

SOUTHERN MARKETING AGENCY, INC.

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April 26, 2013

Ms. Dana Coale, Deputy Administrator
USDA - AMS - Dairy Programs
Stop 0225, Room 2968 – South
1400 Independence Avenue, SW
Washington, D.C. 20250-0225

By email and United Parcel Service

Dear Deputy Administrator Coale,

Southern Marketing Agency, Inc., whose Members market milk on the Appalachian and Southeast Federal Milk Marketing Orders, respectfully requests that the Transportation Credit Balancing Fund provisions of the two Orders be suspended for the period July 2013 through February 2014. The members of Southern Marketing Agency, Inc. are: Arkansas Dairy Cooperative Association; Dairymen's Marketing Cooperative, Inc.; LANCO-Pennland Quality Milk Producers, Inc.; Lone Star Milk Producers, Inc.; Maryland & Virginia Milk Producers Cooperative Association, Inc.; and Premier Milk, Inc.

SMA has been, and continues to be, a great supporter of the Secretary's use of market-wide service payment provisions in Federal Milk Marketing Orders, and encourages the Secretary to expand the use of these provisions. The reimbursement of costs to handlers that provide services of marketwide benefit enhances orderly marketing, encourages handlers to undertake and perform these important services, and contributes to equitable pricing.

Likewise, SMA and its Members have always been proponents and supporters of the Transportation Credit Balancing Fund provisions of the Appalachian and Southeast Orders, and continue to be so. In fact, SMA proposed and supported the expansion of Transportation Credit provisions of the two Orders to help move milk within the two Orders.

However, even in the face of our continued support for Transportation Credits, we find ourselves in a situation where the current Transportation Credit provisions of the two Orders are distressingly inadequate, and in need of substantial updating. Several areas of the Transportation Credit system need to be brought up-to-date, or completely revised. We will describe these in some detail.

1. The mileage rate under the Transportation Credit provisions has become outdated and insufficient. The TCBF mileage rate averages approximately \$0.0048 to \$0.0049 per hundredweight per mile, depending on the price of diesel fuel, while \$0.0072 per hundredweight per mile is more reflective of the real current cost of hauling.
2. The current TCBF assessment rates (\$0.30 per hundredweight of Class I milk in Order 7, and \$0.15 per hundredweight of Class I milk in Order 5) are insufficient to fully fund the requested transportation credits. On average recently, Orders 5 and Order 7 have paid approximately 60 to 70 percent of the claimed transportation credits for the nine month payment period.
3. To correct the combined impact of items 1. and 2., the TCBF assessment rates in each of the two Orders would essentially need to double. We believe setting the transportation credit assessments at \$0.60 per hundredweight of Class I milk in Order 7, and \$0.30 per hundredweight of Class I milk in Order 5 is not a practical possibility. If the current TCBF assessment rates have not caused price alignment issues already, doubling the rates likely would result in price alignment problems.
4. The current transportation credit provisions reduce the calculated mileage reimbursement by the positive difference between the Class I differential applicable at the supplemental milk's origin point, and the Class I differential at the destination plant. While this process does work as intended in that it removes the "double dipping" of mileage reimbursement plus price increase, this system has caused some unintended consequences.

A. Since only the positive difference between the origin point differential and the destination point differential is used to reduce the mileage reimbursement, milk moving from a higher Class I differential location to a lower Class I differential location is afforded a full mileage reimbursement. This has created the possibility for moving milk seasonally from within the Florida Order marketing area to pool distributing plants in the Appalachian or Southeast Orders, and earning a transportation credit payment on the movement. This has created the possibility for a *de facto* "surplus haul-out credit" for Order 6 handlers, paid for by Order 5 and Order 7 Class I handlers.

B. The Class I differential difference adjustment to the TCBF mileage reimbursement coupled with the current national Class I differential surface creates a general preference to move supplemental milk west to east for delivery into Order 7, and north to south along the Atlantic seaboard for delivery into Order 5. Locales with relatively high Class I differentials become preferred suppliers of supplemental milk to Orders 5 and 7, versus areas with lower Class I differentials. For example, milk moving the same distance from a \$1.80 Class I differential zone to a \$3.40 Class I differential zone receives a substantially smaller net transportation credit reimbursement than milk moving from a \$3.00 Class I differential zone to a \$3.80 Class I differential zone. This

somewhat artificial general preference for where to first seek supplemental supplies for Orders 5 and 7 as a result of the transportation credit processes may make sense at times, but at other times, perhaps not. The rigidity of this system does not provide ready adjustment to changes in supply and demand conditions, and the ever-changing regional availability of supplemental supplies for Orders 5 and 7.

5. In the circumstance when one of the two Orders has begun prorating transportation credit payments and the other Order is still paying TCBF requests at 100 percent, milk can move in uneconomic ways, meaning further distances, in order to collect the higher rate of payout in the Order with the higher TC percentage payout.
6. When an Order begins proration of transportation credit payments, the market administrator exhausts the available funds in the Transportation Credit Balancing Fund each month. If additional claims are made later (i.e. on or before the 20th of the following month), the market administrator must collect back a portion of the previously made TC payments in order to have sufficient funds to pay the late-filed claims. The Transportation Credit Balancing Fund provisions should be amended to provide the market administrator the ability to hold back a reasonable reserve each month, so this 'rob Peter to pay Paul' process could be avoided. This pay then collect-back system is also administratively burdensome months later if the market administrator issues an audit correction to TC payments which results in additional TC funds being paid.
7. Twice in the last two years a distributing plant has become regulated on the Appalachian Order after or near the end of the March, April, May period. In both circumstances these plants are located outside the Appalachian marketing area. If a distributing plant's primary regular source of producer supply is also located outside the marketing area, a plant could receive a windfall of transportation credit payments on its regular source of supply, simply because the plant was not a part of the pool during at least two of the March, April and May months. This is contrary to the intent of the transportation credit system which specifies that payments of TC should be on milk which is not a regular source of supply for the Orders.

As can be seen from the above list of issues with the current transportation credit provisions, much work needs to be done to return the provisions to the properly functioning system we desire. Correcting and updating the transportation credit provisions and processes would require an amendatory hearing.

While SMA supports the inclusion of transportation credits in the Appalachian and Southeast Orders, as well as other Orders as needed, we do recognize that this sentiment is not universally held. Opponents of transportation credits as a policy are plentiful. It is not a stretch to say that transportation credits have been blamed by some industry participants for many, many ills. While SMA does not agree in any way that TC are inherently unwise, we must acknowledge the existence and fervor (even though ill-advised) of the TC opponents.

Were SMA to ask for a hearing to correct and update the transportation credit provisions, and were the Secretary amenable to holding a hearing, and were the Secretary to agree that amending the Orders would effectuate the declared policy of the Act, SMA is fearful that there may not be sufficient producer voting support to sustain an Order as amended. SMA has no desire whatsoever to see either the Appalachian Order or the Southeast Order terminated.

So SMA is faced with Order provisions we support, but which are badly in need of improvement, but for which amendment seems unlikely. Not wishing to see the baby thrown out with the bathwater, we believe it is appropriate for the Secretary to suspend the transportation credit provisions for one year.

Suspension of the transportation credit provisions would provide a number of advantages. First, the industry can evaluate the operations of the Orders and their ability to attract a sufficient quantity of milk absent the help of the transportation credit payments. Second, if the sufficient quantity of milk required by the Act does come into jeopardy, the Secretary will retain the transportation credits as an available tool for assuring the supply of milk to the Orders. And finally, in this environment of Federal sequestration, the cost to the market administrator offices of administering the transportation credit provisions would be virtually eliminated for the suspension period.

The market administrators have already collected transportation credit balancing fund assessments from March 2013, and have those funds in the bank. Additional assessments will be collected in the coming months. If the Secretary agrees with our position that the transportation credit provisions should be suspended, the TCBF assessments collected and held by the market administrators should be returned prorata to the contributors to the Fund, in accordance with the General Provisions.

Since the transportation credit payment period is scheduled to begin for milk deliveries in July 2013, time is of the essence in the evaluation and announcement of the Secretary's decision on this suspension request. Marketing plans will need to be formulated whether the transportation credit provisions are in effect or not.

Consistent with the intent of this request, SMA will not be requesting the extension of TCBF payments to the month of June 2013 in either Order 5 or Order 7.

SMA proposes suspension of the following language and such other language as to effectuate the intent of the suspension, in the Orders Regulating the Handling of Milk in the Appalachian and Southeast Marketing Areas for the period of July 2013 through February 2014, inclusive:

§ 1005.13(d)(3) and § 1007.13(d)(3)

“, excluding the total pounds of bulk milk received directly from producers meeting

the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested”

“, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested”

§ 1005.13(d)(4) and § 1007.13(d)(4)

“, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested”

“, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested”

§ 1005.30(a)(5) and § 1007.30(a)(5)

{In their entirety}

§ 1005.30(a)(6) and § 1007.30(a)(6)

{In their entirety}

§ 1005.30(a)(7) and § 1007.30(a)(7)

{In their entirety}

§ 1005.32(a) and § 1007.32(a)

{In their entirety}

§ 1005.80 and § 1007.80

{In their entirety}

§ 1005.81 and § 1007.81

{In their entirety}

§ 1005.82 and § 1007.82

{In their entirety}

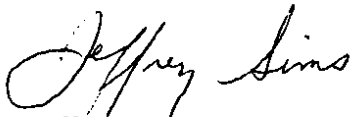
§ 1005.83 and § 1007.83

{In their entirety}

For the above reasons, Southern Marketing Agency, Inc. respectfully requests that these provisions be suspended for the time period specified.

If you have any questions or require additional information, please do not hesitate to call on me.

Sincerely,



Jeffrey Sims
Assistant Secretary
Southern Marketing Agency, Inc.

C: Mr. Harold H. Friedly, Jr., Market Administrator, Appalachian Order
Mr. Erik Rasmussen, Acting Market Administrator, Southeast Order

Mr. Barry Myers, Cobblestone Milk Cooperative, Inc.
Mr. Michael Myatt, Cooperative Milk Producers Association, Inc.
Mr. Randy McGinnis, Dairy Farmers of America, Inc.
Mr. David Jones, Dairy Farmers of America, Inc.
Mr. Elvin Hollon, Dairy Farmers of America, Inc.
Mr. Rance Miles, Select Milk Producers, Inc.
Mr. Greg Speck, Select Milk Producers, Inc.
Mr. Paul Bikowitz, Southeast Milk, Inc.
Mr. Abel Villalpando, Zia Milk Producers, Inc.