Proposed Rules

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011, and 1046

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

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

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

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

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P. O. Box 96456, Washington, DC 20090–6456 (Tel:202/690–1932; E-mail:NMemoli@USDA.gov).

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. No new entities will be regulated as a result of the proposed rules, and any changes experienced by handlers will be of a minor nature.

For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

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

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

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

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

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

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

Prior Documents in This Proceeding

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

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

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

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

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

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

Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), in Charlotte, North Carolina, on May 15–16, 1996, and in Atlanta, Georgia, on December 17–18, 1996. Notice of the May hearing was issued on May 1, 1996, and published May 3, 1996 (61 FR 19861).

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

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

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

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

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

2. Deductions from the minimum uniform price to producers.

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

4. The definition of producer.

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

Summary of Changes to the Interim Amendments

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

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

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

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

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

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

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

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

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

Findings and Conclusions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Interim Amendments Effective August 10, 1996

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

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

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

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

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

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

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

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

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

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

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

Testimony and Briefs Resulting From the Reopened Hearing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

normal distance milk moves from farm to plant. This reduction is appropriate, according to CVMPA, because the producer should be responsible for the cost of farm-to-market hauling. This modification, it adds, will further equate credits on producer milk and plant milk.

CVMPA's brief supports the proposal to have a producer's milk ineligible for credits if the producer's farm is located within 85 miles of the plant receiving the milk, is within the 4 marketing areas, is within 85 miles of certain cities on the periphery of the 4-market area, or is located within certain states in the southeastern United States. CVMPA argued that expansion of the geographic area would tend to curtail the incentive to move milk uneconomically. CVMPA also refuted certain arguments brought up during the reopened hearing which maintained that such an expansion would result in the procurement of milk from further distances so that credits could be earned. This, CVMPA argued, is false logic.

Regarding the assessment rates, CVMPA argued in its brief that assessments should be raised to a level high enough to ensure that there will be no insufficiencies in the transportation credit balancing fund. No justification exists for reducing the blend price to producers, according to CVMPA; therefore, no deductions should be made from the producer-settlement fund. CVMPA's brief also stated that any other alternative, such as over-order pricing, will result in inequity or uncertainty.

Finally, CVMPA opposed the installation of a net shipment provision for reducing transportation credits received by a plant that also ships out Class II or Class III milk during the same month that transportation credits are received by such plant. In its brief, CVMPA argued that seasonal, monthly, and weekly balancing of customer needs is very important to a cooperative association such as itself. While some operators of supply plants have the ability to reshuffle supplies through the week and weekend to help with weekly balancing, cooperatives which do not have manufacturing plants lack such opportunity. According to CVMPA, it is untenable to reduce transportation credits on supplemental milk simply because a cooperative is balancing the daily and weekly need of distributing plants by diverting producer milk.

Mid-Am also submitted a post-hearing brief in support of the continuation of transportation credits under the 4 orders, but with the modifications summarized earlier. Mid-Am reiterated its support for a modification of the interim provisions that would ensure that credits given on producer milk are comparable to credits given on plant milk.

Mid-Am pointed out in its brief that if the proposed modifications to the interim amendments concerning credits on producer milk are adopted, the amount of credits paid out will be significantly reduced; therefore, for Orders 5, 11, and 46, the current assessment rate of 6 cents per hundredweight should be sufficient to cover the costs of credits due. However, Mid-Am stated that in order to prevent funds from being deducted from the producer-settlement fund, an increase of the assessment to 7 cents in Order 7 would be necessary. Mid-Am also reiterated its opposition to the adoption of a net shipment provision for reducing transportation credits. According to Mid-Am, no justification exists for the incorporation of such a provision. Milk Marketing Inc. also submitted a brief in support of the continuation of transportation credits.

MMI stated that it fully supports the positions of CVMPA and Mid-Am with respect to the modification of the interim amendments. According to MMI, the proposed modifications will result in the transportation credit provisions being administered in a more equitable and uniform manner.

A brief filed by AMPI also supported modifications of the current transportation credit provisions so that the credits available on producer milk are more comparable to the credits available on other order plant milk. According to AMPI, such modifications would result in the elimination of the transportation credit advantage of producer milk over plant milk which causes disorderly procurement activities by various handlers.

In its brief, AMPI opposes the modification proposed by Mid-AM and CVMPA that would render ineligible for credits that milk shipped from producers' farms located outside the 4 marketing areas, but within 85 miles of certain basing points. AMPI argues that such a restriction would result in the uneconomical movement of milk, thereby creating additional transportation costs in the Southeast.

AMPI's brief also recommends the inclusion of a net shipment provision to guard against abuse of the transportation credits by various handlers. AMPI's brief stated that it is unreasonable to base such a net shipment provision on monthly transfers and diversions; it suggested that netting shipments that occur within the same 24-hour period would be more appropriate.

Barber Pure Milk Company and Dairy Fresh Corporation also submitted a post-hearing brief opposing certain modifications of the current transportation credit provisions. Barber and Dairy Fresh stated that they are concerned over issues of inequity which may result from any changes to the current provisions.

In their brief, Barber and Dairy Fresh oppose any proposal to have credits on supplemental producer milk be contingent upon the lower of the marketwide Class I utilization or the Class I utilization of the receiving plant. By making the credits on producer milk and plant milk comparable, they argue, other inequities would be created. Additionally, they note that the proposed modifications, including the proposal to subtract 85 miles from the total farm-to-plant mileage, would encourage the importation of other order plant milk rather than producer milk, which is more efficient.

According to Barber and Dairy Fresh, the interim orders should remain as they are with respect to adjustments involving Class I prices applicable at the origination point and the receiving plant. Any modification to the current computation would not have sufficient justification, according to the commentors. Any change to the geographic area from which producers' milk is ineligible to receive credits was opposed by Barber and Dairy Fresh because restrictions would be placed on producer milk which would not apply to milk from other order plants.

In their brief, Barber and Dairy Fresh also opposed decreasing the amount of credits available as the distance increases. This, it was argued, would force the uneconomical movement of milk. Any increase in the assessment rate was opposed by the commentors also. They maintain that producers also must share some responsibility for supplying the Class I milk needs of the markets. Finally, Barber and Dairy Fresh suggest that a net shipment provision be incorporated in the orders to prevent milk from being brought into one order for the transportation credit, while simultaneously milk is being shipped by the same handler to another market. According to the commentors, the Florida markets are benefiting from the transportation credit provisions at the expense of the 4 southeastern markets.

Gold Star Dairy also submitted a post-hearing brief opposing any assessments on Class I prices in order to fund transportation credits under Order 7 and maintains its position as stated in its brief following the May 1996 hearing. Gold Star Dairy also opposes any modifications of the orders regarding

the interim amendments claiming that proper notice had not been given.

Select Milk Producers, Inc., submitted a brief in support of the continuation of transportation credits without modification. In addition to reiterating its position from an earlier brief submitted after the May 1996 hearing, Select stated that proposals to limit transportation credits based on distance would result in an inequitable situation by placing the burden of transporting milk from further distances on cooperatives servicing the southeast markets. Additionally, Select maintained that the small reduction in producer pay prices resulting from the credits will end once the funds in the transportation credit balancing funds are built up; therefore, these past reductions do not justify changing the current provisions. Select also argued that proper notice had not been given to interested parties prior to the reopened hearing.

A brief was also filed by a producer from Tennessee who expressed concern that transportation credits place southeastern producers at a competitive disadvantage. In his brief, he also questioned why southeast producers have been paying to have distant milk hauled into their markets.

Conclusion

Testimony and exhibits introduced at both sessions of the hearing indicate that the Southeastern United States has a chronic shortage of milk for fluid use in the summer and fall months, which often extends into the winter months. This shortage has been worsening over time as milk production has declined and population has increased. This trend is likely to continue, exacerbating the problem of obtaining a sufficient supply of milk for fluid use in an orderly and equitable manner.

Under the arrangements that existed in these markets prior to the adoption of the interim amendments, the costs of obtaining an increasing supply of supplemental milk were not being borne equally by all handlers and producers in each of the 4 orders. The record indicates that disorderly marketing conditions existed because of the significantly different costs that were incurred by handlers who provide the additional service versus those who do not. It also indicates that the disproportionate sharing of costs was jeopardizing the delivery of adequate supplies of milk for fluid use. Thus, based upon the record of the first session of the hearing in these matters, interim amendments were adopted to restore stability and order in providing adequate supplies of milk for fluid use. The reasons for adopting the interim amendments were thoroughly explained in the tentative decision and the provisions that were adopted have been summarized above. Therefore, the discussion that follows will not reiterate the reasons for adopting the interim amendments, but instead will focus on the reasons for changing them based upon the new information presented at the December hearing.

The interim amendments provided for transportation credits during the months of July through December and included all of the months of January through June in a ''discretionary transportation credit period.'' Under those provisions, a handler may request that transportation credits be extended to any of the months of January through June by filing such a request with the market administrator 15 days prior to the beginning of the month for which the request is made. After providing notice of such a request to interested parties and conducting an independent study of the situation, the market administrator has the ultimate authority to grant or deny the request but must notify handlers of the decision by the first day of the month. The complete procedure to be followed is described in § 100X.82(b) of the order language.

This final decision changes the discretionary period from the months of January through June to January and June only. Outside of the July through December period, January and June are likely to be the months when these markets are most in need of supplemental milk for fluid use. Class I utilization generally begins to drop in February and milk supplies are usually adequate for fluid use until June.

The reasons for changing these discretionary months are twofold. First, including all of the months of January through June in the discretionary period could result in a situation where transportation credits are provided on nearly a year-round basis. Were this to happen, it would destroy the concept of a supplemental producer because a dairy farmer conceivably could be shipping milk to one of these markets on a year-round basis. Moreover, under the provisions provided in this decision, if a dairy farmer were to supply milk for more than 2 months of the January through June period, the producer's milk would be ineligible for transportation credits beginning in July. Hence, these provisions would be in conflict with each other. A second reason for restricting the discretionary period to January and June is to give the transportation credit balancing fund a chance to build up so that funds will be available when the markets are most in need of supplemental milk starting in July.

The interim amendments provided for a transfer of funds from the producer-settlement fund to the transportation credit balancing fund when the latter fund had an insufficient balance to pay the month's transportation credits. When this provision was adopted, it was assumed that it would only be needed for the first year that these provisions were in effect and that, thereafter, the transportation credit balancing fund would maintain a sufficient balance to preclude such a transfer of funds. Experience has indicated otherwise, particularly with respect to the Southeast and Carolina markets. Data introduced by the market administrators' offices show that all 4 orders had an insufficient balance in the transportation credit balancing fund during every month that transportation credits have been in effect, with the exception of Order 46 in November 1996. The data also show that the transfer of funds from the producer-settlement fund to the transportation credit balancing fund reduced blend prices to producers by varying amounts during the 4-month period of August through November 1996, ranging from 1 cent for Order 46 to as much as 21 cents in October for Order 7.

To cope with the milk shortage of the past year, action had to be taken to provide handlers with adequate milk supplies to meet their fluid needs as equitably as possible. Since the transportation credit provisions did not become effective until August 10, 1996, there was no opportunity to accumulate funds with which to pay all of the transportation credits. Therefore, as a short-term measure, provision was made for taking funds from the producer-settlement fund. The logic behind this provision was that if transportation credits could not be paid fully from funds collected from handlers, the next best alternative was to have all of a market's producers contribute to making up the difference; otherwise, certain producers (i.e., members of cooperative associations) would bear a disproportionate share of the cost of bringing in supplemental milk.

Based on the experience with transportation credits during the past 4 months, it can be concluded with some certainty that, under present conditions, the transportation credit balancing fund of Orders 5 and 7 would contain insufficient funds to pay for all of the transportation credits that are likely to be accrued during the months of July through December 1997 and that, based upon the current 6-cent assessment rate, funds would have to be transferred from

the producer-settlement fund to the transportation credit balancing fund by fall 1997 if these provisions remain unchanged.

We agree with the proponents of transportation credits that the cost of bringing supplemental milk to a market generally should be shared among all of a market's handlers. However, from the data for the last 4 months, it can now be concluded with reasonable certainty that to fully cover handlers' costs for the Southeast and Carolina markets under the present provisions, the assessment rate would have to be raised significantly. A better approach, we believe, is to address the revenue problem from both ends: slightly increase revenue, but more significantly reduce payouts. This would ensure that only necessary imports are made, and would encourage the most cost effective methods of procurement. At the same time, it would provide handlers with significant, if not total, recoupment of costs.

In particular, based upon the record of this hearing and the experience with transportation credits during the months of August through November 1996, several changes should be made to the transportation credit provisions to correct certain problems that have become evident.

First, the transfer of funds from the producer-settlement fund to the transportation credit balancing fund should be eliminated. This temporary measure is no longer needed. Transportation credits should be paid out each month to the extent possible from the available funds in the transportation credit balancing fund. If the credits exceed the balance in the transportation credit balancing fund, the available funds should be prorated to handlers based upon the transportation credits that are due to each handler.

Second, the per mile transportation credit rate should be reduced to 0.35 cent per hundredweight per mile from the present level of 0.37 cent. This reduction is consistent with the testimony of several witnesses who warned during the course of the hearings that it is better to under-compensate handlers for supplemental milk costs rather than overcompensate them. In this way, handlers will only import milk that is truly needed because their costs may not be fully covered. This argument makes sense and, in view of the need to conserve funds, this suggestion should be adopted.

Third, the proposal by Mid-Am to exclude 85 miles from the mileage when computing credits for supplemental producer milk should be adopted. Mid-Am is correct in arguing that producers should be expected to bear their normal farm to plant hauling cost, and the 85-mile figure proposed appears to be a reasonable approximation of the distance used in computing such cost. This modification will also help significantly to reduce transportation credits.

Fourth, certain changes should be made in the proportion of supplemental producer milk eligible for transportation credits and in the formula for computing those credits. These changes are explained below.

Finally, the maximum assessment for the transportation credit balancing fund should be increased slightly for Orders 5 and 7. It is likely that, even with the changes adopted above and others yet-to-be discussed, there will be a shortfall in funds to pay for all of the projected transportation credits if production patterns continue as they have for the past 3 years. A modest rate increase will help narrow this gap. Therefore, the maximum assessment rate for Order 5 should be increased to 6.5 cents per hundredweight of Class I producer milk and the rate for Order 7 should be increased to 7 cents per hundredweight. The rate should remain at 6 cents per hundredweight for Orders 11 and 46, however.

This modest increase in the assessment rates for Orders 5 and 7 will help to avoid having to prorate available funds to handlers in these markets. It should be kept in mind that this rate is the maximum rate that can be charged. If production increases and/or supplemental milk imports decrease and less money is needed for the transportation credit balancing fund, these changes will trigger an automatic reduction in this assessment.

The current 6-cent assessment for Orders 11 and 46 is likely to meet all of the anticipated transportation credits for 1997. In fact, by the first half of 1998 it may be possible to maintain a sufficient balance in the transportation credit balancing fund with a rate below 6 cents per hundredweight for these 2 markets.

In conjunction with the limit on the disbursement of transportation credits, as explained above, a new procedure should be implemented for receiving the required information, computing the credits to be disbursed, and making final settlement for appropriate adjustments.

Experience with the transportation credit provisions during the months of August through December 1996 has demonstrated a handler/cooperative association problem in getting complete and accurate transportation credit documents to the market administrator by the 7th day of the month, when such information must be received for purposes of computing the uniform price. Because of difficulties in obtaining timely information, the market administrators have accepted late submissions of supplementary information.

Now that the possibility exists that transportation credits may have to be disbursed on a prorata basis, fixing the time for the final submission of requests and for final payment based upon such requests is even more of a necessity. If the submission of supplemental information were left open-ended, the procedure for prorating credits could get hopelessly complicated with endless recalculations based on tardy information. Therefore, the procedure should be clear, reasonable, and unalterable once in place.

When the market administrator receives handlers' reports of receipts and utilization by the 7th day of the month, the market administrator will determine whether there are sufficient funds in the transportation credit balancing fund to cover the requests for transportation credits. If there is not a sufficient balance, the market administrator will compute a preliminary proration percentage by dividing the balance in the fund by the total amount of transportation credits requested. The prorated credits so computed will be disbursed along with any payments from the producer-settlement fund on or before the 13th day of the month with respect to Orders 5, 7, and 11 (16th day of the month in the case of Order 46).

Handlers will be given the opportunity to correct and file complete documentation of their initial transportation credit requests for the preceding month by filing updated information with the market administrator by the 20th day of the month. After such date, the market administrator will conduct a preliminary audit of the requests and will then compute a final proration percentage based upon the revised numbers. Handlers then will be notified of any additional credits due them or of any payments due from them and such payments will be completed the following month when payments are next due.

At the May 1996 hearing, Mid-Am proposed permitting transportation credits for bulk transfers of milk for Class I use from any other order plants. The interim amendments restricted such transfers to plants regulated under Federal orders other than Orders 5, 7, 11, and 46. The reason for excluding plants under these 4 orders from transportation credits was to avoid

potential abuses from undue movements of milk among the orders to take advantage of transportation credits. In particular, handlers were concerned that milk could be stair-stepped from Order 46 to Order 7, for example, thereby creating a shortage of milk in Order 46. Order 46 handlers then would have to import replacement milk, and their assessments for transportation credits would be used to cover transportation costs for such replacement milk when, some argued, Order 7 handlers should have borne the full cost of importing milk from the ultimate source. At the reopened hearing, there were no problems mentioned in connection with the provisions applicable to plant transfers, except for concern that milk could be moved or stair-stepped among orders to obtain credits. As a result, the provisions that prohibit credits to receipts of transferred milk among the four orders should remain unchanged in the final amendments.

Currently, producer milk is eligible to receive transportation credits as discussed above. At the reopened hearing, there was no testimony suggesting that transportation credits be eliminated for producer milk. In fact, the available data shows that during the months of August through November 1996 far more supplemental milk was received directly from producers' farms than from other order plants. Several suggestions were made concerning how to compute such credits in a more equitable and efficient manner. Since most of these suggestions have merit, modifications to the interim amendments involving producer milk are provided.

The thrust of the testimony was that the present method for computing transportation credits for producer milk resulted in an overly generous credit as compared to the method used for plant milk and, therefore, provided an artificial incentive to receive producer milk directly from farms rather than milk transferred from an other order plant. The testimony, as summarized earlier, was quite convincing, with the exception of Mid-Am's proposal to exclude the milk of a producer who is within 85 miles of the perimeter of any of the 4 marketing areas from transportation credit eligibility. Such proposal should not be adopted.

In the interim amendments, producer milk was not eligible for a transportation credit if the producer's farm was located within one of the 4 marketing areas or if the farm was within 85 miles of the plant to which milk from the farm was delivered. The tentative decision concluded that it was ''reasonable to conclude that the markets'' regular producers are located reasonably close to the plants receiving their milk. Thus, such producers' farms are likely to be within the geographic marketing areas defined in each order.''

At the reopened hearing, Mid-Am proposed expanding this restriction to include producers whose farms are: (a) Within the States of Florida, Georgia, Alabama, Louisiana, Mississippi, Arkansas, Tennessee, South Carolina, North Carolina, or Kentucky; or (b) within 85 miles of the City Hall in the nearer of Lake Charles or Shreveport, Louisiana; Little Rock, Arkansas; Evansville, Indiana; Fulton, Louisville, or Lexington, Kentucky; Bristol, Tennessee; or Reidsville, or Roanoke Rapids, North Carolina.

Mid-Am's 10-state exclusion area would randomly exclude many counties in Arkansas and Kentucky that are outside of any of the 4 marketing areas and should not be adopted. It would be difficult to justify the exclusion of a county from transportation credits simply because of its location within a particular state. For example, under the Mid-Am proposal, many counties in northwest Arkansas and northeast Kentucky would be excluded from transportation credits. These counties may or may not be part of the regular supply for the 4 markets. By randomly excluding all territory within a state, certain counties outside of the 4 marketing areas may be unfairly excluded. The exclusion of territory from transportation credits should be based upon whether that territory is a regular source of supply for the markets involved in this proceeding. It must be noted, however, that simply because a county is within one of the 4 marketing areas does not necessarily make it a regular source of supply for these 4 markets. By the same token, simply because a county is just outside these marketing areas does not mean it is not a regular source of supply either. However, it is reasonable and appropriate to use such marketing area boundaries to define the exclusionary area since it is apparent that most of the producers located within these areas supply plants regulated under these orders. Furthermore, other performance measures are used to distinguish between producers who are or who are not regular suppliers of these markets. Thus, the exclusionary area need not be overly restrictive as proposed by Mid-Am.

The interim amendments excluded the area within the 4 marketing areas from transportation credits. However, the use of the marketing area definition failed to exclude several unregulated counties within the State of Kentucky where producers are located and who could qualify for transportation credits. These counties are completely encircled by the Order 7 and Order 46 marketing areas and are an integral part of the milk supply for those 2 markets. There can be no doubt that these counties— Allen, Barren, Metcalfe, Monroe, Simpson, and Warren—clearly should be part of the area excluded from transportation credits because the surrounding markets are clearly the regular outlets for this milk. Accordingly, the order language should be modified to include these 6 counties in § 100X.82(c)(2)(iii).

The proposal of Mid-Am to exclude the territory within 85 miles of the cities mentioned above should not be adopted. This proposal would exclude many producers who are located in counties adjacent to the 4 marketing areas. These producers may, for the most part, be regular suppliers of other markets. For example, there may be dairy farmers in East Texas who are within 85 miles of Lake Charles or Shreveport, Louisiana, from whose farms milk is delivered on a supplemental basis to other plants within the Southeast market that may be hundreds of miles away. It would make no sense to exclude these farms from transportation credits and thereby force cooperative associations and plant operators to bring in supplemental milk from even farther distances when this closer milk is available.

Not all of the pool distributing plants regulated under these orders are located within the 10-state area specified above. For example, a pool distributing plant regulated under Order 5 is located in Lynchburg, Virginia. The interim amendments dealt with this problem by specifying that a farm had to be more than 85 miles from the plant to be eligible for a transportation credit. This provision was based upon a suggestion made by MMI at the May 1996 hearing restricting supplemental producers to those who are more than 85 miles from Louisville or Lexington, Kentucky, or Evansville, Indiana.

As explained above, the amendments provided in this decision would subtract 85 miles from the transportation credit computation for producer milk. In view of this adjustment, it is no longer necessary to specify that a producer must be more than 85 miles from the plant because a transportation credit would not be given for that distance anyway. In effect, the origination point for producer milk has to be at least 85 miles from the plant of receipt before milk from that point would receive a transportation credit. Thus, the language now contained in § 100X.82(c)(2)(ii) of the interim

amendments referring to 85 miles has not been carried forward to the comparable revised paragraph, § 100X.82(c)(2)(iii), of the attached final amendments.

Mid-Am also proposed certain changes to the way transportation credits are computed for producer milk. As provided in the interim amendments, all producer milk classified as Class I milk is eligible for the credit. At present, the proportion of such milk that receives a Class I classification is approximately equal to the utilization of the plant receiving the milk. Receipts of transferred milk from other order plants, on the other hand, are allocated to Class I based upon the lower of the receiving handler's Class I utilization or the marketwide Class I utilization. This difference in classifying supplemental milk, according to Mid-Am, has provided an incentive for a high Class I utilization handler to receive supplemental producer milk rather than supplemental milk transferred from an other order plant in order to receive credits on a greater proportion of the supplemental milk.

To correct this bias, Mid-Am proposed that supplemental milk from producers should be assigned to Class I in the same proportion as other order supplemental milk to determine the proportion of such milk that is eligible for the transportation credit. This modification should be adopted. Supplemental producer milk should be assigned to Class I, for transportation credit purposes, by adding a paragraph—(c)(2)(i)—to Section 82 (''Payments from the transportation credit balancing fund''). This new paragraph states that the quantity of producer milk that is eligible for the transportation credit shall be determined by multiplying the total pounds of supplemental producer milk received at the plant by the lower of the marketwide Class I utilization of all handlers for the month or the Class I utilization of the pool plant operator receiving the milk after all of the handler's receipts have been allocated to classes of utilization in Section 44 of the respective order.

Another change that should be made to the transportation credit for producer milk has to do with the way the gross credit is adjusted by the difference in Class I price at the receiving plant and the origination point for the load of milk. At the present time, even though a farm and an other order plant may be identically located in another order's marketing area, there may be a difference in the transportation credit that would apply to milk coming from those identically-located points under the provisions of Orders 5, 11, and 46. The Class I price, adjusted for location, under Orders 5, 11, and 46, applicable to a plant in the marketing area of some other order is not necessarily the same as the Class I price, adjusted for location, applicable to that plant pursuant to the provisions of that other order. For example, the Class I price to any plant under the Eastern Ohio-Western Pennsylvania order is $2.00 plus the basic formula price under the provisions of the Eastern Ohio-Western Pennsylvania order, but the Class I price that would apply to a plant located in the Eastern Ohio-Western Pennsylvania marketing area under the provisions of the Carolina order would be based upon mileage from specified basing points in North Carolina; it could be greater or less than $2.00 plus the basic formula price. Under the Southeast order, by contrast, the Class I price applicable to a plant that is located in the marketing area of some other order is the Class I price that would apply to that plant under the provisions of the order covering that marketing area. Therefore, under the Southeast order the transportation credit for a plant or farm identically located in another Federal order marketing area is the same, but for Orders 5, 11, and 46 it may not be.

In computing transportation credits for plant milk, the gross credit (i.e., the mileage times 0.35 cent) is adjusted by subtracting the Class I price applicable to the plant under the other order from the Class I price applicable to the plant receiving the milk. For producer milk, however, the gross credit is adjusted by subtracting this order's Class I price at the origination point from this order's Class I price at the receiving plant. As a result, there could be a difference in the transportation credit applicable to plant milk versus producer milk, even though the plant and farm are adjacent to each other.

This can and should be corrected for plants and farms located in Federal order marketing areas by changing the way the credit is computed for producer milk. The adjustment to the gross credit for producer milk should be computed as if the origination point for the producer milk were a plant location. Specifically, if the origination point is in another order's marketing area, the other order Class I price applicable at the origination point should be subtracted from the receiving order's Class I price at the receiving plant. This change is provided in § 100X.82(d)(3)(v) of the order language.

A complication arises in the case of an origination point that is not located within any Federal order marketing area. While the other order Class I price that would apply to an other order plant that is located in unregulated territory is known, the same cannot be said for a farm location (i.e., an origination point for a load of supplemental producer milk). In view of this uncertainty, the most reasonable treatment for such milk is to price it under the provisions of the order receiving the milk. For example, if an Order 5 plant in Raleigh, North Carolina, received supplemental producer milk from a farm in an unregulated county in central Pennsylvania, the gross transportation credit for that load of milk would be adjusted by subtracting from the credit the difference between the Order 5 Class I price at the Pennsylvania origination point and the Order 5 Class I price at Raleigh.

Another issue, not addressed at the hearing, must be discussed. It is possible that milk may be transferred from an other order plant that is located in one Federal order marketing area but is regulated under a different order. For example, a plant may be located in the Eastern Ohio-Western Pennsylvania marketing area but may be regulated under the Ohio Valley order. In such a case, a question may arise concerning which order's Class I price to use in computing the transportation credit. In this situation, the market administrator should use the Class I price that applies at that plant under the order in which the plant is regulated. Thus, in the example given, the Class I price at the plant would be the applicable Class I price under the Ohio Valley order. This treatment will ensure that the transportation credit properly reflects the difference in the Class I prices applicable to the shipping handler and the receiving handler.

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

Since the need for supplemental milk generally drops off sharply after the month of December or January in all of these markets and does not reappear, usually, until the month of July, it is reasonable to conclude that the milk of a producer who is located outside of the exclusionary areas (the 4 subject marketing areas or the 6 Kentucky counties mentioned above) generally would not be needed during the months of January through June, but might be needed starting in July. It is also logical that the milk of a supplemental producer would not be needed each day but perhaps once or twice a week.

Accordingly, if a dairy farmer was a regular supplier of the market during January through June—i.e., a ''producer'' on the market for more than 2 of those months—the milk of such a dairy farmer should not be considered supplemental milk during the following months of July through December.

It would be unduly restrictive to disqualify a dairy farmer for shipping a limited amount of milk during one or two months of the January through June period, however, because even the months of January and June can be short months in the Southeast, and, in fact, these 2 months can be included in the transportation credit period. Therefore, the provision should be flexible enough to accommodate some shipments to the market during the January through June period. Specifically, a dairy farmer should not lose status as a supplemental producer if milk is shipped to a market for not more than 2 months of the January through June period. However, shipments during this period should be of a limited duration. Therefore, not more than 50 percent of the dairy farmer's production may be received as producer milk, in aggregate, during the 2 months of the January through June period in which the dairy farmer was a producer on the market. In addition, if January and/or June are months in which transportation credits are extended, those months should not be included in the 2-month limit for a supplemental producer. The transportation credits would not be extended to January or June if milk were not needed during those months, and it would be counterproductive to penalize a producer for responding to that need. Therefore, if January and June are part of the transportation credit period, a dairy farmer may be a producer during those months and, in addition, may be a producer during 2 of the months of February through May provided that the dairy farmer's producer milk during those additional 2 months did not exceed the 50 percent limit.

The interim amendments provided that 32 days' production of a dairy farmer could be delivered during January through June before the dairy farmer would lose status as a supplemental producer. This has been changed to ''50 percent of the dairy farmer's production'' to simplify reporting and administration of this provision.

The provisions in the interim amendments prescribing the determination of an origination point for a load of supplemental producer milk are continued in this final decision. No problems were noted with this provision and no suggestions were made for changing it at the reopened hearing or in the post-hearing briefs. The 2 alternatives provided for determining a supplemental producer milk origination point are contained in § 100X.82(d)(3)(i).

As noted earlier, there was a great deal of concern expressed at both sessions of the hearing about ''stair-stepping'' milk from one market to another. Suggestions were made at both sessions of the hearing to adopt a net shipment provision to offset transfers from a pool plant to other order plants against supplemental milk brought into the pool plant within a specified period of time.

This issue can be quite complex, particularly in large markets, such as the Southeast market. It may very well make economic sense to ship surplus milk from one part of a market (for example, southern Louisiana in the Order 7 marketing area) to another market that is short of milk (for example, the Florida markets) at the same time that bulk milk is imported for a handler in another part of the Order 7 marketing area (for example, a handler in Nashville). Also, it is entirely possible that milk may be needed at the beginning of a month, while by the end of the month milk must be exported out of the market for surplus disposal. Finally, since fluid milk processors have different bottling needs, extra milk may be needed on certain days but not on other days within the same week.

In response to concerns expressed at both sessions of the hearing, the 4 orders should contain a net shipment provision to prevent the type of abuses feared by proponents of such a provision. However, in view of the varying circumstances surrounding the fluid needs of these markets, the provision should be flexible enough to accommodate these varying needs. To be effective, the net shipment provision should apply to all supplemental milk received, either by transfer or directly from producers' farms as producer milk.

In applying the net shipment provision, bulk transfers to nonpool plants that were made on the same day that supplemental milk was received at a pool plant should be subtracted from the total receipts of supplemental milk for which the pool plant operator or cooperative association is requesting a credit. In reducing the supplemental milk eligible for the credit pursuant to this net shipment provision, the market administrator should first subtract the loads of milk that were most distant from the plant and then continue in sequence with less distant loads. This procedure, which is described in § 100X.82(d)(1) of the orders, will minimize the depletion of funds from the transportation credit balancing fund resulting from unwarranted receipts of supplemental milk.

The net shipment provision will require accurate accounting and reporting on the part of handlers. Specifically, each pool plant operator applying for transportation credits will be required to maintain accurate accounting records of daily transfers of bulk milk from the plant to nonpool plants. This is provided in § 100X.30(a)(7) of the order language for Orders 5, 7, and 46, and § 100X.30(a)(8) for Order 11.

Although specific proposals were made to net outgoing shipments from incoming shipments within a 24-hour period, this suggestion could prove to be tedious for handlers, as well as for the market administrator. Therefore, the attached amendments provide for netting based on receipts and shipments occurring the same calendar day.

The diversion of producer milk to a nonpool plant was not addressed at great length at either session of the hearing, although AMPI did state in its brief that diversions to nonpool plants should also be included in a net shipment provision.

It is certainly a fact that milk is diverted from pool plants in these 4 markets to nonpool plants for Class II and Class III use. Each pool plant operator has a regular supply of producer milk for its Class I needs and that milk should be utilized to the full extent before importing supplemental milk. While diversions could have been incorporated into the net shipment provision, as suggested by AMPI, there would be numerous obstacles to overcome in doing so. Therefore, we concluded, on balance, that any possible benefit of including diverted milk would be outweighed by the problems caused by such a complicated provision.

To illustrate one type of problem, for example, not all supplemental milk may be needed at a pool plant every day; some days it may be diverted to a nonpool plant close to the farm where produced and hundreds of miles away from the pool plant where it is received on a supplemental basis some of the time. If diversions were included in the net shipment provision, the milk that is not needed—i.e., it is diverted to a nonpool plant—would have to be subtracted from the supplemental milk that was needed that day, which could result in the handler getting no transportation credit for supplemental milk received on that day. While a provision undoubtedly could be written to distinguish ''regular'' or ''close-in'' producer milk that is diverted from

''supplemental'' or ''distant'' producer milk in an attempt to overcome these problems, it would likely be a very cumbersome provision. If, at some point, it becomes obvious that handlers are diverting local milk for manufacturing use while importing supplemental milk for Class I use within the same 24-hour period, appropriate action should be taken to stop this abuse of the transportation credit provisions. In the meantime, however, handlers should be given as much freedom as possible to move milk according to their needs.

At the reopened hearing, Mid-Am proposed an amendment to that section of the orders dealing with overdue accounts. Specifically, it proposed adding overdue payments to the transportation credit balancing fund in the list of late payments to which a late payment charge would apply.

This proposal should be adopted. Although handler compliance with the transportation credit balancing fund assessment has been excellent thus far, it is possible that late payments may occur in the future. Were this to happen, one handler could gain an advantage over competing handlers by using money that should have been paid to the market administrator. To discourage this from happening, and to rectify the situation when it does happen, a late payment charge should apply to delinquent payments to the transportation credit balancing fund.

A conforming change should be made in Order 46 with respect to the payment of assessments for the transportation credit balancing fund and the payment of transportation credits to handlers. In the interim amendments, assessments for the transportation credit balancing fund were uniformly due on the 13th day of the month for all 4 orders and, similarly, payment of transportation credits to handlers was uniformly set at the 12th day of the month for all 4 orders. However, Order 46 differs from the other 3 orders with respect to payments to and from the producer-settlement fund. Under Order 46, payments to the producer-settlement fund are due on the 15th day of the month and payments from the producer-settlement fund are due on the 16th day of the month. For the other 3 orders, however, payments into the producer-settlement fund must be made by the 12th day of the month and payments out of the producer-settlement fund must be made by the 13th day of the month. To facilitate the payments of transportation credit assessments and payouts under Order 46, the dates in §§ 1046.81(a) and 1046.82(a) should be changed from the 12th and 13th, respectively, to the 15th and 16th, respectively, to coincide with payments in and out of the producer-settlement fund for that order.

A conforming change also should be made in § 100X.81 with respect to how the assessment for the transportation credit balancing fund is to be determined. In the interim amendments, the standard used for determining how much the handler assessment would be each month was based upon the credits disbursed during the preceding July through December period or during the immediately preceding 6-month period. This paragraph was worded that way because transportation credits theoretically could have been in effect every month of the year. However, as modified in this final decision, transportation credits can only be effective during the months of June through January and the months of June and January are subject to a finding by the market administrator that supplemental milk is needed for fluid use.

In view of the change in months for which transportation credits may be effective, it is also appropriate to change the benchmark for determining the level of such assessments. Specifically, § 100X.81(a) should be modified to read ''the total transportation credits disbursed during the prior June–January period.'' However, in the event that the funds disbursed are prorated based on the available funds, the assessment should be based upon the total amount of credits that would have been disbursed as determined by the market administrator. Although the yardstick for the balance in the fund can now be raised to 8 months instead of 6, this change is necessary to maintain a balance in the transportation credit balancing fund that is sufficient to cover the transportation credits to be disbursed in the following short production period. In other words, if the months of January and/or June were included in the prior transportation credit period, the amount of credits given during these months should also be included in the calculation of the assessment rates for the 4 orders.

Section 100X.77, adjustment of accounts, of the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville orders should also be amended to conform with the changes adopted above. Presently, the orders lack any instruction pertaining to the adjustment of accounts in the event that an error has been made either involving payments into the transportation credit balancing fund by handlers or payments to handlers by the market administrator from such fund. Therefore, it is necessary to include such language in section 100X.77 of these 3 orders to avoid any ambiguity concerning these matters. In particular, transportation credit balancing fund adjustments should be handled in the same manner as adjustments to the producer-settlement fund, except that additional transportation credits due handlers should be made as soon as transportation credit funds become available and not necessarily within 15 days of the time that this adjustment is discovered. A similar conforming change is not necessary for the Southeast order because the language contained in § 1007.77 of that order is general enough to accommodate adjustments related to the transportation credit balancing fund.

Rulings on Proposed Findings and Conclusions

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

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

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

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements and the orders, as hereby

proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held; and

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Marketing Agreement and Order

Annexed hereto and made a part hereof is an Order amending the orders regulating the handling of milk in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. A marketing agreement that reflects the attached order verbatim is available upon request from the market administrator.

It is hereby ordered that this entire decision and the order amending the orders be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

February 1997 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas is approved or favored by producers, as defined under the terms of the individual orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

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

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

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

Milk marketing orders.

Dated: May 12, 1997.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Orders Regulating the Handling of Milk in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas

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

Findings and Determinations

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Order Relative to Handling

It is therefore Ordered, that on and after the effective date hereof, the handling of milk in each of the specified orders' marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended.

Accordingly, the interim rule amending 7 CFR Parts 1005, 1007, 1011, and 1046, which was published at 61 FR 41488 on August 9, 1996, is adopted as a proposed rule with the following changes:

1. The authority citation for 7 CFR parts 1005, 1007, 1011, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

§ 1005.30 [Amended]

2. In § 1005.30, paragraphs (a)(7) and (a)(8) are redesignated, respectively, as paragraphs (a)(8) and (a)(9), new paragraph (a)(7) is added, and paragraphs (a)(5), (a)(6), and (c)(3) are revised to read as follows:

§ 1005.30 Reports of receipts and utilization.

* * * * *

(a) * * *

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

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

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

* * * * *

§ 1005.32 [Amended]

3. In § 1005.32, a new paragraph (a) is added to read as follows:

§ 1005.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1005.9(a), (b), and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(5), (6), and (7).

* * * * *

§ 1005.61 [Amended]

4. In § 1005.61, paragraph (a)(4) is removed and paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively.

§ 1005.77 [Amended]

5. § 1005.77 is revised to read as follows:

§ 1005.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1005.71 or to the transportation credit balancing fund pursuant to § 1005.81, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1005.72 or § 1005.82, the market administrator shall make payment to such handler within 15 days or, in the case of the transportation credit balancing fund, as soon as funds become available. If a handler is due additional payment for a month in which payments to handlers were prorated pursuant to § 1005.82(a), the additional payment pursuant to this section shall be multiplied by the final proration percentage computed in § 1005.82(a)(2).

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1005.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1005.78 [Amended]

6. In the introductory text of § 1005.78, the number ''1005.81,'' is added following the number ''1005.77,''.

§ 1005.81 [Amended]

7. In § 1005.81, paragraph (c) is removed and paragraphs (a) and (b) are revised to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler operating a pool plant and each handler specified in § 1005.9(b) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.065 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.

§ 1005.82 [Amended]

8. § 1005.82 is revised to read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1005.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for

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

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, and allocated to Class I milk pursuant to § 1005.44(a)(12); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1005.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1005.44;

(ii) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1007, 1011, or 1046, or within the Kentucky counties of Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

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

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point is not in any Federal order marketing area, determine the Class I price at the origination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) of this section.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

§ 1007.30 [Amended]

9. In § 1007.30, paragraphs (a)(7) and (a)(8) are redesignated, respectively, as paragraphs (a)(8) and (a)(9), new paragraph (a)(7) is added, and paragraphs (a)(5), (a)(6), and (c)(3) are revised to read as follows:

§ 1007.30 Reports of receipts and utilization.

* * * * *

(a) * * *

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

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

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

* * * * *

§ 1007.32 [Amended]

10. In § 1007.32, a new paragraph (a) is added to read as follows:

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1007.30 (a)(5), (6), and (7).

* * * * *

§ 1007.61 [Amended]

11. In § 1007.61, paragraph (a)(4) is removed and paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively.

§ 1007.78 [Amended]

12. In the introductory text of § 1007.78, the number ''1007.81,'' is added following the number ''1007.78,''.

§ 1007.81 [Amended]

13. In § 1007.81, paragraph (c) is removed and paragraphs (a) and (b) are revised to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler operating a pool plant and each handler specified in § 1007.9 (b) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.07 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.

§ 1007.82 [Amended]

14. § 1007.82 is revised to read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of any payment adjustments based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1007.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

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

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046, allocated to Class I milk pursuant to § 1007.44(a)(12); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1007.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1007.44;

(ii) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1011, or 1046, or within the

Kentucky counties of Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

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

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point is not in any Federal order marketing area, determine the Class I price at the origination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) of this section.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

§ 1011.30 [Amended]

15. In § 1011.30, paragraphs (a)(8) and (a)(9) are redesignated, respectively, as paragraphs (a)(9) and (a)(10), new paragraph (a)(8) is added, and paragraphs (a)(6), (a)(7), and (c)(3) are revised to read as follows:

§ 1011.30 Reports of receipts and utilization.

* * * * *

(a) * * *

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

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

(8) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1011.82, all of the information required in paragraphs (a)(6), (a)(7) and (a)(8) of this section.

* * * * *

§ 1011.32 [Amended]

16. In § 1011.32, a new paragraph (a) is added to read as follows:

§ 1011.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1011.9(a), (b), and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1011.30(a)(6), (7), and (8).

* * * * *

§ 1011.61 [Amended]

17. In § 1011.61, paragraph (a)(4) is removed and paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively.

§ 1011.77 [Amended]

18. § 1011.77 is revised to read as follows:

§ 1011.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1011.71 or to the transportation credit balancing fund pursuant to § 1011.81, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1011.72 or § 1011.82, the market administrator shall make payment to such handler within 15 days or, in the case of the transportation credit balancing fund, as soon as funds become available. If a handler is due additional payment for a month in which payments to handlers were prorated pursuant to § 1011.82(a), the additional payment pursuant to this section shall be multiplied by the final proration percentage computed in § 1011.82(a)(2).

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1011.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to

producers or cooperative associations next following such disclosure.

§ 1011.81 [Amended]

19. In § 1011.81, paragraph (c) is removed and paragraphs (a) and (b) are revised to read as follows:

§ 1011.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler operating a pool plant and each handler specified in § 1011.9(b) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1011.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.

§ 1011.82 [Amended]

20. § 1011.82 is revised to read as follows:

§ 1011.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1011.30(a)(6), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1011.30(a)(7), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1011.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1011.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1011.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

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

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1046, and allocated to Class I milk pursuant to § 1011.44(a)(12); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1011.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1011.44;

(ii) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1046, or within the Kentucky counties of Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c) (1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant

load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

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

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For milk described in paragraph (c)(2) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point is not in any Federal order marketing area, determine the Class I price at the origination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) of this section.

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

§ 1046.30 [Amended]

21. In § 1046.30, paragraphs (a)(7) and (a)(8) are redesignated, respectively, as paragraphs (a)(8) and (a)(9), new paragraph (a)(7) is added, and paragraphs (a)(5), (a)(6), and (c)(3) are revised to read as follows:

§ 1046.30 Reports of receipts and utilization.

* * * * *

(a) * * *

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

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

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1046.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

* * * * *

§ 1046.32 [Amended]

22. In § 1046.32, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 1046.32 Other reports.

* * * * *

(c) On or before the 20th day after the end of each month, each handler described in § 1046.9(a), (b), and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1046.30(a)(5), (6), and (7).

* * * * *

§ 1046.61 [Amended]

23. In § 1046.61, paragraph (a)(4) is removed and paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively.

§ 1046.77 [Amended]

24. § 1046.77 is revised to read as follows:

§ 1046.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1046.71 or to the transportation credit balancing fund pursuant to § 1046.81, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1046.72 or § 1046.82, the market administrator shall make payment to such handler within 15 days or, in the case of the transportation credit balancing fund, as soon as funds become available. If a handler is due additional payment for a month in which payments to handlers were prorated pursuant to § 1046.82(a), the additional payment pursuant to this section shall be multiplied by the final proration percentage computed in § 1046.82(a)(2).

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1046.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1046.78 [Amended]

25. In the introductory text of § 1046.78, the number ''1046.81,'' is added following the number ''1046.77,''.

§ 1046.81 [Amended]

26. In § 1046.81, paragraph (c) is removed and paragraphs (a) and (b) are revised to read as follows:

§ 1046.81 Payments to the transportation credit balancing fund.

(a) On or before the 15th day after the end of the month, each handler

operating a pool plant and each handler specified in § 1046.9(b) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1046.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.

§ 1046.82 [Amended]

27. § 1046.82 is revised to read as follows:

§ 1046.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 16th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1046.30(a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1046.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1046.32(c). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a) (1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1046.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

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

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

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, and allocated to Class I milk pursuant to § 1046.44(a)(12); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1046.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1046.44;

(ii) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1011, or within the Kentucky counties of Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c) (1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

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

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For milk described in paragraph (c)(2) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point is not in any Federal order marketing area, determine the Class I price at the origination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) of this section.

[FR Doc. 97–13000 Filed 5–19–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AA89

Long-Range Financial Forecasts of Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend its policy on long-range financial forecasts of electric borrowers. RUS requires that applicants for loans, loan guarantees, lien accommodations, and certain general fund approvals, submit, as part of their application, a long-range financial forecast. RUS loans are generally amortized over a period of 35 years, and the long-range financial forecast provides RUS information necessary to determine that the loans are feasible. This amended provision will eliminate some of the items in the present forecasting regulation that are no longer considered necessary to be included in borrower's forecast. Eliminated items include the sensitivity study for all forecasts, and a commercially available credit report for applicants seeking a loan or loan guarantee. The proposed regulation provides that RUS may request a sensitivity study on a case-by-case basis.

DATES: Written comments must be received by RUS or carry a postmark or equivalent by July 21, 1997.

ADDRESSES: Written comments should be addressed to William E. Davis, Program Advisor, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250–1569. RUS requires a signed original and three copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: William E. Davis, Program Advisor, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, D.C. 20250–1569, telephone number: (202) 720–0738, E-mail: wdavis@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Section 3 of the Executive Order.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) definition of the rule does not include rules relating to the RUS electric program, and, therefore, the Regulatory Flexibility Act does not apply to this proposed rule.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the proposed rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0032.

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to William E. Davis, Program Advisor, Electric Program, Rural Utilities Service, 1400 Independence Ave., SW., Washington, D.C. 20250–1569.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, D.C. 20402–9325, telephone number (202)783–3238.