner authorized by State law so long as the institution does not both accept demand deposits and make commercial loans;²

(5) Acting as investment or financial adviser, including (i) serving as the advisory company for a mortgage or a real estate investment trust and (ii) furnishing economic or financial information;³

(6) Leasing personal property and equipment, or acting as agent, broker, or adviser in leasing of such property, where at the inception of the initial lease the expectation is that the effect of the transaction and reasonably anticipated future transactions with the same lessee as to the same property will be to compensate the lessor for not less than the lessor's full investment in the property;

(7) Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas.⁴

(b) (1) *De novo entry.* A bank holding company may engage de novo (or continue to engage in an activity earlier commenced de novo) directly or indirectly, solely in activities described in paragraph (a) of this section, 45 days after the company has furnished its Reserve Bank with a copy of a notice of the proposal (in substantially the same form as F.R. Y-4A) published within the preceding 30 days in a newspaper of general circulation in the communities to be served, unless the company is notified to the contrary within that time or unless it is permitted to consummate the transaction at an earlier date on the basis of exigent circumstances of a particular case. If adverse comments of a substantive nature are received by the Reserve Bank within 30 days after the company has so published its proposal,⁴ or if it otherwise appears appropriate in a particular case, the Reserve Bank may inform the company that (i) the proposal shall not be consummated until specifically authorized by the Reserve Bank or by the Board or (ii) the proposal should

² Acting as investment adviser to an open-end investment company or as a management consultant is not regarded by the Board as within the description of this activity. Whether to propose expanding activity (5) to include acting in either or both of those capacities is under consideration by the Board.

³ Investing in an industrial development corporation is not regarded by the Board as within the description of this activity. Whether to propose adding that and other activities to the list is under consideration.

⁴ If a Reserve Bank decides that adverse comments are not of a substantive nature, the person submitting the comments may request review by the Board of that decision in accordance with the provisions of § 265.3 of the Board's Rules Regarding Delegation of Authority (12 CFR 265.3) by filing a petition for review with the Secretary of the Board.

APPENDIX V

Appendix V
Dean Foods Company
FMMO #5 & #7
Docket No. AO-388-A17 and AO-366-A46; D-05-06
Amended Proposals

Proposal #4 – Regulate transportation credits based on non-distributing plant deliverers.

1. Amend Sec. 1005.82 by:
 - (a) Revising paragraph (d)(2)(v);
 - (b) Adding a new paragraph (d)(2)(vi);
 - (c) Revising paragraph (d)(3)(vii); and
 - (d) Adding a new paragraph (d)(3)(viii).

Sec. 1005.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(v) Divide Z% (~~currently believed to be close to 30%, may provide evidence for a higher or lower number~~)¹ by the percent of producer milk delivered to plants other than plants qualified pursuant to Sec. 1005.7(a) and (b) and Sec. 1007.7(a) and (b) of this chapter²; if the result is 100% or greater, then the percentage applicable in paragraph (d)(2)(vi) of this section shall be 100%.

(vi) Compute the result of multiplying the remainder computed in paragraph (d)(2)(iv) of this section by the percentage computed in paragraph (d)(2)(v) of this section and by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) * * *

(vii) Divide Z% (~~currently believed to be close to 30%, may provide evidence for a higher or lower number~~)³ by the percent of producer milk delivered to plants other than plants qualified pursuant to Sec. 1005.7(a) and (b) and Sec. 1007.7(a) and (b) of

¹ This change was presented in Exhibit 37 and testified to by Mr. Kinser Tr. 1/12/2006 page 61 line 9 – 13. The change was simply a deletion of the extra language provided in the original request.

² This language is unnecessary and is being deleted.

³ This change was presented in Exhibit 37 and testified to by Mr. Kinser Tr. 1/12/2006 page 61 line 13 – 16. The change was simply a deletion of the extra language provided in the original request.

this chapter⁴; if the result is 100% or greater, then the percentage applicable in paragraph (d)(3)(viii) of this section shall be 100%.

(viii) Compute the result of multiplying the remainder computed in paragraph (d)(3)(vi) of this section by the percentage computed in paragraph (d)(3)(vii) and by the hundredweight of milk described in paragraph (d)(3) of this section.

2. Amend Sec. 1007.82 by:

- (a) Revising paragraph (d)(2)(v);
- (b) Adding a new paragraph (d)(2)(vi);
- (c) Revising paragraph (d)(3)(vii); and
- (d) Adding a new paragraph (d)(3)(viii).

Sec. 1007.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(v) Divide ~~Z% (currently believed to be close to 30%, may provide evidence for a higher or lower number)~~⁵ by the percent of producer milk delivered to plants other than plants qualified pursuant to Sec. 1005.7(a) and (b) and Sec. 1007.7(a) and (b) of this chapter⁷; if the result is 100% or greater, then the percentage applicable in paragraph (d)(2)(vi) of this section shall be 100%.

(vi) Compute the result of multiplying the remainder computed in paragraph (d)(2)(iv) of this section by the percentage computed in paragraph (d)(2)(v) of this section and by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) * * *

(vii) Divide ~~Z% (currently believed to be close to 30%, may provide evidence for a higher or lower number)~~⁸ by the percent of producer milk delivered to plants other than plants qualified pursuant to Sec. 1005.7(a) and (b) ~~of this chapter~~⁹ and Sec.

⁴ This language is unnecessary and is being deleted.

⁵ This change was presented in Exhibit 37 and testified to by Mr. Kinser Tr. 1/12/2006 page 61 line 16 – 18. The change was simply a deletion of the extra language provided in the original request.

⁶ Testified to by Mr. Kinser Tr. 1/12/2006 page 75 line 1 – Page 75 line 18. This was an oversight in the original proposal. All along the intent was that both FMMO #5 and FMMO #7 distributing plants (a) and (b) be considered in the calculation.

⁷ This language is unnecessary and is being deleted.

⁸ This change was presented in Exhibit 37 and testified to by Mr. Kinser Tr. 1/12/2006 page 61 line 18 – 20. The change was simply a deletion of the extra language provided in the original request.

⁹ This language is unnecessary and is being deleted.

1007.7(a) and (b); if the result is 100% or greater, then the percentage applicable in paragraph (d)(3)(viii) of this section shall be 100%.

(viii) Compute the result of multiplying the remainder computed in paragraph (d)(3)(vi) of this section by the percentage computed in paragraph (d)(3)(vii) and by the hundredweight of milk described in paragraph (d)(3) of this section.

Proposal #5 – Out of Area zone out pricing

1. Revise Sec. 1005.13(d)(6) to read as follows:

Sec. 1005.13 Producer milk.

* * * * *

(d) * * *

(6) Milk diverted to plants located in the marketing area described in 7 CFR parts 1005 and 1007, shall be priced at the location of the plant to which diverted; milk diverted to plants located outside the marketing area or received and classified as other than Class I by supply plants (that qualify as supply plants on or after February 1, 2006) located outside the marketing area¹⁰ described in either Sec. Sec. 1005.2 or 1007.2, shall be priced at the lower of A)¹¹ the location of the closest pool distributing plant county¹² located in the either¹³ marketing area less an adjustment calculated by multiplying Ψ (currently believe this to be close to 4.0, but may provide evidence for a higher or lower number)¹⁴ cents per cwt. for each 10 miles or fraction thereof (by the shortest hard surface highway as computed by the market administrator) between the plant to which

¹⁰ This change is being presented consistent with the brief to address the point that was made by Mr. Sims with Exhibit 45. Mr. Sims testified to in Tr. 1/12/2006 page 235 line 1 – page 237 line 5. The purpose of this change is to prevent handlers from creating a pool plant outside the marketing area to circumvent the impact of this proposal.

¹¹ This change was presented in Exhibit 37 and testified to by Mr. Kinser Tr. 1/12/2006 page 65 line 1 – 3. This in connection with Footnote 17 prevents this zone-out provision from raising the price to a plant located outside the marketing area.

¹² There was concern by Mr. Shad's in his testimony that a change in plant status could cause the price at a plant receiving diversions (Tr. 1/12/2006 page 211 line 24 – page 213 line 4). Consistent with our brief, this change would lock the location adjustment, unless there would a change in the counties in the marketing area. Further this would make it slightly closer for some plants than the calculation prepared for this exhibits use at the hearing, but we do not believe any of those changes to have a material effect on the effectiveness of this proposal.

¹³ This change was presented by Mr. Kinser (Tr. 1/12/2006 page 165 line 9 – page 166 line 3). This change is to ensure there is no confusion that of the purpose of this proposal and this proposal alone the marketing areas of 1005.2 and 1007.2 would be looked at in common. As testified to by Mr. Kinser (Tr. 1/12/2006 page 47 line 7 – line 20) Dean Foods continues to believe the orders should not be merged in fact they should be broken down into smaller orders.

¹⁴ This change was presented in Exhibit 37 and testified to by Mr. Kinser Tr. 1/12/2006 page 65 line 4 – 6. The change was simply a deletion of the extra language provided in the original request. While Dean Foods has proposed and supports 4 cents, if the secretary agrees with Proposal #3, Dean Foods believes it will prudent for the Secretary to use the same adjusted transportation credit rate in this price calculation. (TR 1/12/2006 Page 92 line 1 – 12)

the milk was diverted and the closest pool distributing plant county seat¹⁵ located in the either¹⁶ marketing area, or B) the location of the plant to which diverted¹⁷; and
* * * * *

2. Revise Sec. 1005.75 to read as follows:

Sec. 1005.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk: Except milk diverted to plants located outside the marketing area or received and classified as other than Class I by supply plants (that qualify as supply plants on or after February 1, 2006) located outside the marketing area described in either Sec. Sec. 1005.2 or 1007.2 ~~of this chapter~~¹⁸, a plant location adjustment shall be determined by subtracting the Class I price specified in Sec. 1005.51 from the Class I price at the plant's location; for milk diverted to plants located outside the marketing area described in either Sec. Sec. 1005.2 or 1007.2 ~~of this chapter~~¹⁹, a plant location adjustment shall be determined by subtracting the Class I price specified in Sec. 1005.51 from the result of the formula found in Sec. 1005.13(d)(6) for such milk. The difference, plus or minus as the case may be, shall be used to adjust the payments require pursuant to Sec. Sec. 1005.73 and 1000.76.

1. Revise Sec. 1007.13(d)(6) to read as follows:

Sec. 1007.13 Producer milk.

* * * * *

(d) * * *

(6) Milk diverted to plants located in the marketing area described in 7 CFR parts 1005 and 1007, shall be priced at the location of the plant to which diverted; milk diverted to plants located outside the marketing area or received and classified as other than Class I by supply plants (that qualify as supply plants on or after February 1, 2006) located outside the marketing area²⁰ described in either Sec. Sec. 1005.2 or 1007.2, shall be priced at the lower of A)²¹ the location of the closest pool distributing plant county²² located in the either²³ marketing area less an adjustment calculated by multiplying ¥

¹⁵ This change is consistent with Footnote 12.

¹⁶ This change is consistent with Footnote 13.

¹⁷ This change was presented in Exhibit 37 and testified to by Mr. Kinser Tr. 1/12/2006 page 65 line 6 – 9. See Footnote 11.

¹⁸ This language is unnecessary and is being deleted.

¹⁹ This language is unnecessary and is being deleted.

²⁰ This change is being presented consistent with the brief to address the point that was made by Mr. Sims with Exhibit 45. Mr. Sims testified to in Tr. 1/12/2006 page 235 line 1 – page 237 line 5. The purpose of this change is to prevent handlers from creating a pool plant outside the marketing area to circumvent the impact of this proposal.

²¹ This change was presented in Exhibit 37 and testified to by Mr. Kinser Tr. 1/12/2006 page 65 line 9 – 14. This in connection with Footnote 27 prevents this zone-out provision from raising the price to a plant located outside the marketing area.

²² Same as Footnote 12 only this applies to FMMO #7.

²³ Same as Footnote 13 only this applies to FMMO #7

(currently believe this to be close to 4.0, but may provide evidence for a higher or lower number)²⁴ cents per cwt. for each 10 miles or fraction thereof (by the shortest hard surface highway as computed by the market administrator) between the plant to which the milk was diverted and the closest ~~pool distributing plant~~county seat²⁵ located in the either²⁶ marketing area, or B) the location of the plant to which diverted²⁷; and
* * * * *

2. Revise Sec. 1007.75 to read as follows:

Sec. 1007.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk: Except for milk diverted to plants located outside the marketing area described in Sec. Sec. 1005.2 and 1007.2, a plant location adjustment shall be determined by subtracting the Class I price specified in Sec. 1007.51 from the Class I price at the plant's location; for milk diverted to plants located outside the marketing area described in either Sec. Sec. 1005.2 ~~of this chapter~~²⁸ or 1007.2, a plant location adjustment shall be determined by subtracting the Class I price specified in Sec. 1007.51 from the result of the formula found in Sec. 1007.13(d)(6) for such milk. The difference, plus or minus as the case may be, shall be used to adjust the payments require pursuant to Sec. Sec. 1007.73 and 1000.76.

²⁴ This change was presented in Exhibit 37 and testified to by Mr. Kinser Tr. 1/12/2006 page 65 line 15 – 20. The change was simply a deletion of the extra language provided in the original request. While Dean Foods has proposed and supports 4 cents, if the secretary agrees with Proposal #3, Dean Foods believes it will prudent for the Secretary to use the same adjusted transportation credit rate in this price calculation. (TR 1/12/2006 Page 92 line 1 – 12)

²⁵ Same as Footnote 12 only this applies to FMMO #7.

²⁶ Same as Footnote 13 only this applies to FMMO #7.

²⁷ This change was presented in Exhibit 37, but Mr. Kinser neglected to enter it into the transcript. See Footnote 21.

²⁸ This language is unnecessary and is being deleted.

Appendix V
Dean Foods Company
FMMO #5 & #7
Docket No. AO-388-A17 and AO-366-A46; D-05-06
Amended Proposals

Proposal #4 – Regulate transportation credits based on non-distributing plant deliverers.

1. Amend Sec. 1005.82 by:
- (a) Revising paragraph (d)(2)(v);
 - (b) Adding a new paragraph (d)(2)(vi);
 - (c) Revising paragraph (d)(3)(vii); and
 - (d) Adding a new paragraph (d)(3)(viii).

Sec. 1005.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(v) Divide 30% by the percent of producer milk delivered to plants other than plants qualified pursuant to Sec. 1005.7(a) and (b) and Sec. 1007.7(a) and (b); if the result is 100% or greater, then the percentage applicable in paragraph (d)(2)(vi) of this section shall be 100%.

(vi) Compute the result of multiplying the remainder computed in paragraph (d)(2)(iv) of this section by the percentage computed in paragraph (d)(2)(v) of this section and by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) * * *

(vii) Divide 30% by the percent of producer milk delivered to plants other than plants qualified pursuant to Sec. 1005.7(a) and (b) and Sec. 1007.7(a) and (b); if the result is 100% or greater, then the percentage applicable in paragraph (d)(3)(viii) of this section shall be 100%.

(viii) Compute the result of multiplying the remainder computed in paragraph (d)(3)(vi) of this section by the percentage computed in paragraph (d)(3)(vii) and by the hundredweight of milk described in paragraph (d)(3) of this section.

2. Amend Sec. 1007.82 by:
- (a) Revising paragraph (d)(2)(v);
 - (b) Adding a new paragraph (d)(2)(vi);
 - (c) Revising paragraph (d)(3)(vii); and
 - (d) Adding a new paragraph (d)(3)(viii).

Sec. 1007.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(v) Divide 30% by the percent of producer milk delivered to plants other than plants qualified pursuant to Sec. 1005.7(a) and (b) and Sec. 1007.7(a) and (b); if the result is 100% or greater, then the percentage applicable in paragraph (d)(2)(vi) of this section shall be 100%.

(vi) Compute the result of multiplying the remainder computed in paragraph (d)(2)(iv) of this section by the percentage computed in paragraph (d)(2)(v) of this section and by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) * * *

(vii) Divide 30% by the percent of producer milk delivered to plants other than plants qualified pursuant to Sec. 1005.7(a) and (b) and Sec. 1007.7(a) and (b); if the result is 100% or greater, then the percentage applicable in paragraph (d)(3)(viii) of this section shall be 100%.

(viii) Compute the result of multiplying the remainder computed in paragraph (d)(3)(vi) of this section by the percentage computed in paragraph (d)(3)(vii) and by the hundredweight of milk described in paragraph (d)(3) of this section.

Proposal #5 – Out of Area zone out pricing

1. Revise Sec. 1005.13(d)(6) to read as follows:

Sec. 1005.13 Producer milk.

* * * * *

(d) * * *

(6) Milk diverted to plants located in the marketing area described in 7 CFR parts 1005 and 1007, shall be priced at the location of the plant to which diverted; milk diverted to

plants located outside the marketing area or received and classified as other than Class I by supply plants (that qualify as supply plants on or after February 1, 2006) located outside the marketing area described in either Sec. Sec. 1005.2 or 1007.2, shall be priced at the lower of A) the location of the closest county located in either marketing area less an adjustment calculated by multiplying 4.0 cents per cwt. for each 10 miles or fraction thereof (by the shortest hard surface highway as computed by the market administrator) between the plant to which the milk was diverted and the closest county seat located in either marketing area, or B) the location of the plant to which diverted; and

* * * * *

2. Revise Sec. 1005.75 to read as follows:

Sec. 1005.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk: Except milk diverted to plants located outside the marketing area or received and classified as other than Class I by supply plants (that qualify as supply plants on or after February 1, 2006) located outside the marketing area described in either Sec. Sec. 1005.2 or 1007.2, a plant location adjustment shall be determined by subtracting the Class I price specified in Sec. 1005.51 from the Class I price at the plant's location; for milk diverted to plants located outside the marketing area described in either Sec. Sec. 1005.2 or 1007.2, a plant location adjustment shall be determined by subtracting the Class I price specified in Sec. 1005.51 from the result of the formula found in Sec. 1005.13(d)(6) for such milk. The difference, plus or minus as the case may be, shall be used to adjust the payments require pursuant to Sec. Sec. 1005.73 and 1000.76.

1. Revise Sec. 1007.13(d)(6) to read as follows:

Sec. 1007.13 Producer milk.

* * * * *

(d) * * *

(6) Milk diverted to plants located in the marketing area described in 7 CFR parts 1005 and 1007, shall be priced at the location of the plant to which diverted; milk diverted to plants located outside the marketing area or received and classified as other than Class I by supply plants (that qualify as supply plants on or after February 1, 2006) located outside the marketing area described in either Sec. Sec. 1005.2 or 1007.2, shall be priced at the lower of A) the location of the closest county located in either marketing area less an adjustment calculated by multiplying 4.0 cents per cwt. for each 10 miles or fraction thereof (by the shortest hard surface highway as computed by the market administrator) between the plant to which the milk was diverted and the closest county seat located in either marketing area, or B) the location of the plant to which diverted; and

* * * * *

2. Revise Sec. 1007.75 to read as follows:

Sec. 1007.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk: Except for milk diverted to plants located outside the marketing area described in Sec. Sec. 1005.2 and 1007.2, a plant location adjustment shall be determined by subtracting the Class I price specified in Sec. 1007.51 from the Class I price at the plant's location; for milk diverted to plants located outside the marketing area described in either Sec. Sec. 1005.2 or 1007.2, a plant location adjustment shall be determined by subtracting the Class I price specified in Sec. 1007.51 from the result of the formula found in Sec. 1007.13(d)(6) for such milk. The difference, plus or minus as the case may be, shall be used to adjust the payments require pursuant to Sec. Sec. 1007.73 and 1000.76.

APPENDIX VI

Monthly Transportation Credit Fund Balance Assuming 0.42 cent Mileage Rate, \$0.15 per cwt Assessment and Implementation of Proposal 4
 Appalachian Marketing Area - Federal Order 5
 January 2004 - November 2005

Appendix VI

Month/Year	Actual Assessment	Actual Credits Requested	Actual Credits Paid	Prorata Percentage	Beginning Balance	Impact of 0.42 cent Mileage Rate, \$0.15 Assessment and Proposal 4		Ending Balance
						Assessment at \$0.095	Total Credits Requested Proposal 4	
Jan. 2004	\$255,554.31				\$7,687.18	\$589,740.72	\$479,719.73	\$597,427.90
Feb. 2004	\$225,033.25				\$597,427.90	\$519,307.50	\$889,870.57	\$1,116,735.40
Mar. 2004	\$247,738.69				\$1,116,735.40	\$571,704.67	\$1,023,886.09	\$1,688,440.06
Apr. 2004	\$239,319.21				\$1,688,440.06	\$552,275.10	\$738,683.69	\$2,240,715.16
May 2004	\$215,589.08				\$2,240,715.16	\$497,513.26	\$738,683.69	\$2,738,228.43
Jun. 2004	\$216,674.45				\$2,738,228.43	\$500,017.96	\$738,683.69	\$3,238,246.39
Jul. 2004	\$226,917.85	\$442,064.57	\$442,064.57	100.0%	\$3,238,246.39	\$523,656.58	\$738,683.69	\$3,282,183.24
Aug. 2004	\$238,228.51	\$763,396.13	\$763,396.13	100.0%	\$3,282,183.24	\$549,758.10	\$738,683.69	\$2,942,070.77
Sep. 2004	\$235,912.01	\$844,675.40	\$844,675.40	100.0%	\$2,942,070.77	\$544,412.33	\$738,683.69	\$2,462,597.01
Oct. 2004	\$229,372.77	\$617,341.61	\$617,341.61	40.6%	\$2,462,597.01	\$529,321.78	\$733,304.13	\$2,253,235.10
Nov. 2004	\$239,669.92	\$621,133.97	\$242,118.04	39.0%	\$2,253,235.10	\$553,084.43	\$693,944.04	\$2,073,015.40
Dec. 2004	\$240,928.43	\$556,701.59	\$238,240.69	42.8%	\$2,073,015.40	\$555,988.68	\$693,944.04	\$1,935,060.04
Annual 2004	\$2,810,938.48	\$3,845,313.27	\$2,781,012.17	72.3%	\$7,687.18	\$6,486,781.11	\$4,559,408.25	\$0.00
Jan. 2005	\$240,221.63				\$1,935,060.04	\$554,357.61	\$489,259.92	\$2,489,417.64
Feb. 2005	\$214,388.21				\$2,489,417.64	\$494,742.02	\$489,259.92	\$2,984,159.67
Mar. 2005	\$244,895.76				\$2,984,159.67	\$565,144.06	\$489,259.92	\$3,549,303.73
Apr. 2005	\$233,372.57				\$3,549,303.73	\$538,552.08	\$489,259.92	\$4,087,855.81
May 2005	\$224,323.32				\$4,087,855.81	\$517,689.20	\$489,259.92	\$4,605,525.01
Jun. 2005	\$217,878.29				\$4,605,525.01	\$502,796.05	\$489,259.92	\$5,108,321.07
Jul. 2005	\$216,258.26	\$463,173.69	\$463,173.69	100.0%	\$5,108,321.07	\$499,057.52	\$489,259.92	\$5,118,118.67
Aug. 2005	\$227,881.93	\$759,457.64	\$759,457.64	100.0%	\$5,118,118.67	\$525,881.37	\$489,259.92	\$4,761,890.83
Sep. 2005	\$219,603.69	\$915,087.20	\$819,564.45	89.6%	\$4,761,890.83	\$506,777.75	\$489,259.92	\$4,249,951.41
Oct. 2005	\$221,342.21	\$688,480.53	\$210,493.42	30.6%	\$4,249,951.41	\$510,789.72	\$489,259.92	\$3,964,058.57
Nov. 2005	\$337,795.27	\$586,710.11	\$340,038.99	58.0%	\$3,964,058.57	\$533,360.95	\$489,259.92	\$3,839,899.11
Dec. 2005								
Annual 2005	\$2,597,961.14	\$3,412,909.17	\$2,592,728.19	76.0%	\$1,935,060.04	\$5,749,128.33	\$3,844,289.26	\$0.00

T/ Does not reflect any possible interest or audit adjustments

Monthly Transportation Credit Fund Balance Assuming 0.44 cent Mileage Rate, Current \$0.15 per cwt Assessment and Implementation of Proposal 4
 Appalachia Marketing Area - Federal Order 5
 January 2004 - November 2005

Month/Year	Actual Assessment	Actual Credits Requested	Actual Credits Paid	Prorata Percentage	Beginning Balance	Impact of 0.44 cent Mileage Rate \$0.15 Assessment and Proposal 4		Prorata Percentage	Ending Balance
						Assessment at \$0.095	Total Credits Requested Proposal 4		
Jan. 2004	\$255,554.31				\$7,687.18	\$589,740.72	\$514,427.15	100.0%	\$597,427.90
Feb. 2004	\$225,033.25				\$597,427.90	\$519,307.50	\$951,738.26	100.0%	\$1,116,735.40
Mar. 2004	\$247,738.69				\$1,116,735.40	\$571,704.67	\$1,094,191.69	100.0%	\$1,688,440.06
Apr. 2004	\$239,319.21				\$1,688,440.06	\$552,275.10	\$790,420.62	100.0%	\$2,240,715.16
May 2004	\$215,589.08				\$2,240,715.16	\$497,513.26	\$786,048.30	100.0%	\$2,738,228.43
Jun. 2004	\$216,674.45				\$2,738,228.43	\$500,017.96	\$786,048.30	100.0%	\$3,238,228.43
Jul. 2004	\$226,917.85	\$442,064.57	\$442,064.57	100.0%	\$3,238,228.43	\$523,656.58	\$786,048.30	100.0%	\$3,247,475.82
Aug. 2004	\$238,228.51	\$763,396.13	\$763,396.13	100.0%	\$3,247,475.82	\$549,758.10	\$790,420.62	100.0%	\$2,845,495.66
Sep. 2004	\$235,912.01	\$844,675.40	\$844,675.40	100.0%	\$2,845,495.66	\$544,412.33	\$790,420.62	100.0%	\$2,295,716.30
Oct. 2004	\$229,372.77	\$617,341.61	\$617,341.61	40.6%	\$2,295,716.30	\$529,321.78	\$740,953.54	100.0%	\$2,034,617.46
Nov. 2004	\$239,669.92	\$621,133.97	\$242,118.04	39.0%	\$2,034,617.46	\$553,084.43	\$740,953.54	100.0%	\$1,801,653.58
Dec. 2004	\$240,928.43	\$556,701.59	\$238,240.69	42.8%	\$1,801,653.58	\$555,988.68	\$740,953.54	100.0%	\$1,616,688.73
Annual 2004	\$2,810,938.48	\$3,845,313.27	\$2,781,012.17	72.3%	\$7,687.18	\$6,486,781.11	\$4,877,779.56	100.0%	\$0.00
Jan. 2005	\$240,221.63				\$1,616,688.73	\$654,357.61	\$523,447.35	100.0%	\$2,171,046.33
Feb. 2005	\$214,388.21				\$2,171,046.33	\$494,742.02	\$943,939.84	100.0%	\$2,665,788.36
Mar. 2005	\$244,895.76				\$2,665,788.36	\$565,144.06	\$851,448.72	100.0%	\$3,230,932.42
Apr. 2005	\$233,372.57				\$3,230,932.42	\$538,552.08	\$851,448.72	100.0%	\$3,769,484.50
May 2005	\$224,323.32				\$3,769,484.50	\$517,669.20	\$851,448.72	100.0%	\$4,287,153.70
Jun. 2005	\$217,878.29				\$4,287,153.70	\$502,796.05	\$851,448.72	100.0%	\$4,789,949.76
Jul. 2005	\$216,258.26	\$463,173.69	\$463,173.69	100.0%	\$4,789,949.76	\$499,057.52	\$851,448.72	100.0%	\$4,765,559.93
Aug. 2005	\$227,881.93	\$759,457.64	\$759,457.64	100.0%	\$4,765,559.93	\$525,881.37	\$851,448.72	100.0%	\$4,347,501.46
Sep. 2005	\$219,603.69	\$915,087.20	\$819,564.45	89.6%	\$4,347,501.46	\$506,777.75	\$851,448.72	100.0%	\$3,767,885.89
Oct. 2005	\$221,342.21	\$688,480.53	\$210,493.42	30.6%	\$3,767,885.89	\$510,789.72	\$704,691.68	100.0%	\$3,427,226.88
Nov. 2005	\$337,795.27	\$586,710.11	\$340,038.99	58.0%	\$3,427,226.88	\$533,360.95	\$704,691.68	100.0%	\$3,255,896.15
Dec. 2005									
Annual 2005	\$2,597,961.14	\$3,412,909.17	\$2,592,728.19	76.0%	\$1,616,688.73	\$5,749,128.33	\$4,109,920.91	100.0%	\$0.00

1/ Does not reflect any possible interest or audit adjustments

Monthly Transportation Credit Fund Balance Assuming 0.46 cent Mileage Rate, Current \$0.15 per cwt Assessment and Implementation of Proposal 4
 Appalachian Marketing Area - Federal Order 5
 January 2004 - November 2005

Month/Year	Actual Assessment	Actual Credits		Prorata Percentage	Beginning Balance	Assessment at \$0.095	Total Credits		Prorata Percentage	Ending Balance 1/
		Requested	Actual Credits Paid				Requested Proposal 4	Total Credits Paid Proposal 5		
Jan. 2004	\$255,554.31				\$7,687.18	\$589,740.72	\$549,096.26	\$549,096.26	100.0%	\$597,427.90
Feb. 2004	\$225,033.25				\$597,427.90	\$519,307.50	\$1,013,541.60	\$1,013,541.60	100.0%	\$1,116,735.40
Mar. 2004	\$247,738.69				\$1,116,735.40	\$571,704.67	\$1,164,449.54	\$1,164,449.54	100.0%	\$1,688,440.06
Apr. 2004	\$239,319.21				\$1,688,440.06	\$552,275.10	\$842,146.60	\$842,146.60	100.0%	\$2,240,715.16
May 2004	\$215,589.08				\$2,240,715.16	\$497,513.26	\$838,731.63	\$838,731.63	100.0%	\$2,738,228.43
Jun. 2004	\$216,674.45				\$2,738,228.43	\$500,017.96	\$787,994.69	\$787,994.69	100.0%	\$3,238,246.39
Jul. 2004	\$226,917.85	\$442,064.57	\$442,064.57	100.0%	\$3,238,246.39	\$523,656.58	\$842,146.60	\$842,146.60	100.0%	\$3,749,023.21
Aug. 2004	\$238,228.51	\$763,396.13	\$763,396.13	100.0%	\$3,749,023.21	\$549,758.10	\$838,731.63	\$838,731.63	100.0%	\$4,298,986.00
Sep. 2004	\$235,912.01	\$844,675.40	\$844,675.40	100.0%	\$4,298,986.00	\$544,412.33	\$842,146.60	\$842,146.60	100.0%	\$4,841,181.18
Oct. 2004	\$229,372.77	\$617,341.61	\$617,341.61	40.6%	\$2,128,986.00	\$529,321.78	\$787,994.69	\$787,994.69	100.0%	\$1,530,513.98
Nov. 2004	\$239,669.92	\$621,133.97	\$242,118.04	39.0%	\$1,816,161.18	\$553,084.43	\$549,096.26	\$549,096.26	100.0%	\$1,298,507.98
Dec. 2004	\$240,928.43	\$556,701.59	\$238,240.69	42.8%	\$1,530,513.98	\$555,988.68	\$549,096.26	\$549,096.26	100.0%	\$0.00
Annual 2004	\$2,810,938.48	\$3,845,313.27	\$2,781,012.17	72.3%	\$7,687.18	\$6,486,781.11	\$5,195,960.31	\$5,195,960.31	100.0%	\$0.00
Jan. 2005	\$240,221.63				\$1,298,507.98	\$554,357.61	\$557,687.47	\$557,687.47	100.0%	\$1,852,865.59
Feb. 2005	\$214,388.21				\$1,852,865.59	\$494,742.02	\$1,005,828.08	\$1,005,828.08	100.0%	\$2,347,607.61
Mar. 2005	\$244,895.76				\$2,347,607.61	\$565,144.06	\$1,154,056.87	\$1,154,056.87	100.0%	\$2,912,751.67
Apr. 2005	\$233,372.57				\$2,912,751.67	\$538,552.08	\$906,212.02	\$906,212.02	100.0%	\$3,451,303.76
May 2005	\$224,323.32				\$3,451,303.76	\$517,669.20	\$751,894.91	\$751,894.91	100.0%	\$3,968,972.96
Jun. 2005	\$217,878.29				\$3,968,972.96	\$502,796.05	\$557,687.47	\$557,687.47	100.0%	\$4,471,769.01
Jul. 2005	\$216,258.26	\$463,173.69	\$463,173.69	100.0%	\$4,471,769.01	\$499,057.52	\$1,005,828.08	\$1,005,828.08	100.0%	\$3,933,192.34
Aug. 2005	\$227,881.93	\$759,457.64	\$759,457.64	100.0%	\$4,413,139.06	\$525,881.37	\$1,154,056.87	\$1,154,056.87	100.0%	\$3,285,913.22
Sep. 2005	\$219,603.69	\$915,087.20	\$819,564.45	89.6%	\$3,933,192.34	\$506,777.75	\$906,212.02	\$906,212.02	100.0%	\$2,890,490.91
Oct. 2005	\$221,342.21	\$688,480.53	\$210,493.42	30.6%	\$3,285,913.22	\$510,789.72	\$751,894.91	\$751,894.91	100.0%	\$2,671,956.96
Nov. 2005	\$337,795.27	\$586,710.11	\$340,038.99	58.0%	\$2,890,490.91	\$533,360.95				
Dec. 2005										
Annual 2005	\$2,597,961.14	\$3,412,909.17	\$2,592,728.19	76.0%	\$1,298,507.98	\$5,749,128.33	\$4,375,679.35	\$4,375,679.35	100.0%	\$0.00

1/ Does not reflect any possible interest or audit adjustments

Monthly Transportation Credit Fund Balance Assuming 0.48 cent Mileage Rate, Current \$0.15 per cwt Assessment and Implementation of Proposal 4
 Appalachia Marketing Area - Federal Order 5
 January 2004 - November 2005

Month/Year	Actual Assessment	Actual Credits Requested	Actual Credits Paid	Prorata Percentage	Beginning Balance	Assessment at \$0.095	Total Credits		Prorata Percentage	Ending Balance 1/
							Requested Proposal 4	Total Credits Paid Proposal 5		
Jan. 2004	\$255,554.31				\$7,687.18	\$589,740.72				\$597,427.90
Feb. 2004	\$225,033.25				\$597,427.90	\$519,307.50	\$1,075,407.92	\$1,075,407.92	100.0%	\$1,116,735.40
Mar. 2004	\$247,738.69				\$1,116,735.40	\$571,704.67	\$1,234,761.85	\$1,234,761.85	100.0%	\$1,698,440.06
Apr. 2004	\$239,319.21				\$1,698,440.06	\$552,275.10	\$893,886.31	\$893,886.31	100.0%	\$2,240,715.16
May 2004	\$215,589.08				\$2,240,715.16	\$497,513.26	\$891,463.10	\$891,463.10	100.0%	\$2,738,228.43
Jun. 2004	\$216,674.45				\$2,738,228.43	\$500,017.96	\$835,009.73	\$835,009.73	100.0%	\$3,238,228.43
Jul. 2004	\$226,917.85	\$442,064.57	\$442,064.57	100.0%	\$3,238,228.43	\$523,656.58	\$1,075,407.92	\$1,075,407.92	100.0%	\$3,178,119.73
Aug. 2004	\$238,228.51	\$763,396.13	\$763,396.13	100.0%	\$3,178,119.73	\$549,758.10	\$1,234,761.85	\$1,234,761.85	100.0%	\$2,652,469.91
Sep. 2004	\$235,912.01	\$844,675.40	\$844,675.40	100.0%	\$2,652,469.91	\$544,412.33	\$893,886.31	\$893,886.31	100.0%	\$1,962,120.39
Oct. 2004	\$229,372.77	\$617,341.61	\$250,517.34	40.6%	\$1,962,120.39	\$529,321.78	\$891,463.10	\$891,463.10	100.0%	\$1,597,555.86
Nov. 2004	\$239,669.92	\$621,133.97	\$242,118.04	39.0%	\$1,597,555.86	\$553,084.43	\$835,009.73	\$835,009.73	100.0%	\$1,259,177.20
Dec. 2004	\$240,928.43	\$556,701.59	\$238,240.69	42.8%	\$1,259,177.20	\$555,988.68	\$5,514,312.14	\$5,514,312.14	100.0%	\$980,156.15
Annual 2004	\$2,810,938.48	\$3,845,313.27	\$2,781,012.17	72.3%	\$7,687.18	\$6,486,781.11	\$5,514,312.14	\$5,514,312.14	100.0%	\$0.00
Jan. 2005	\$240,221.63				\$980,156.15	\$554,357.61	\$1,075,407.92	\$1,075,407.92	100.0%	\$1,534,513.76
Feb. 2005	\$214,398.21				\$1,534,513.76	\$494,742.02	\$1,234,761.85	\$1,234,761.85	100.0%	\$2,029,255.78
Mar. 2005	\$244,895.76				\$2,029,255.78	\$565,144.06	\$893,886.31	\$893,886.31	100.0%	\$2,594,399.84
Apr. 2005	\$233,372.57				\$2,594,399.84	\$538,552.08	\$891,463.10	\$891,463.10	100.0%	\$3,132,951.93
May 2005	\$224,323.32				\$3,132,951.93	\$517,669.20	\$835,009.73	\$835,009.73	100.0%	\$3,650,621.13
Jun. 2005	\$217,878.29				\$3,650,621.13	\$502,796.05	\$891,463.10	\$891,463.10	100.0%	\$4,153,417.18
Jul. 2005	\$216,258.26	\$463,173.69	\$463,173.69	100.0%	\$4,153,417.18	\$499,057.52	\$1,067,646.85	\$1,067,646.85	100.0%	\$4,060,577.15
Aug. 2005	\$227,881.93	\$759,457.64	\$759,457.64	100.0%	\$4,060,577.15	\$525,881.37	\$1,221,740.30	\$1,221,740.30	100.0%	\$3,518,811.66
Sep. 2005	\$219,603.69	\$915,087.20	\$819,564.45	89.6%	\$3,518,811.66	\$506,777.75	\$960,972.80	\$960,972.80	100.0%	\$2,803,849.10
Oct. 2005	\$221,342.21	\$688,480.53	\$210,493.42	30.6%	\$2,803,849.10	\$510,789.72	\$799,047.39	\$799,047.39	100.0%	\$2,353,666.02
Nov. 2005	\$337,795.27	\$586,710.11	\$340,038.99	58.0%	\$2,353,666.02	\$533,380.95			100.0%	\$2,087,979.58
Dec. 2005										
Annual 2005	\$2,597,961.14	\$3,412,909.17	\$2,592,728.19	76.0%	\$980,156.15	\$5,749,128.33	\$4,641,304.91	\$4,641,304.91	100.0%	\$0.00

1/ Does not reflect any possible interest or audit adjustments

Monthly Transportation Credit Fund Balance Assuming 0.42 cent Mileage Rate, \$0.11 per cwt Assessment and Implementation of Proposal 4
 Appalachian Marketing Area - Federal Order 5
 January 2004 - November 2005

Month/Year	Actual Assessment	Actual Credits Requested	Actual Credits Paid	Prorata Percentage	Beginning Balance	Impact of 0.42 cent Mileage Rate, \$0.11 Assessment and Implementation of Proposal 4				
						Assessment at \$0.095	Requested Proposal 4	Total Credits Paid Proposal 4	Prorata Percentage	
Jan. 2004	\$255,554.31	\$442,064.57	\$442,064.57	100.0%	\$7,687.18	\$432,476.52	\$479,719.73	\$479,719.73	100.0%	\$440,163.70
Feb. 2004	\$225,033.25	\$763,396.13	\$763,396.13	100.0%	\$440,163.70	\$380,825.50	\$889,870.57	\$889,870.57	100.0%	\$820,989.20
Mar. 2004	\$247,738.69	\$844,675.40	\$844,675.40	100.0%	\$820,989.20	\$419,250.09	\$1,023,886.09	\$1,023,886.09	100.0%	\$1,240,239.30
Apr. 2004	\$239,319.21	\$617,341.61	\$617,341.61	40.6%	\$1,240,239.30	\$405,001.74	\$738,683.69	\$738,683.69	100.0%	\$1,645,241.04
May 2004	\$215,589.08	\$621,133.97	\$242,118.04	39.0%	\$1,645,241.04	\$364,843.06	\$733,304.13	\$733,304.13	100.0%	\$2,010,084.09
Jun. 2004	\$216,674.45	\$556,701.59	\$238,240.69	42.8%	\$2,010,084.09	\$366,679.84	\$693,944.04	\$693,944.04	100.0%	\$2,376,763.93
Jul. 2004	\$226,917.85	\$844,675.40	\$763,396.13	100.0%	\$2,376,763.93	\$384,014.82	\$889,870.57	\$889,870.57	100.0%	\$2,281,059.03
Aug. 2004	\$238,228.51	\$617,341.61	\$250,517.34	40.6%	\$403,155.94	\$399,235.71	\$738,683.69	\$738,683.69	100.0%	\$1,794,344.40
Sep. 2004	\$235,912.01	\$621,133.97	\$242,118.04	39.0%	\$1,794,344.40	\$388,169.30	\$733,304.13	\$733,304.13	100.0%	\$1,169,694.02
Oct. 2004	\$229,372.77	\$556,701.59	\$238,240.69	42.8%	\$1,169,694.02	\$405,595.25	\$693,944.04	\$693,944.04	100.0%	\$819,179.63
Nov. 2004	\$239,669.92	\$3,845,313.27	\$2,810,012.17	72.3%	\$819,179.63	\$407,725.04	\$4,559,408.25	\$4,559,408.25	100.0%	\$491,470.75
Dec. 2004	\$240,928.43	\$3,845,313.27	\$2,810,012.17	72.3%	\$491,470.75	\$476,972.81	\$4,559,408.25	\$4,559,408.25	100.0%	\$205,251.74
Annual 2004	\$2,810,938.48	\$3,845,313.27	\$2,810,012.17	72.3%	\$7,687.18	\$4,756,972.81	\$4,559,408.25	\$4,559,408.25	100.0%	\$0.00
Jan. 2005	\$240,221.63	\$463,173.69	\$463,173.69	100.0%	\$205,251.74	\$406,528.91	\$489,259.92	\$489,259.92	100.0%	\$611,780.65
Feb. 2005	\$214,388.21	\$759,457.64	\$759,457.64	100.0%	\$611,780.65	\$362,810.82	\$882,109.20	\$882,109.20	100.0%	\$974,591.47
Mar. 2005	\$244,895.76	\$915,087.20	\$819,564.45	89.6%	\$974,591.47	\$414,438.98	\$1,018,717.17	\$1,018,717.17	100.0%	\$1,389,030.45
Apr. 2005	\$233,372.57	\$688,480.53	\$210,493.42	30.6%	\$1,389,030.45	\$394,938.20	\$796,682.56	\$796,682.56	100.0%	\$1,783,968.64
May 2005	\$224,323.32	\$586,710.11	\$340,038.99	58.0%	\$1,783,968.64	\$379,624.08	\$657,520.41	\$657,520.41	100.0%	\$2,163,592.72
Jun. 2005	\$217,878.29	\$463,173.69	\$463,173.69	100.0%	\$2,163,592.72	\$368,717.11	\$489,259.92	\$489,259.92	100.0%	\$2,532,309.83
Jul. 2005	\$216,258.26	\$759,457.64	\$759,457.64	100.0%	\$2,532,309.83	\$365,975.52	\$882,109.20	\$882,109.20	100.0%	\$2,409,025.42
Aug. 2005	\$227,881.93	\$915,087.20	\$819,564.45	89.6%	\$2,409,025.42	\$385,646.33	\$1,018,717.17	\$1,018,717.17	100.0%	\$1,912,562.56
Sep. 2005	\$219,603.69	\$688,480.53	\$210,493.42	30.6%	\$1,912,562.56	\$371,637.01	\$796,682.56	\$796,682.56	100.0%	\$1,265,482.40
Oct. 2005	\$221,342.21	\$586,710.11	\$340,038.99	58.0%	\$1,265,482.40	\$374,579.12	\$657,520.41	\$657,520.41	100.0%	\$843,378.97
Nov. 2005	\$337,795.27	\$3,412,909.17	\$2,592,728.19	76.0%	\$843,378.97	\$391,131.37	\$3,844,289.26	\$3,844,289.26	100.0%	\$576,989.93
Dec. 2005	\$259,796.14	\$3,412,909.17	\$2,592,728.19	76.0%	\$205,251.74	\$4,216,027.44	\$3,844,289.26	\$3,844,289.26	100.0%	\$0.00
Annual 2005	\$2,597,961.14	\$3,412,909.17	\$2,592,728.19	76.0%	\$205,251.74	\$4,216,027.44	\$3,844,289.26	\$3,844,289.26	100.0%	\$0.00

1/ Does not reflect any possible interest or audit adjustments

Monthly Transportation Credit Fund Balance Assuming 0.44 cent Mileage Rate, Current \$0.115 per cwt Assessment and Implementation of Proposal 4
 Appalachian Marketing Area - Federal Order 5
 January 2004 - November 2005

Appendix VI

Month/Year	Actual Assessment	Actual Credits		Prorata Percentage	Beginning Balance	Assessment at \$0.095	Total Credits		Prorata Percentage	Ending Balance 1/
		Requested	Actual Credits Paid				Requested Proposal 4	Total Credits Paid Proposal 5		
Jan. 2004	\$255,554.31				\$7,687.18	\$452,134.55	\$514,427.15	\$514,427.15	100.0%	\$459,821.73
Feb. 2004	\$225,033.25				\$459,821.73	\$398,135.75	\$951,738.26	\$951,738.26	100.0%	\$857,957.48
Mar. 2004	\$247,738.69				\$857,957.48	\$438,306.91	\$1,094,191.69	\$1,094,191.69	100.0%	\$1,296,264.39
Apr. 2004	\$239,319.21				\$1,296,264.39	\$423,410.91	\$790,420.62	\$790,420.62	100.0%	\$1,719,675.30
May 2004	\$215,589.08				\$1,719,675.30	\$381,426.83	\$786,048.30	\$786,048.30	100.0%	\$2,101,102.14
Jun. 2004	\$216,674.45				\$2,101,102.14	\$383,347.10	\$740,953.54	\$740,953.54	100.0%	\$2,484,449.24
Jul. 2004	\$226,917.85	\$442,064.57	\$442,064.57	100.0%	\$2,484,449.24	\$401,470.04	\$951,738.26	\$951,738.26	100.0%	\$2,371,492.14
Aug. 2004	\$238,228.51	\$763,396.13	\$763,396.13	100.0%	\$2,371,492.14	\$421,481.21	\$1,094,191.69	\$1,094,191.69	100.0%	\$1,841,235.09
Sep. 2004	\$235,912.01	\$844,675.40	\$844,675.40	100.0%	\$1,841,235.09	\$417,382.79	\$790,420.62	\$790,420.62	100.0%	\$1,164,426.18
Oct. 2004	\$229,372.77	\$617,341.61	\$250,517.34	40.6%	\$1,164,426.18	\$405,813.36	\$786,048.30	\$786,048.30	100.0%	\$779,818.93
Nov. 2004	\$239,669.92	\$621,133.97	\$242,118.04	39.0%	\$779,818.93	\$424,031.40	\$740,953.54	\$740,953.54	100.0%	\$417,802.02
Dec. 2004	\$240,928.43	\$556,701.59	\$238,240.69	42.8%	\$417,802.02	\$426,257.99	\$487,779.56	\$487,779.56	100.0%	\$103,106.47
Annual 2004	\$2,810,938.48	\$3,845,313.27	\$2,781,012.17	72.3%	\$7,687.18	\$4,973,198.85	\$4,877,779.56	\$4,877,779.56	100.0%	\$0.00
Jan. 2005	\$240,221.63				\$103,106.47	\$425,007.50	\$523,447.35	\$523,447.35	100.0%	\$528,113.97
Feb. 2005	\$214,388.21				\$528,113.97	\$379,302.22	\$943,939.84	\$943,939.84	100.0%	\$907,416.18
Mar. 2005	\$244,895.76				\$907,416.18	\$433,277.11	\$1,086,393.31	\$1,086,393.31	100.0%	\$1,340,693.30
Apr. 2005	\$233,372.57				\$1,340,693.30	\$412,889.93	\$943,939.84	\$943,939.84	100.0%	\$1,753,583.23
May 2005	\$224,323.32				\$1,753,583.23	\$396,879.72	\$851,448.72	\$851,448.72	100.0%	\$2,150,462.95
Jun. 2005	\$217,878.29				\$2,150,462.95	\$385,476.97	\$704,691.68	\$704,691.68	100.0%	\$2,535,939.92
Jul. 2005	\$216,258.26	\$463,173.69	\$463,173.69	100.0%	\$2,535,939.92	\$382,610.77	\$943,939.84	\$943,939.84	100.0%	\$2,395,103.34
Aug. 2005	\$227,881.93	\$759,457.64	\$759,457.64	100.0%	\$2,395,103.34	\$403,175.71	\$1,086,393.31	\$1,086,393.31	100.0%	\$1,854,339.22
Sep. 2005	\$219,603.69	\$915,087.20	\$819,564.45	89.6%	\$1,854,339.22	\$388,529.61	\$851,448.72	\$851,448.72	100.0%	\$1,156,475.51
Oct. 2005	\$221,342.21	\$688,480.53	\$210,493.42	30.6%	\$1,156,475.51	\$391,605.45	\$704,691.68	\$704,691.68	100.0%	\$696,632.23
Nov. 2005	\$337,795.27	\$586,710.11	\$340,038.99	58.0%	\$696,632.23	\$408,910.06	\$704,691.68	\$704,691.68	100.0%	\$400,850.62
Dec. 2005										
Annual 2005	\$2,597,961.14	\$3,412,909.17	\$2,592,728.19	76.0%	\$103,106.47	\$4,407,665.06	\$4,109,920.91	\$4,109,920.91	100.0%	\$0.00

1/ Does not reflect any possible interest or audit adjustments

Monthly Transportation Credit Fund Balance Assuming 0.46 cent Mileage Rate, Current \$0.12 per cwt Assessment and Implementation of Proposal 4
 Appalachian Marketing Area - Federal Order 5
 January 2004 - November 2005

Month/Year	Actual Assessment	Actual Credits Requested	Actual Credits Paid	Prorata Percentage	Beginning Balance	Assessment at \$0.095	Total Credits		Prorata Percentage	Ending Balance 1/
							Requested Proposal 4	Total Credits Paid Proposal 5		
Jan. 2004	\$255,554.31	\$442,064.57	\$442,064.57	100.0%	\$7,687.18	\$471,792.57	\$549,096.26	\$549,096.26	100.0%	\$479,479.75
Feb. 2004	\$225,033.25	\$763,396.13	\$763,396.13	100.0%	\$479,479.75	\$415,446.00	\$1,013,541.60	\$1,013,541.60	100.0%	\$894,925.75
Mar. 2004	\$247,738.69	\$844,675.40	\$844,675.40	100.0%	\$894,925.75	\$457,363.74	\$1,164,449.54	\$1,164,449.54	100.0%	\$1,352,289.49
Apr. 2004	\$239,319.21	\$617,341.61	\$617,341.61	40.6%	\$1,352,289.49	\$441,820.08	\$842,146.60	\$842,146.60	100.0%	\$1,794,109.57
May 2004	\$215,569.08	\$621,133.97	\$621,133.97	39.0%	\$1,794,109.57	\$398,010.61	\$838,731.63	\$838,731.63	100.0%	\$2,192,120.18
Jun. 2004	\$216,674.45	\$556,701.59	\$556,701.59	42.8%	\$2,192,120.18	\$400,014.37	\$787,994.69	\$787,994.69	100.0%	\$2,592,134.55
Jul. 2004	\$226,917.85	\$763,396.13	\$763,396.13	100.0%	\$2,592,134.55	\$418,925.26	\$549,096.26	\$549,096.26	100.0%	\$2,461,963.55
Aug. 2004	\$238,228.51	\$844,675.40	\$844,675.40	100.0%	\$2,461,963.55	\$439,806.48	\$1,013,541.60	\$1,013,541.60	100.0%	\$1,888,228.43
Sep. 2004	\$235,912.01	\$617,341.61	\$617,341.61	40.6%	\$1,888,228.43	\$435,529.86	\$1,164,449.54	\$1,164,449.54	100.0%	\$1,154,056.87
Oct. 2004	\$229,372.77	\$621,133.97	\$621,133.97	39.0%	\$1,154,056.87	\$423,457.42	\$842,146.60	\$842,146.60	100.0%	\$1,047,561.46
Nov. 2004	\$239,669.92	\$242,118.04	\$242,118.04	42.8%	\$1,047,561.46	\$442,467.54	\$838,731.63	\$838,731.63	100.0%	\$549,981.21
Dec. 2004	\$240,928.43	\$556,701.59	\$556,701.59	72.3%	\$344,355.50	\$444,790.95	\$787,994.69	\$787,994.69	100.0%	\$1,151.76
Annual 2004	\$2,810,938.48	\$3,845,313.27	\$2,781,012.17	72.3%	\$7,687.18	\$5,189,424.89	\$5,195,960.31	\$5,195,960.31	100.0%	\$0.00
Jan. 2005	\$240,221.63	\$1,151.76	\$1,151.76		\$1,151.76	\$443,486.09	\$557,687.47	\$557,687.47	100.0%	\$444,637.84
Feb. 2005	\$214,388.21	\$444,637.84	\$444,637.84		\$444,637.84	\$395,793.62	\$1,005,828.08	\$1,005,828.08	100.0%	\$840,431.46
Mar. 2005	\$244,895.76	\$840,431.46	\$840,431.46		\$840,431.46	\$452,115.25	\$1,154,056.87	\$1,154,056.87	100.0%	\$1,292,546.71
Apr. 2005	\$233,372.57	\$1,292,546.71	\$1,292,546.71		\$1,292,546.71	\$430,841.67	\$906,212.02	\$906,212.02	100.0%	\$1,723,388.38
May 2005	\$224,323.32	\$1,723,388.38	\$1,723,388.38		\$1,723,388.38	\$414,135.36	\$751,894.91	\$751,894.91	100.0%	\$2,137,523.74
Jun. 2005	\$217,878.29	\$2,137,523.74	\$2,137,523.74		\$2,137,523.74	\$402,236.84	\$557,687.47	\$557,687.47	100.0%	\$2,539,760.58
Jul. 2005	\$216,258.26	\$463,173.69	\$463,173.69	100.0%	\$2,539,760.58	\$399,246.02	\$1,005,828.08	\$1,005,828.08	100.0%	\$2,381,319.13
Aug. 2005	\$227,881.93	\$759,457.64	\$759,457.64	100.0%	\$2,381,319.13	\$420,705.09	\$1,154,056.87	\$1,154,056.87	100.0%	\$1,796,196.14
Sep. 2005	\$219,603.69	\$915,087.20	\$819,564.45	89.6%	\$1,796,196.14	\$405,422.20	\$906,212.02	\$906,212.02	100.0%	\$1,047,561.46
Oct. 2005	\$221,342.21	\$688,480.53	\$210,493.42	30.6%	\$1,047,561.46	\$408,631.77	\$751,894.91	\$751,894.91	100.0%	\$549,981.21
Nov. 2005	\$337,795.27	\$586,710.11	\$340,038.99	58.0%	\$549,981.21	\$426,888.76	\$751,894.91	\$751,894.91	100.0%	\$224,775.07
Dec. 2005										
Annual 2005	\$2,597,961.14	\$3,412,909.17	\$2,592,728.19	76.0%	\$1,151.76	\$4,599,302.67	\$4,375,679.35	\$4,375,679.35	100.0%	\$0.00

1/ Does not reflect any possible interest or audit adjustments

Monthly Transportation Credit Fund Balance Assuming 0.48 cent Mileage Rate, Current \$0.13 per cwt Assessment and Implementation of Proposal 4
 Appalachian Marketing Area - Federal Order 5
 January 2004 - November 2005

Month/Year	Actual Assessment	Actual Credits		Prorata Percentage	Beginning Balance	Assessment at \$0.095	Total Credits		Prorata Percentage	Ending Balance 1/
		Requested	Actual Credits Paid				Requested Proposal 4	Total Credits Paid Proposal 5		
Jan. 2004	\$255,554.31				\$7,687.18	\$511,108.62	\$583,783.23	\$583,783.23	100.0%	\$518,795.80
Feb. 2004	\$225,033.25				\$518,795.80	\$450,066.50	\$1,075,407.92	\$1,075,407.92	100.0%	\$968,862.30
Mar. 2004	\$247,738.69				\$968,862.30	\$495,477.38	\$1,234,761.85	\$1,234,761.85	100.0%	\$1,464,339.68
Apr. 2004	\$239,319.21				\$1,464,339.68	\$478,638.42	\$893,886.31	\$893,886.31	100.0%	\$1,942,978.10
May 2004	\$215,589.08				\$1,942,978.10	\$431,178.16	\$891,463.10	\$891,463.10	100.0%	\$2,374,156.26
Jun. 2004	\$216,674.45				\$2,374,156.26	\$433,348.90	\$835,009.73	\$835,009.73	100.0%	\$2,807,505.16
Jul. 2004	\$226,917.85	\$442,064.57	\$442,064.57	100.0%	\$2,807,505.16	\$453,835.70	\$1,075,407.92	\$1,075,407.92	100.0%	\$2,677,557.63
Aug. 2004	\$238,228.51	\$763,396.13	\$763,396.13	100.0%	\$2,677,557.63	\$476,457.02	\$1,234,761.85	\$1,234,761.85	100.0%	\$2,078,606.73
Sep. 2004	\$235,912.01	\$844,675.40	\$844,675.40	100.0%	\$2,078,606.73	\$471,824.02	\$893,886.31	\$893,886.31	100.0%	\$880,528.13
Oct. 2004	\$229,372.77	\$617,341.61	\$250,517.34	40.6%	\$1,315,668.90	\$458,745.54	\$891,463.10	\$891,463.10	100.0%	\$468,404.87
Nov. 2004	\$239,669.92	\$621,133.97	\$242,118.04	39.0%	\$880,528.13	\$479,339.84	\$835,009.73	\$835,009.73	100.0%	\$115,252.00
Dec. 2004	\$240,928.43	\$556,701.59	\$238,240.69	42.8%	\$468,404.87	\$481,856.86	\$5,514,312.14	\$5,514,312.14	100.0%	\$0.00
Annual 2004	\$2,810,938.48	\$3,845,313.27	\$2,781,012.17	72.3%	\$7,687.18	\$5,621,876.96	\$5,514,312.14	\$5,514,312.14	100.0%	\$0.00
Jan. 2005	\$240,221.63				\$115,252.00	\$480,443.26	\$591,897.56	\$591,897.56	100.0%	\$595,695.26
Feb. 2005	\$214,388.21				\$595,695.26	\$428,776.42	\$1,067,646.85	\$1,067,646.85	100.0%	\$1,024,471.68
Mar. 2005	\$244,895.76				\$1,024,471.68	\$489,791.52	\$1,221,740.30	\$1,221,740.30	100.0%	\$1,514,263.20
Apr. 2005	\$233,372.57				\$1,514,263.20	\$466,745.14	\$960,972.80	\$960,972.80	100.0%	\$1,981,008.34
May 2005	\$224,323.32				\$1,981,008.34	\$448,646.64	\$835,009.73	\$835,009.73	100.0%	\$2,429,654.98
Jun. 2005	\$217,878.29				\$2,429,654.98	\$435,756.58	\$799,047.39	\$799,047.39	100.0%	\$2,865,411.56
Jul. 2005	\$216,258.26	\$463,173.69	\$463,173.69	100.0%	\$2,865,411.56	\$432,516.52	\$1,067,646.85	\$1,067,646.85	100.0%	\$2,706,030.52
Aug. 2005	\$227,881.93	\$759,457.64	\$759,457.64	100.0%	\$2,706,030.52	\$455,763.85	\$1,221,740.30	\$1,221,740.30	100.0%	\$2,094,147.52
Sep. 2005	\$219,603.69	\$915,087.20	\$819,564.45	89.6%	\$2,094,147.52	\$439,207.38	\$960,972.80	\$960,972.80	100.0%	\$1,311,614.60
Oct. 2005	\$221,342.21	\$688,480.53	\$210,493.42	30.6%	\$1,311,614.60	\$442,684.42	\$799,047.39	\$799,047.39	100.0%	\$793,326.22
Nov. 2005	\$337,795.27	\$586,710.11	\$340,038.99	58.0%	\$793,326.22	\$462,246.16	\$4,982,577.89	\$4,982,577.89	100.0%	\$456,524.99
Dec. 2005										
Annual 2005	\$2,597,961.14	\$3,412,909.17	\$2,592,728.19	76.0%	\$115,252.00	\$4,982,577.89	\$4,641,304.91	\$4,641,304.91	100.0%	\$0.00

1/ Does not reflect any possible interest or audit adjustments

EXPLANATION OF APPENDIX VI

Appendix VI was prepared consistent with Mr. Neirman's testimony (TR Day2 Page 242 line 7 through page 243 line 4. In each page of Appendix VI only one change was made. Exhibit #33 assumed a .095 cent assessment on the Class I pounds. This Appendix has simply divided the assessment by .095 and then multiplied the resulting pounds by a new assessment rate as labeled on the page. There are two sets of re-works of Exhibit 33 in Appendix VI. Appendix VI, pages 1-4 are the rate asked for by proponents of 15 cents is used. Appendix VI pages 5-8 a different rate is used in each scenario. The rate used in each page is an attempt to demonstrate what rate could be used to limit the assessment and still provide a sufficient assessment for full payment of transportation credits.

Dean Foods believes that Proposal 4 is an appropriate solution to keep handlers in check from abusing the transportation credit program and pushes for its adoption by the Secretary, regardless of the Secretary's decision on Proposal 1. With or without the Secretary's adoption of Proposal 4, Dean Foods would recommend any increase in the assessment as it relates to Proposal #1 not be