Before the United States Department of Agriculture, Agricultural Marketing Service

Milk in the Appalachian, Southeast, and Florida Marketing Areas

7 CFR Parts 1005, 1006, and 1007

Docket No. 23-J-0019

AMS-DA-23-0003

Office of the Hearing Clerk
United States Department of Agriculture
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Washington, DC 20250-9203

Brief for Prairie Farms Dairy

Prairie Farms Dairy, Inc., 3744 Staunton Rd, Edwardsville, IL, 62025 is a qualified Capper-Volstead cooperative. Prairie Farms member producer milk is pooled on both Federal Order 5 and Federal Order 7. The producers are located both inside the Marketing Area of the two Orders and in areas outside the Marketing Area of the two Orders. Those producers deliver milk to many of the Federal Order 5 and Federal Order 7 pool distributing plants owned and operated by Prairie Farms. These plants are:

- Hiland Dairy-Order 7- Springfield, MO; Little Rock, Fayetteville, and Fort Smith, Arkansas, Memphis,TN. Prairie Farms owns 80% of the Hiland plants. Prairie Farms joint-venture partner (a cooperative that owns the remaining 20%) supplies most of the milk to these plants. Prairie Farms supplies a small amount to Memphis
- ESJD Hammond, LA-Order 7- Prairie Farms supplies a majority of the milk through independent non-member(s) marketed by Prairie Farms
- ESJD Kosciusko, MS-Order 7-Prairie Farms supplies a significant portion of milk to this plant, but the majority is supplied by other cooperatives
- Prairie Farms, Somerset, KY-Order 5-Prairie Farms supplies the majority of the milk
- Prairie Farms, Holland, IN-Order 5-Prairie Farms supplies the majority of the milk

Southeastern United States Milk Deficit

There has been a milk deficit, especially in the fall, in the Southeastern United States for many years. The fall deficit has received much attention over the last quarter century. As that deficit increased, efforts were made to find a method to share the supplemental milk transportation costs among the pool participants. This led to the transportation credit hearing in 1996.

Along with a growing deficit in the fall and winter, there also has been a persistent growing deficit developing in the spring and early summer. The need for supplemental milk in the southeastern states now exists every month of the year.

Per capita milk production is a method of easily determining the milk supply/ population relationship and provided an easy way of comparing milk production changes and population changes overtime. Per

capita milk production in the eleven southeastern states in 1997 was approximately 206.2 pounds, Exhibit 85. According to the USDA Economic Research Service, national fluid milk consumption was 201 pounds per capita. Therefore, the annual milk production and annual fluid milk consumption was relatively balanced for 1997, provided there is no consideration given to the seasonal nature of southern milk production. This relative balance of milk production and fluid demand leaves no excess milk to produce non-fluid milk products such as sour cream, cottage cheese, ice cream, etc. throughout the year.

Twenty-four years later in 2021, the per capita milk production had dropped to 98.2 pounds, a 52.4% decline, Exhibit 86. According to ERS, national fluid milk consumption had fallen to 134 pounds per capita, a 33% decline. The shortfall in per capita milk production when compared with the smaller change in fluid milk consumption shows why an ever-increasing volume of milk from outside the southeastern states is imported into the area.

Exhibit 8, page 9 shows the 2019 to 2021 daily average in-area producer milk by month for Order 5 with a comparison of the daily average distributing plant demand. The producer milk originating in the Order 5 Marketing Area in May is, on average, approximately 3.3 million pounds per day short of meeting the distributing plant requirements. The shortfall grows in September to 4.9 million pounds per day, a 48% increase in the deficit volume.

While it is difficult to determine the exact distributing plant demand from the graph found in the exhibit, the demand appears to be about 12 million pounds. Using the 12 million pound demand as the denominator and the 3.3 million pound May shortfall as numerator, the shortfall calculates to be 27.5% of the distributing plant demand. In September with the shortfall growing to 4.9 million pounds per day and the distributing plant demand approximating 12 million pounds per day, the shortfall is 40.8% of total demand.

There is a comparison of in-area milk production and distributing plant demand for Order 7, similar to the comparison for Order 5 in Exhibit 8, page 11. In Order 7, the shortage is 3.8 million pounds per day in April. The deficit grows to 6.5 million pounds per day in September, a 71% increase in the deficit volume.

The total distributing plant demand volume illustrated in the Order 7 graph appears to be about 12 million pounds per day in both April and September. The 3.8 million pounds per day April shortfall is 31.7% of the distributing plant demand and the 6.5 million pound per day shortfall in September calculates to be 54% of distributing plant demand.

The huge volume of milk required in all months of the year to offset the southeastern states production shortfall demands that the out-of-area milk supplied to the in-area distributing plants is accomplished in the most efficient manner at the lowest possible cost. Unlimited subsidization of in-area milk movements does not contribute to a low-cost solution.

Location of Producers and Pool Distributing Plants

The location of pool distributing plants in the southeast has changed over the years as plants have consolidated, closed, or changed. The remaining pool distributing plants are often the ones closer to the population centers (consumers) than the plants that closed. Unfortunately the remaining distributing

plants are also often more distant from the traditional milk supply areas. The Federal Orders do not dictate where distributing plants are located.

During the Hearing, there was testimony from dairy farmers who were first generation dairy farmers and also from dairy farmers who represented multiple generation operations. Dairy farms are often located close to the family roots of the owners. This is especially true of farms that pass from generation to generation. The location of the markets, in the southeastern states these are primarily pool distributing plants, does not drive the current location of these farms. Producers decide to continue to produce milk in a certain area or move to a new area for many reasons. Along with tradition and history, there are often other reasons that influence dairy farm location.

Mr. Sumner testified that he started dairying in 1981 at Franklin, TN. He was shipping to Kroger. Then he relocated to Paris, TN in 2001. In his current location, his cost for purchased corn, "a big expense in our business", is considerably less expensive than in East Tennessee. The area he chose to dairy in gave him a lower production cost. He may also have a marketing advantage, "I could get credits to go to East Tennessee and compete with that milk over there with their higher costs and I got low cost, it just wouldn't be fair." His milk has been going to a plant that is not a pool distributing plant.

Producers can choose to move to an area that is closer to the market with reduced hauling costs. They can choose to move to an area with lower production costs, as Mr. Sumner did. They can choose to move to an area that provides lower production costs and is closer to markets. Predominantly though producers will stay where they are and pay the higher hauling costs, either directly or through subsidies paid to the hauler by the cooperative or handler. The Federal Orders do not dictate where dairy farms are located.

Producers in the southeastern United States do not have a large choice of plants for the delivery of their milk. Most of the plants in the region are pool distributing plants. Since producers generally must deliver to a pool distributing plant to have a market, it is also reasonable to assume the producer must pay a majority of the cost to get the milk to that market.

The milk supply dilemma in the Southeast is not just one of a supply and demand imbalance, but also one of traditional milk supply locations becoming more distant from the demand locations. The Federal Order system should not provide mileage-based compensation to the in-area producer for the transportation required to deliver milk to the pool distributing plant demand locations. Nevertheless, it is appropriate for the Federal Order system to provide a "marketwide service payment", such as an assembly performance credit, that is a uniform flat-rate compensation for all milk delivering to distributing plants.

Payments from the TCBF

Payments from the Transportation Credit Balancing Fund (TCBF) are made on out-of-area milk needed by pool distributing plants during the eight lower production/ higher demand months of July through February. Milk within the Order 5 and Order 7 Marketing Areas is ineligible for TCBF payments. Additionally, milk outside the Order 5 and Order 7 Marketing Areas is ineligible for TCBF payments if more than 50% of a producer's milk during the three-month period of March through May was producer milk on either Order 5 or Order 7, or if the dairy farmer was a "producer" on either Order 5 or Order 7 for more than 45 days during the three-month period of March through May. These requirements would

not be burdensome if Order 5 and Order 7 did not have such a drastic ongoing year around need for out of area milk to supply the distributing plants.

Exhibit 8, referenced earlier, illustrates a need for 3.3 million pounds per day to supplement the in-area production and meet the Order 5 May pool distributing plant demand. Exhibit 8 also illustrates a need for 3.8 million pounds per day to supplement the in-area production and meet the Order 7 April pool distributing plant demand.

Out-of-area milk accounted for over 25% of the milk delivered to Order 5 pool plants in March, April, and May 2022. Milk originating in states or portions of states that were immediately adjacent to the Marketing Area accounted for 28.8% of the March 2022 total producer milk receipts at pool plants. Exhibit 98. This surrounding milk supplied 27.8% of producer milk receipts at pool plants in April 2022, and for May, it was 26.8%.

Out of area milk accounts for an even larger portion of the Order 7 pool plant volume in March, April, and May 2022. Milk originating in states or portions of states that were immediately adjacent to the Marketing Area accounted for 42.7% of the March 2022 total producer milk receipts at pool plants. Exhibit 100. This surrounding milk supplied 39.6% of producer milk receipts at pool plants in April 2022, and for May, it was 37.1%.

As shown, there is not enough in-area producer milk to supply the March, April, and May needs of the pool distributing plants. Much of the supplemental milk comes from areas adjacent to the Marketing Area of Order 5 or Order 7. This is logical since that would be a least freight cost solution. Using this producer milk with the least-cost freight in the spring could also result in this milk being ineligible for transportation credits during the current eight-payment month TCBF payment period.

Proposal 9 and 10, Order 5 and Order 7 respectively, would eliminate the transportation credit ineligibility imposed by §1005.82(c)(2)(i) and §1007.82(c)(2)(i). With these sections removed, the closest out-of-area milk could be used to supply Order 5 and 7 pool distributing plant needs in March, April, and May, and still allow this nearby out-of-area milk to be used to supply the pool distributing plant needs in the fall and winter. If §1005.82(c)(2)(i) and §1007.82(c)(2)(i) are not removed from the Order language, handlers will use different producer milk to supply the fall needs. This different producer milk will often come from greater distances and have a higher transportation credit cost. Exhibits 94 and 95 show possible changes in delivery patterns to allow maximum transportation credits when the closer (ineligible) milk is "swapped" with milk that is more distant. While the miles travelled in the examples used showed smaller increases, the transportation credit increased significantly. The smallest transportation credit increase due to milk swapping and rerouting, Exhibit 24, was $273.73. This is a 94% increase from the $290.03 that would exist if §1007.82(c)(2)(i) was eliminated.

Exhibit 95 shows a transportation credit of $265.20 when milk from Sulphur Springs, Texas is delivered to Lafayette, LA. When the milk from Sulphur Springs is "swapped" with milk from Dalhart, Texas, due to the restrictions of §1007.82(c)(2)(i), the transportation credit for the Dalhart milk delivering to Lafayette is $1,207.46. This is a $942.26 increase, a 355 % increase, just because closer milk is ineligible for the transportation credit if it delivered in the March, April, and May period.

Using the more distant milk to supply pool distributing plants and achieve a transportation credit means there will be an increased negative environmental impact since more miles will be travelled and more fuel will be used.

Eliminating §1005.82(c)(2)(i) and §1007.82(c)(2)(i) would allow in-area and out-of-area milk to move in the most efficient, coordinated manner possible. It would no longer be necessary to swap milk loads among delivery locations with the resulting increase in transportation credits. The transportation credit calculations would continue the adjustment for shipping zone and receiving zone values. The offset for diverted milk would continue in place.

Assembly Performance Credits

The proposed assembly performance credit (APC) would help offset the costs involved in getting milk from the producer farm to the pool distributing plants. The APC would apply to all producers delivering milk to a pool distributing plant. The APC would promote the least-cost transportation solution since it is not a mileage -based payment. Without a mileage-based cost reimbursement, the cooperatives and pool distributing plants would make every effort to move milk from the dairy farm to the pool distributing plant in an efficient manner. There would be no effect on the payment rates if cooperatives and other handlers continued to use inefficient routing.

Using an APC to cover the cost of assembling and moving producer milk to distributing plants is not new. Federal Order 30 has had an assembly credit for years. It is not a mileage-based credit. In addition to the assembly credit, Order 30 does have a mileage-based transportation credit. It partially compensates the movement of milk from pool supply plants to pool distributing plants. The Order 30 assembly credit was instituted to help attract milk to pool distributing plants from alternative delivery locations.

Since the APC is not mileage based, milk delivering to a pool distributing plant from a close by area has a higher portion of the assembly and delivery costs covered than milk delivering from an area further away. This is no different than currently exists with the Order 30 assembly credit. Additionally since a higher portion of the assembly and delivery cost is covered for the closer milk, it should incent milk production in the close by area.

The proponents of the Distributing Plant Delivery Credit (DPDC) declare that the PDPC is needed since the Southeast Marketing Area, Order 7, is a geographically large area. The Upper Midwest Marketing Area, Order 30, is also a geographically large area, as shown by the map of Marketing Areas on the Order 5/ 7 website. The $.08 per hundredweight assembly credit is sufficient to help attract milk away from plants in the Order 30 area that are not pool distributing plants and to pool distributing plants. The proposed $.50 APC should be sufficient to do the same in Order 7 and in Order 5. There are very few plants in the southeast, other than pool distributing plants, receiving producer milk.

The APC assessment of $.50 is collected on only the Class I deliveries to pool distributing plants. Since the pool distributing plant receipts include Class II, III, and IV milk in addition to Class I, the distribution on the producer milk will be less than the assessment rate. Exhibit 9, pages 7, 8, and 9 show the estimated APC distribution for Orders 5, 6, and 7. Since the Market Administrator used both pool distributing plant pounds and pool supply plant pounds when calculating the distribution credit, the actual distribution calculation would not include the pool supply plant pounds. Therefore, the

distribution would actually be a little higher than shown. The APC distribution varies by Order and by month. For Order 5 the low is $.39 and the high is $.45; for Order 6 the low is $.44 and the high is $.46; and for Order 7 the low is $.36 and the high is $.43. DCMA Exhibit 44 uses a $3.67 loaded mile base rate and a $.209 per loaded mile fuel adjustment, for a total loaded mile rate of $3.879. Using a 50,000 pound load, this would calculate to $.00758 per hundredweight per loaded mile. Based on the above, the APC would provide close-to-total compensation for approximately 50 to 60 loaded miles of transportation. The producer, cooperative, or other handler will need to pay the rest. Remember, the producer generally does not have nearby alternative markets such as cheese plants or butter powder plants. Often the pool distributing plants are the only markets. The Federal Order system should not provide compensation for the majority of the delivery cost.

Covington stated in response to questioning, "Yes, you look at individual loads, you don't want to lose money on anything" and "But you've got to look at the total picture. We might lose money on 5 loads of milk or 10 loads of milk, but by losing money on that, we're making money for the dairy farmers on that other hundred loads by keep the customers, it's important, you got to look at the big picture." Page 432, lines 9-17. While this was not about the APC, it certainly is applicable. The APC does not cover the assembly and delivery costs for delivery miles on more distant milk at the same ratio as closer milk. The total picture would suggest that the combination of these differences would leave a balanced outcome. You have to look at the big picture.

The APC does not need to consider diversions to other plants. There is no mileage-based payment to gain by moving distant milk to pool distributing plants, while moving less distant milk to plants that are not pool distributing plants.

A concern raised at the Hearing was that the combination of the APC on a year-round basis and transportation credits during the fall and winter was double dipping. Prairie Farms does not agree with this characterization. Transportation credits partially reimburse the costs of transporting more distant milk to pool distributing plants during the fall and winter, while adjusting that reimbursement for mileage and Federal Order differentials. Assembly performance credits are a year-round partial compensation for assembling and moving milk to pool distributing plants without consideration for mileage, Federal Order differential differences, and specific producer and plant locations. In our view, transportation credits and assembly performance credits are complementary credits that create the most efficient movement patterns.

Changes in the proposed language can be made if USDA decides that Assembly Performance Credits and Transportation Credits on the same milk is truly double-dipping, There can be regulations put in place that would require that milk could only receive the Transportation Credit or the Assembly Performance Credit during the months the Transportation Credit is operational. Another alternative is to deduct the APC credit from the Transportation Credit Balancing Fund credit.

Distributing Plant Delivery Credits

Proposals 3, 4, and 5 are an admirable effort to partially recover the costs of delivering producer milk to pool distributing plants. However, these proposals are deeply flawed. The proponents of the Distributing Plant Delivery Credits (DPDC) propose that the DPDC operates in a similar fashion and for the same purpose as the Transportation Credit Balancing Fund (TCBF), with the only difference being that the DPDC is for in-area milk and the TCBF is for out-of-area milk. Hollon testified "It is time to

address this year-round marketwide service with order provisions that compensate deliveries to distributing plants in a fashion similar to the system which has compensated handlers for imports of supplemental milk." The Southeastern orders have never provided transportation compensation for the service of obtaining in-area milk for Class I needs on a year-round basis. Although out-of-area milk is needed on a year-round basis by pool distributing plants, the proponents do not offer any method of obtaining year-round transportation assistance on this out-of-area-milk. The assistance provided by the TCBF is not year-round, and only provides seasonal assistance on the out-of-area milk.

As proposed, the DPDC will only be available to producer milk originating within the Marketing Area of the respective Orders and some selected out-of-area counties. This is discriminatory since some out-of-area counties supplying producer milk to pool distributing plants can participate in the DPDC, while other out-of-area counties that consistently supply milk to pool distributing plants cannot participate in the DPDC.

Hollon stated, "For Order 5, the in-area deliveries account for 54% of needs; for Order 6 in-area production meets 82% of needs and for Order 7 in-area production supplies 44% of needs. Obviously, the converse percentage of these numbers is drawn from other areas, negotiated for and partially paid for with the assistance of the existing transportation credit system." The existing transportation credit system only provides seasonal assistance, not the year round assistance envisioned for in-area milk through the DPDC.

Approximately half of the milk utilized at pool distributing plants in Order 5 and 7 originates from areas outside the respective Marketing Areas. Except for a few specified counties, the proposed DPDC would not be available to any milk from outside the Marketing Area, although this milk provides a significant portion of the pool distributing plant needs. Most, if not all, of this out-of-area milk has alternative market opportunities within the Federal Orders where the milk originates. The southeast in-area milk, for the most part, does not have alternative markets. The in-area milk generally must deliver to pool distributing plants since other markets in the area are limited.

Milk generally moves from areas of lower Class I differentials to areas of higher Class I differentials. However there are times that milk moves "against the grain"'i.e., from areas with higher Class I differentials to areas of lower Class I differentials. Milk will, at times, move with no change in Class I differential between the producer location and the plant location. The proponents of the DPDC assert that compensation is needed for these milk movements. The described milk movements are nothing new and have been going on for years, both within the southeast and throughout the Federal Order system. There is no reason for the DPDC, as proposed, to provide compensation for these movements. Again, options for markets in the southeast, other than pool distributing plants, are limited.

The last page of Exhibit 82 shows the various types of movements referenced in the above paragraph for Georgia milk in 2022. While a number of delivery destinations are shown, testimony from Covington and Herting suggest that the lion's share of the Georgia milk was delivered in Georgia, Florida, and South Carolina. Tonak testified that in selected periods of 2022 very little of the milk delivering to Hammond, LA originated in the Southeast Order, with most of the milk delivering from Texas. Of the Hammond milk from the Southeast Order, most came from Georgia with very little from the area around Hammond, Louisiana. The Order 7 Market Administrator statistics show that the largest milk producing area in Louisiana is adjacent to Hammond-- yet the majority of the Order 7 milk delivered to Hammond came from Georgia.

The DPDC may actually encourage inefficient movements. The opportunity for backhauls exist in the southeast. As an example, moving excess cream from distributing plants to other plants can reduce the overall transportation cost, especially when milk is moved from the cream delivery area to the distributing plant originating the cream, especially if the DPDC is used to offset a portion of the milk transportation cost. It will be difficult for the Market Administrator to monitor the backhauls and other types of offsetting milk movements. These movements can still take place with the APC, but the credit received will not be mileage-based.

The proponents of the DPDC suggested that locally produced milk should be on a better footing, i.e. receive added compensation, due to the DPDC payment than out-of-area milk. This might be understandable if out-of-area milk was not required year-round to make up the in-area shortfall.

The proponents also state that the "locally produced milk will travel fewer miles to milk plants than imported milk, and as such, the lower travel miles are more supportive of a healthy environment." This of course is true, local in-area milk will travel less miles than out-of-area milk; but it is true with or without the DPDC. It is difficult to understand how the proposed DPDC will more efficiently and effectively attract milk to distributing plants in the southeast. The DPDC does not encourage producer farms to move closer to the distributing plants, since it will, in fact subsidize the movement of milk from the existing producer locations. This DPDC subsidy does not encourage added production from dairy farmers close to distributing plants.

The distributing plants in the southeast receive almost all of the milk produced in the southeast already. Because of this, the DPDC is not able to encourage more in-area milk to deliver to pool distributing plants; the milk is already delivering to the pool distributing plants. Really, the only source of additional milk for the southeast comes from outside the Marketing Areas. Moreover, the DPDC is not available to most of this out-of-area milk.

If the Secretary decides to adopt the DPDC proposal for the southeast Marketing Orders, out-of-area milk that regularly supplies Order S, 6, and 7 pool distributing plants should be included. Without an expansion of the eligible DPDC area to include the states and portions of states surrounding the respective marketing areas, there will not be any additional milk, as suggested by the DPDC proponents, to supply the distributing plants. Alternatively, the DPDC could be made available to all milk that delivers to an Order's pool distributing plants.

SUMMARY

Proposal 3, 4, and 5, concerning year-round Distributing Plant Delivery Credits for in-area milk delivering to pool distributing plants should not be adopted. The Proposals will not result in additional supplies of milk to southeast pool distributing plants. The Proposals will not reduce miles travelled or reduce delivery costs, but will in effect subsidize current in-area hauling costs, and possibly lead to inefficient milk movements.

Proposals 6 and 7, concerning Transportation Credits for out-of-area milk delivering to pool distributing plants should be adopted. The Proposals would allow out-of-area milk that delivered to southeast pool distributing plants with a majority of the spring milk to receive transportation credits in the fall. This results in the most efficient movements of the out of area milk.

Proposals 8, 9, and 10 concerning year-round Assembly Performance Credits for all milk delivering to pool distributing plants should be adopted. The Proposals would provide uniform compensation for all milk delivering to pool distributing plants.

The proposal should be adopted on an expedited basis. The current situation in the southeast is critical for dairy farmers and the pool distributing plants they supply.

Prairie Farms expresses our gratitude to the Secretary for allowing us to present our views and reviewing this matter on a timely basis.

Submitted on behalf of Prairie Farms by:

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CERTIFICATE OF SERVICE

Appalachian and Southeast Federal Milk Marketing Orders Hearing
Docket No.: 23-J-0019

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct, and this is to certify that a copy of the POST-HEARING BRIEF FOR DAIRY COOPERATIVE MARKETING ASSOCIATION (DCMA), POST-HEARING BRIEF OF SELECT MILK PRODUCERS, INC., MILK INNOVATION GROUP'S BRIEF AND PROPOSED CONCLUSIONS OF LAW, and BRIEF FOR PRAIRIE FARMS DAIRY has been furnished and was served upon the following parties on April 20, 2023 by the following:

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Respectfully Submitted,

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