Proposed Rules

Federal Register
Vol. 61, No. 57
Friday, March 22, 1996

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, 1006, 1007, 1011, 1012, 1013, and 1046

[Docket No. AO–366–A37; AO–388–A9, et al.; DA–95–22]

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

7 CFR part	Marketing area	Docket No.
1005	Carolina	AO–388–A9
1006	Upper Florida	AO–356–A32
1007	Southeast	AO–366–A37
1011	Tennessee Valley	AO–251–A40
1012	Tampa Bay	AO–347–A35
1013	Southeastern Florida.	AO–286–A42
1046	Louisville-Lexington-Evansville.	AO–123–A67

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision proposes to amend certain location adjustments under the Southeast Federal milk marketing order. The decision denies a proposal to provide a fluid milk surcharge during the period of November 1995 through March 1996 and a transportation credit on bulk milk purchased for 6 Federal milk orders in the Southeastern United States. The decision is based on the record of a public hearing held in Atlanta, Georgia, on September 19, 1995.

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

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

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments will promote orderly marketing of milk by producers and regulated handlers.

The proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, the proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Prior Documents in This Proceeding

Notice of Hearing: Issued August 11, 1995; published August 17, 1995 (60 FR 42815).

Supplemental Notice of Hearing: Issued September 8, 1995; published September 13, 1995 (60 FR 47495).

Recommended Decision: Issued December 18, 1995; published December 27, 1995 (60 FR 66929).

Preliminary Statement

A public hearing was held upon 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), at Atlanta, Georgia, on September 19, 1995. Notice of such hearing was issued on August 11, 1995, and September 8, 1995, and published August 17, 1995 (60 FR 42815) and September 13, 1995 (60 FR 47495), respectively.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on December 18, 1995, issued a recommended decision containing notice of the opportunity to file written exceptions thereto. Six comments were received in response to the notice.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, with no material modifications. Under Issue No. 1, two paragraphs have been added at the end of the discussion and, under Issue No. 3, 12 paragraphs have been added at the end of the issue to discuss the exceptions received.

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

1. Whether the location adjustment at Hammond, Louisiana, should be increased by 7 cents under Order 7.

2. Whether the location adjustment at Mobile, Alabama, should be reduced by 7 cents under Order 7.

3. Whether a transportation credit for supplemental milk should be adopted for Orders 5, 6, 7, 11, 12 and 13.[1]

4. Whether a fluid milk surcharge should be provided on a temporary basis for Orders 5, 6, 7, 11, 12, and 13.

5. Whether emergency marketing conditions in the 6 regulated areas warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issues are

[1] The Louisville-Lexington-Evansville order was dropped from Proposals 4 and 5, as contained in the hearing notice, at the hearing.

based on evidence presented at the hearing and the record thereof:

1. Whether the Location Adjustment at Hammond, Louisiana, Should Be Increased by 7 Cents Under Order 7

The location adjustment in the portion of Tangipahoa Parish, Louisiana, south of State Highway 16, should be increased from plus 50 cents to plus 57 cents. The 7-cent price increase applies to both Class I prices applicable to handlers and blend prices applicable to producers. However, for the sake of simplicity, the price increase is discussed in terms of the Class I differential price.

The vice-president of fluid milk marketing and economic analysis for Mid-America Dairymen, Inc. (Mid-Am), proposed the 7-cent higher location adjustment at Hammond, Louisiana, which is located in the southern portion of Tangipahoa Parish. He stated that the 7-cent location adjustment increase would provide a $3.65 Class I differential price at Hammond, the same price applicable at Baton Rouge and New Orleans.

The representative explained that Mid-Am is a cooperative owned by approximately 18,000 dairy farmers and a major supplier of distributing plants pooled on the Southeast Federal milk marketing order (Order 7). He testified that in southeast Louisiana Mid-Am has a full supply agreement with 5 of the 6 plants in the New Orleans/Baton Rouge/Hammond area and a partial supply agreement with the 6th plant. In August 1995, he indicated, Mid-Am represented 55.9 percent of both the Class I sales and total producer milk pooled on Order 7.

The Mid-Am representative stated that the final decision for the Southeast order that was issued on May 3, 1995 (60 FR 25014), established a price of $3.58 at Hammond and a price of $3.65 at Baton Rouge and New Orleans, Louisiana. The representative argued that the 7-cent difference in price provides a competitive sales advantage to the plant located in Hammond while its ability to procure milk is no different than plants located in Baton Rouge.

According to the Mid-Am representative, the milk supply for plants in Hammond and Baton Rouge comes from direct-ship milk produced in Louisiana's ''Florida parishes'' (i.e., Tangipahoa, Washington, St. Tammany, St. Helena, Livingston, East Feliciana, and East Baton Rouge). He contended that the 7-cent lower price at Hammond is not justified since the per hundredweight rate paid to local milk haulers who deliver milk to Baton Rouge and Hammond is the same. He elaborated further that the rate per hundredweight that is charged producers in the Florida parishes is the same whether the producer's milk is delivered to Hammond or Baton Rouge or even New Orleans. Thus, he asserted, competing handlers in the New Orleans/Hammond/Baton Rouge area should have the same Class I differential price because the cost of procuring milk at each of these locations is the same.

The assistant operations manager for Fleming Dairy, which operates two distributing plants in the Southern United States, testified in support of the proposal to equalize Class I prices adjusted for location at Hammond, Baton Rouge, and New Orleans, Louisiana. Alternatively, the witness stated, Fleming would support a 7-cent price reduction at Baton Rouge and New Orleans, which also would equalize the Class I differential prices at these locations. He testified that equal and uniform Class I differential prices are justified for these locations for competitive reasons.

The Fleming witness indicated that 100 percent of the raw milk supply delivered to its distributing plant in Baker, Louisiana,[2] is produced by dairy farmers located within 45 miles of the plant. He stated that a higher Class I price at one location compared to another suggests a greater shortage or need to attract milk from distant supply areas. However, the witness indicated, southern Louisiana has an abundant supply of milk available and has had to regularly transfer milk to Florida during short production months to supplement Florida's raw milk requirements. Additionally, he argued, handlers located in Hammond should not have a competitive advantage over Baton Rouge handlers because both locations are approximately the same distance to New Orleans, the primary population center of southern Louisiana.

According to the Fleming witness, the Secretary's Final Decision issued May 3, 1995, justifying the lower price in Hammond compared to Baton Rouge or New Orleans was based on mistaken conclusions of facts and miscommunications within the newly enlarged cooperative association (Mid-Am). The witness also stated that marketing conditions in the Southern United States have changed since the merger hearing was held in 1993. He explained that a single farmer-owned cooperative now controls the milk supply for southern Louisiana, as opposed to three or four competing cooperatives which previously supplied this area. Accordingly, he agreed with Mid-Am that the difference in price for these locations is not justified because there is no freight difference in supplying New Orleans, Hammond, and Baton Rouge with raw milk. Thus, he urged the Secretary to correct the price disparity at Hammond immediately.

Fleming reiterated support for the 7-cent location adjustment increase at Hammond, Louisiana, in its post-hearing brief. Gold Star Dairy, Inc. (Gold Star), Little Rock, Arkansas, also supported the proposed 7-cent location adjustment increase at Hammond in a post-hearing brief. Gold Star stated that the 7-cent increase will correct an unintended inequity problem in the Southeast order. There was no opposition to the proposed increase at the hearing, in post-hearing briefs, or in the exceptions to the recommended decision.

The proposed 7-cent higher location adjustment in the southern portion of Tangipahoa Parish should be adopted to provide the same prices at pool distributing plants located at Hammond and Baton Rouge, Louisiana. These plants are located within a major production area of the market and procure their milk supplies from the same nearby farms. As a result, the rates paid to haulers to transport milk to Hammond compared to Baton Rouge are the same because the mileage from producers' farms to the various plants is essentially the same. Thus, the value of producer milk delivered to Hammond should be no less than the value of such milk delivered to Baton Rouge. Therefore, the southern portion of Tangipahoa Parish should be moved to Zone 12, as proposed in the recommended decision, to provide a 7-cent higher price at Hammond.

In its exception to the recommended decision, Fleming again emphasized its support for equalizing the prices at Baton Rouge, Hammond, and New Orleans, but asked the Secretary to consider whether it may be more appropriate to reduce the New Orleans and Baton Rouge prices to the Hammond level rather than increase the Class I price at Hammond to the price level applicable at New Orleans and Baton Rouge.

The suggestion of Fleming Dairy to reduce the New Orleans and Baton Rouge prices to the level at Hammond may have merit. However, there was no proposal on this record to reduce the price at New Orleans or Baton Rouge. If there is any desire on the part of the industry for such a reduction, it should be fully explored on the record, particularly taking into consideration

[2] Baker is 10 miles north of Baton Rouge. Both Baker and Baton Rouge are in East Baton Rouge Parish, which is within Zone 12 of the marketing area.

what the impact of such a change might have on handlers in the adjacent Texas marketing area. At the present time, there is close Class I price alignment between Texas and Louisiana handlers. If a price reduction in southern Louisiana is deemed to have merit, it should be considered in conjunction with an overall evaluation of price levels in the area.

2. Whether the location adjustment at Mobile, Alabama, should be reduced by 7 cents under Order 7.

The location adjustment at Mobile, Alabama, should be reduced from plus 57 cents to plus 50 cents.

A witness appearing on behalf of Barber Pure Milk Company (Barber) and Dairy Fresh Corporation (Dairy Fresh) proposed the 7-cent reduction in the location adjustment at Mobile, Alabama. The witness stated that Barber and Dairy Fresh operate pool distributing plants under Order 7. He said the Barber plant at Mobile and the Dairy Fresh plant at Prichard, Alabama, are located within 20 miles of the Mobile City Hall and handle approximately 8.5 to 9.5 million pounds of milk per month.

The witness for Barber and Dairy Fresh contended that the Southeast order, which became effective July 1, 1995, established pricing zones that created cost inequities for the Barber Mobile plant and the Dairy Fresh Prichard plant with other Order 7 pool plant handlers. He argued that the final decision lowered the Class I price adjusted for location for Barber and Dairy Fresh competitors while the price at Mobile remained unchanged at $3.65. He claimed that the 7-cent difference is a substantial amount and that Barber and Dairy Fresh cannot continue to operate as viable business entities with the current pricing situation. The proposed $3.58 Class I differential price is the price applicable for most of Barber and Dairy Fresh's competitors and is sufficient to attract an adequate supply of milk to the Mobile area, he asserted.

The Barber/Dairy Fresh witness also indicated that the market structure in the Southeastern United States had changed since the merger hearing was held in 1993. He stated that several plants had closed or changed ownership and that one new large state-of-the-art Class I plant had recently opened. Several cooperatives serving the Southeast marketing area at the time of the hearing have now joined Mid-Am, resulting in Mid-Am being the major supply organization in the market, he added.

The witness explained that one key change that has occurred since the 1993 merger hearing is that Barber now receives its entire milk supply from Mid-Am and approximately 2.8 million pounds are for its Mobile plant. He added that Dairy Fresh purchases about 92 percent of its milk from nonmembers and the remainder from Mid-Am. The milk supply for both plants is from producers located in the same general area, he said, while the Class I distribution area of the Mobile and Prichard plants is primarily along the Gulf Coast stretching west from Mobile to Hancock County, Mississippi, east from Mobile to Tallahassee, Florida, and northeast from Mobile to Montgomery County, Alabama.

The witness argued that the proposed price change is needed to equalize prices between Mobile-area handlers and handlers located in the Upper Florida order. He urged the Department to lower the location adjustment by 7 cents at Mobile, Alabama, thus changing the location adjustment from a plus 57 cents to a plus 50 cents.

In its post-hearing brief and exception to the recommended decision, Barber and Dairy Fresh reiterated their support for the proposed 7-cent lower location adjustment. The brief pointed out that witnesses at the hearing testified that 7 cents per hundredweight is a significant amount for Class I milk. The handlers asserted that the adoption of the proposal would align the Mobile price with the price applicable in the northern portion of the Upper Florida order.

At the hearing, in its post-hearing brief, and in its exception to the recommended decision, Gold Star Dairy opposed the 7-cent lower location adjustment at Mobile, Alabama, but presented no testimony or evidence to support its position. There was no other opposition testimony.

The location adjustment at Mobile, Alabama, should be reduced by 7 cents to provide a price of $3.58 by eliminating the Zone 12 island around Mobile in what is otherwise a Zone 11 region. The city of Mobile, Alabama, is within Mobile County, which is in Zone 11 of the Southeast order. Unlike the rest of Mobile County, the 20-mile radius area surrounding the city of Mobile is now part of Zone 12, which is priced 7 cents above Zone 11.

The record of this hearing indicates that changes in procurement patterns have occurred since the 1993 hearing and that the original reason for placing the Mobile handlers in the 7-cent higher pricing zone—i.e., to insure the two Mobile handlers of an adequate supply of milk—is no longer an overriding consideration. The record of this hearing indicates that the Barber plant at Mobile now has a full supply contract with Mid-America Dairymen, Inc., thereby eliminating any concern that the handler had about obtaining an adequate supply of milk.

Although the Dairy Fresh plant at Prichard still receives a majority of its milk from nonmember producers, there was no testimony at the hearing from any cooperative association representative or any nonmember producer, no post-hearing briefs, and no exceptions filed in response to the recommended decision to indicate that the plant would not be able to maintain its milk supply with the proposed 7-cent lower Class I price.

Accordingly, it must be concluded that no valid purpose is served by pricing the Mobile area at its current $3.65 Class I differential price. A 7-cent lower price at Mobile will properly align the prices at Mobile with the Florida panhandle, which has a Class I differential price of $3.58, as well as with counties directly east and west of Mobile, which are also priced at $3.58. Most importantly, the record indicated that the lower price at Mobile would not jeopardize the supply of milk at the Barber or Dairy Fresh plants.

3. Whether a Temporary Transportation Credit for Supplemental Milk Should Be Adopted for Orders 5, 6, 7, 11, 12, and 13.

The proposed amendment to provide a transportation credit for bulk milk received by transfer from a plant regulated under another Federal order for Orders 5, 6, 7, 11, 12, and 13 during the period of July 1995 through February 1996 should be denied. The cooperatives withdrew their pre-hearing request to amend the Louisville-Lexington-Evansville Federal milk marketing order.

The transportation credit was proposed by the Dairy Cooperative Marketing Association, Inc. (DCMA), whose members include Arkansas Dairy Cooperative, Associated Milk Producers, Inc., Carolina-Virginia Milk Producers, Inc., Cooperative Milk Producers, Inc., Florida Dairy Farmers Association, Inc., Mid-America Dairymen, Inc., and Tampa Independent Dairy Farmers Association, Inc. These cooperatives represent the vast majority of milk pooled in the 6 marketing areas.

A spokesman for DCMA testified that a shortage of milk in the Southeast has been brought about by lower prices, rising costs, and extreme weather conditions in most areas of the Southeast. According to the spokesman, many factors, including extreme heat and drought conditions, contributed to the decline in milk production in the Southeast. He indicated that milk

production in Florida declined by 15 percent or more during 1995. During August 1995, he noted, producer milk pooled on the 6 Federal milk orders was down approximately 15 million pounds from volumes pooled during August 1994 in comparable Federal orders.

The DCMA spokesman stated that the percentage of producer milk allocated to Class I under the 6 orders has increased, while total producer milk pooled under the orders has decreased. During July and August 1995, the spokesman indicated, the pounds of milk purchased as transfers from other Federal order plants exceeded 30 and 74 million, respectively.

According to the witness, current milk production of producers pooled on the 6 southeastern orders will be insufficient to meet fluid requirements. He argued that the current Federal order minimum Class I price structure has not and will not attract an adequate supply of locally-produced milk.

Some handlers and/or cooperatives, he complained, will incur the cost of obtaining needed supplemental supplies from distant marketing areas. Additionally, he claimed, those producers who are responsible for supplying the needs of the market will pay the cost of bringing in supplemental milk. This will result in such producers not receiving uniform prices for their milk, he said.

The DCMA spokesman stated that the proposal would provide a temporary transportation credit to handlers who purchase supplemental milk allocated to Class I use from plants regulated under other Federal milk marketing orders. Milk received on a requested Class II or III basis or milk that is simply allocated to Class II or III would not receive the transportation credit, he said. He explained that the rate of the hauling credit would be 3.9 cents per hundredweight per 10 miles, based on the distance between the shipping and receiving plants, less any positive difference between the Class I differential applicable at the receiving plant and the Class I differential applicable at the shipping plant. The rate of 3.9 cents per hundredweight per 10 miles is reflective of the actual cost of hauling milk, he claimed.

The DCMA spokesman testified that the transportation credit should be made effective beginning July 1, 1995, and extend through February 29, 1996. Applying the transportation credit retroactively is appropriate, he argued, because of the substantial amount of supplemental milk purchased during the months of July and August. However, he recommended that the amount of money deducted from the pool for transportation credits each month be limited to 150 percent of the funds generated by the proposed Class I price surcharge for the month. This approach would spread the price-reducing impact of the transportation credits over the proposed 7-month period. DCMA reiterated its position in a post-hearing brief.

The marketing specialist of the Southern Region of Associated Milk Producers, Inc. (AMPI), testified in support of the DCMA's proposed transportation credits for emergency relief. According to the representative, AMPI's Southern Region represents approximately 3,000 Grade A dairy farmers located throughout the Southwest United States, with the greatest concentration of milk production in Texas and New Mexico. He indicated that AMPI also now has a substantial quantity of producer milk marketed on the Southeast order each month that was associated with the former Central Arkansas Federal milk order (Order 108).

The AMPI representative stated that AMPI assisted in supplying supplemental milk to the Southeast during the extreme milk shortage. He testified that from August 23 through September 10 AMPI delivered 10 loads of milk per day to Schepps Dairy, Dallas, Texas, to allow Mid-Am to reroute an equivalent amount of milk to southeastern handlers from the Mid-Am reload facility in Sulphur Springs, Texas. A total of 193 loads of milk were delivered to Schepps, he noted.

The AMPI spokesman stated that AMPI supplied approximately 8.8 million pounds of supplemental milk during July and August, which includes milk delivered to Schepps, as well as milk transferred directly into the Southeast marketing area. He said that AMPI charged the purchasing handler or cooperative $2.00 per hundredweight for this service and that the buyer paid the freight charge.

A representative for Fleming Dairy (Fleming), Nashville, Tennessee, testified in support of the proposed transportation credit, but recommended certain modifications. He agreed with the testimony of DCMA that the Southeast had suffered an unusual milk supply crisis since early August and that it would be equitable to provide a method to reimburse those who have served the market by incurring extraordinary costs to bring supplemental milk into the region from distant supply markets. He said that Fleming is supplied primarily by independent producers, but receives supplemental supplies from Mid-Am. During the last week of August, he indicated, Fleming obtained milk supplies from the New Mexico-West Texas and Upper Midwest marketing areas to meet its fluid demand due to the insufficient supply of locally-produced milk.

According to the Fleming representative, some additional supplemental milk may be required through October, but the period of greatest crisis and demand is now over. Thus, he stated, Fleming would favor a transportation credit through the month of October.

The Fleming spokesman testified that supplemental shipments of milk in late summer and fall are a recurring feature of the southeastern marketing areas, and transportation credits in some form would be justified as a permanent feature of the orders for the months of July through October. However, he recommended that the transportation credit only apply for distances that exceed 100 miles. He said the Secretary should determine whether the proposed 3.9-cent rate is justified.

The Fleming representative also observed that this is the first year in which there has been a significant need for supplemental milk in the southeast region from the north-central region since the adoption of Class III–A pricing. The witness stated that the transportation credit should not be granted to a handler or cooperative association that has any milk assigned to Class III–A during the same period of time. In addition, he said, Class III–A pricing should be suspended for the Southeast region and neighboring marketing areas in the northeast and north-central regions when there is a clear demand for milk for Class I use that is not being met. Class III–A, he stressed, was adopted to permit the orderly disposition of excess milk when another use for the milk was not available, not as a bargaining lever to extract high give-up costs when the need for fluid milk is great.

Fleming's post-hearing brief reiterated its qualified support for transportation credits. The brief stated that transportation credits for past services of marketwide benefit are consistent with the 1985 amendments to the Agricultural Marketing Agreement Act. The transportation credits, Fleming contended, are necessarily retroactive because the application for credit comes only after a service has been rendered.

The president of Southern Belle Dairy (Southern Belle) Somerset, Kentucky, testified in opposition to the proposed transportation credit. The representative stated that Southern Belle is a pool plant regulated under the Tennessee Valley Federal milk order. He explained

that Southern Belle receives its milk supply from Southeastern Graded Milk Producers, Milk Marketing, Inc., and Mid-America Dairymen, Inc. He said Southern Belle also receives supplemental milk supplies from Armour Foods.

According to the Southern Belle representative, during the crisis period Southern Belle purchased 2 loads of milk in Buffalo, New York, at a give-up charge of $5.50 per hundredweight. He said that, under the DCMA proposal, Southern Belle would receive a transportation credit of approximately $1,500, but claimed that the proposed 5-cent per hundredweight surcharge to pay for the transportation credits would force Southern Belle to pay an amount far in excess of its $1,500 credit.

In a post-hearing brief, Southern Belle reiterated its opposition to the retroactive application of the transportation credit but did not support or oppose the prospective issuance of the credit for supplemental milk purchased during months of very short production. The brief also argued that the record evidence shows that the ''crisis'' was due to Mid-Am's inability to properly manage its sales of milk and to recover adequate over-order premiums to cover the costs of purchasing supplemental milk supplies. Finally, Southern Belle argued that the retroactive application of the proposed transportation credit would encourage cooperatives to request relief for a problem that no longer exists.

The general manager of Gold Star Dairy (Gold Star), Little Rock, Arkansas, also testified in opposition to the proposed transportation credit at the hearing. In its post-hearing brief, Gold Star opposed any retroactive application of the transportation credit but did not support or oppose the issuance of the credit for Class I milk purchased during months of very short production.

Gold Star contended that there is no record evidence to support DCMA'S argument that supplemental milk would be needed beyond October. According to Gold Star's brief, the last year of shipments into the southeast region from Wisconsin was in 1992, a year in which shipments began in mid-August and extended to October. The brief also argued that shipments from Wisconsin in 1995 probably have peaked already and that no shipments will likely be needed after October.

Gold Star and Southern Belle argued that the Secretary does not have the authority to issue rules that would have a retroactive effect. Moreover, even if he did, they contend, such authority would invite the post-crisis demand for modifications of the rules to alleviate problems that may no longer exist.

A brief filed on behalf of Land-O-Sun Dairies, Inc. (Land-O-Sun), opposed the proposed transportation credit. Land-O-Sun stated that it operates pool plants regulated under Orders 5 and 11 in Spartanburg, South Carolina, and Kingsport, Tennessee, respectively. The handler also indicated it operates an Order 5 partially regulated plant in Portsmouth, Virginia.

Land-O-Sun argued that the Secretary lacks the authority to grant rules regarding transportation credits that would have a retroactive effect absent the expressed statutory language. According to Land-O-Sun, the Department of Health and Human Services (HHS) issued a rule in 1984 which applied to a cost reimbursement calculation method and tried to recoup costs that were incurred prior to the effective date of the 1984 rule. However, Land-O-Sun noted, in the case of *Bowen* v. *Georgetown University Hospital,* 488 U.S. 204 (1988), the Supreme Court invalidated the retroactive feature of the HHS rule.

Land-O-Sun contends that the Agricultural Marketing Agreement Act, as amended, is wholly silent on the issue of retroactive powers vested in the Secretary. It argues that in 1986 the Secretary did not have the authority to implement retroactively the Class I differentials mandated by the 1985 Farm Bill and, by the same token, does not now have the authority to implement the proposed transportation credits retroactively.

Land-O-Sun argues that even if the Secretary had the authority to impose the retroactive transportation credits, he should deny this request because the problem should have been addressed through private business agreements. The Land-O-Sun brief states that the proposed credit penalizes both handlers who procured their own supplies and producers not involved in bringing in supplemental supplies. Finally, Land-O-Sun stated that there is significant competition between Order 5 plants and plants located in Florida, Georgia, Tennessee, Virginia, and Kentucky and that the 5-cent higher surcharge for Order 5 compared to Orders 7 and 11 would place Order 5 handlers at a competitive disadvantage.

Milkco, Inc. (Milkco), a fully regulated handler under Order 5, filed a post-hearing brief in opposition to the proposed transportation credit because of its retroactive effect. Milkco stated that if a transportation credit is granted, it should apply to the same months that an emergency fluid milk surcharge would be applicable.

After carefully evaluating the record evidence and the post-hearing briefs, we must conclude that during the summer of 1995 there was a need for supplemental milk for Class I use in all of the 6 orders and that this need was particularly acute for the Carolina and 3 Florida orders. Furthermore, the record clearly shows that the burden of bringing in supplemental milk to satisfy fluid milk demand fell, almost exclusively, on the cooperative associations supplying these markets. The record also shows that during the months of July and August 1995 over-order charges were either non-existent or—where they did exist—appeared to be inadequate to compensate the cooperatives for the costs which they incurred.

It may be true, as opponents argue, that price adjustments should not be made to compensate for prior marketing costs. Any pool plant operator that obtained milk on a direct-shipped basis—at whatever cost it had to pay—during July through September of 1995 would not be eligible for a credit under the DCMA proposal; yet the handler would now be asked to pay a higher Class I price to subsidize someone else's supplemental milk expense.

Opponents argued that the Secretary lacks the authority to retroactively apply the proposals. Ultimately, this question can only be clarified in a court of law. However, in this proceeding the threshold question of whether or not the proposals are supported by the record precludes any subsequent debate concerning their legality.

While the record clearly showed that a great deal of milk was brought into the 6 markets, it lacked comparable data for earlier years from which to measure the magnitude of this year's problem. As can be seen in Table 1, for example, there was clearly much more bulk milk imported to the Carolina and Florida markets for Class I use in August of 1995 compared to August 1993, but this picture is less clear in comparing the bulk imports for the Southeast market in August 1995 compared to August 1994, and the comparison is virtually impossible for the Tennessee Valley market because of the restrictions on the data. Also, while the record data unequivocally demonstrated a significant drop in production for some of the markets involved in this proceeding, it was less demonstrative for some of the other markets involved. For example, while producer receipts in the Southeastern Florida market were down by 8.5 percent in July (compared to July 1994), they were up by 19 percent during July 1995 in the Tennessee Valley market. Similarly, in

August 1995 producer receipts were down (compared to a year earlier) in 4 of the 6 markets, but they were up by 4 percent in Order 7 and by 2 percent in Order 11.

TABLE 1.—MILLIONS OF POUNDS OF BULK FLUID MILK PRODUCTS FROM OTHER ORDER PLANTS NOT REQUESTED FOR CLASS II OR III USE, JULY–AUGUST, 1993–1995

	7/93	8/93	7/94	8/94	7/95	8/95
Order 5	2.3	1.8	R	R	1.7	12.3
Orders 6, 12, and 13	2.4	17.3	R	15.8	16.3	32.9
Order 7	4.1	12.3	6.9	27.6	10.5	29.7
Order 11	.8	R	0	R	R	5.2

R=Data restricted. Less than 3 handlers involved.

The record also was lacking in detail with respect to cooperatives' over-order charges. In the Florida markets, where such charges were in effect during the summer months, there is no indication how much, if any, of the premium is supposed to cover the cost of bringing supplemental milk to the market. It was also unclear how this year's transportation and give-up costs compared to prior years.

A transportation credit, with or without an accompanying surcharge, might have merit in these seasonally-deficit markets where no other means exist to recoup costs of servicing the market. However, the specific proposals under consideration in this proceeding are not supported by the weight of evidence in the record.

Exceptions to the recommended decision. Five comments were received with respect to the proposed transportation credit and the proposed fluid milk surcharge.

Southern Belle reiterated its opposition to the proposed Class I price increase and the retroactive application of transportation credits, but stated that ''it took no position'' on the prospective issuance of transportation credits for Class I milk during months of very short production.

Gold Star Dairy also restated its opposition to the proposed Class I price increase and the retroactive application of transportation credits. The exception stated that, even though the proposed transportation credits were not adopted, the Secretary should clarify his position regarding the issuance of retroactive rules. Land O' Sun Dairies, Inc., took a similar position in its exception.

Fleming Dairy stated in its exception that Land O' Sun Dairy was incorrect in asserting that the proposed transportation credits from future producer settlement funds constitute unlawful retroactive rulemaking. According to Fleming, the proposal would mitigate burdens of the past by credits from future pools. While supportive of the DCMA proposal, Fleming suggested that the transportation credit for mileage be limited to 3.4 cents per 10 miles and that such credit only apply beyond 100 miles distance from the transferor plant to the transferee plant.

In response to the request of Gold Star and Land O' Sun for a clarification of the Secretary's position regarding the legality of the retroactive application of transportation credits, no good purpose would be served in a hypothetical discussion of this issue when there is insufficient record evidence to support any credits.

A proposal was made for a transportation credit applicable to past marketings to be paid for through a surcharge based upon current and future marketings.

Dairy Cooperative Marketing Association, Inc., also excepted to the denial of the proposed transportation credit and fluid milk surcharge.

DCMA argued that a marketwide service provision is justified under the Act if it can be shown that marketwide services are being performed in a market and the cost for such services are not being borne equally by all producers in the market. It stated that the rationale for denying the transportation credits and Class I surcharge is inconsistent with past agency decisions with respect to other markets.

The rationale for denying this proposal was not the concept of transportation credits, but the factual record herein. Proponents claimed that an unusual milk shortage necessitated a temporary emergency action. Yet, the record failed to sufficiently support this claim. The evidence, as noted above, was inconsistent from month to month, year to year, and order to order.

In its exception, DCMA states that ''the Administrator concluded, as an apparent expression of policy, that transportation credits are only available where no other means exist to recoup costs of servicing the market.'' DCMA incorrectly interprets this statement to mean that transportation credits can only be adopted if all other means of recouping costs, including cooperative over-order charges, have been exhausted. The statement included in the recommended decision and in this final decision reads: ''A transportation credit, with or without an accompanying surcharge, might have merit for these seasonally deficit markets where no other means exist to recoup costs of servicing the market.'' The clause ''where no other means exist to recoup costs of servicing the market'' was intended to be interpreted as a nonrestrictive clause adding information about the markets at issue herein rather than serving to identify or define a precondition necessary for adoption of any proposal. In the past year, some of the cooperative associations in the Southeast apparently have been unable to maintain over-order charges at a level necessary to recoup all of their costs for servicing these markets.

DCMA is correct in asserting that any decision regarding transportation credits need not be based upon the level of over-order payments in effect in a market. However, the proposal before the Secretary was not only for temporary transportation credits for past months, but also for a Class I surcharge to pay for them. In these circumstances, the level of over-order payments becomes a relevant consideration. For example, if some handlers are already paying a cooperative association an over-order charge for balancing the market, but their competitors, who obtain milk from nonmember producers or other cooperatives, are not, it is inequitable for the aforementioned handlers to be subject to an additional surcharge under the order for a service for which they have already paid, at least in part. Similarly, if some handlers already paid extra charges to non-order producer sources, it would be inequitable to charge them an additional surcharge (as well as denying them any transportation credits). If all parties had advance notice of the proposed

transportation credit and surcharge, all could have made arrangements for their supplemental milk supplies with equal knowledge concerning how they would be impacted by the order's provisions and with equal knowledge in making their contractual. The situation before the Secretary, however, was one in which the importation of supplemental milk had already occurred, handlers had dealt with the shortage in different ways and had incurred different costs, and the proposed solution to the problem would have compensated some handlers for their costs but not others.

There is nothing wrong with the concept of a transportation credit or a marketwide service payment, and a surcharge on Class I milk to pay for the credits may be entirely justified as well. Where the concept, however, cannot be effectuated until the shipments have been made, an increased number of factual circumstances should be considered. A reconstruction of what had happened and who was deserving of reimbursement was not clearly developed in the record.

4. Whether a Fluid Milk Surcharge Should Be Provided on a Temporary Basis for Orders 5, 6, 7, 11, 12, and 13

The proposal to impose a Class I surcharge in each of the 6 orders to pay for the proposed transportation credits should not be adopted.

A spokesman for DCMA proposed a fluid milk surcharge for the 6 Federal milk marketing orders for the period of November 1, 1995, through March 31, 1996. The spokesman requested that the proposed amendment not be considered for the Louisville-Lexington-Evansville Federal milk order. The DCMA spokesman estimated that a temporary fluid milk surcharge would generate enough money to fund the out-of-pocket transportation costs incurred by handlers during the period of July 1, 1995, through March 31, 1996. This money would be returned to dairy farmers through the blend price by the added specified rate to the Class I differential for each order, he stated.

The representative testified that DCMA's revised proposal would provide a fluid milk surcharge of 5 cents per hundredweight for Orders 7 and 11, 10 cents per hundredweight for Order 5, 20 cents per hundredweight for Order 6, 25 cents for Order 12, and 30 cents for Order 13.

According to the DCMA representative, these proposed temporary surcharges are designed to help assure that an adequate supply of milk will be made available to meet the fluid needs of the 6 orders. The representative proposed that the fluid milk surcharge for each order become effective November 1, 1995, and extend through March 1996. The November 1 effective date is needed to provide adequate advance notice, he stated.

The assistant operations manager for Fleming testified in support of the proposed fluid milk surcharge. He stated that Fleming favors a surcharge to offset the cost of the transportation credit for the extraordinary supplemental milk costs incurred by cooperatives during the months of July through October, but said that the surcharge and the transportation credit should be coordinated for each market. Fleming reiterated its qualified support for the proposed fluid milk surcharge in its post-hearing brief.

The controller of Coburg Dairy (Coburg), an Order 5 pool plant located in North Charleston, South Carolina, testified in support of the proposed fluid milk surcharge at a rate of 10 cents per hundredweight for Order 5. The witness indicated that Coburg purchases its raw milk supply from Edisto Milk Producers Association, a cooperative which purchases raw milk from Carolina Virginia Milk Producers Association and from brokers. He stated that Coburg has distribution throughout South Carolina, southeastern Georgia, and parts of North Carolina.

The director of milk procurement and marketing for Dean Foods Company (Dean Foods) testified in opposition to DCMA's proposed fluid milk surcharge. According to the witness, Dean Foods is the largest fluid milk processor in the United States and owns and operates plants in Kentucky, Florida, and Athens, Tennessee.

The witness for Dean Foods stated that weather conditions in the southeast region caused milk supply shortages in the region in late August and early September. As a result, he indicated, supplemental milk was purchased from outside the region. The witness claimed that there has been and continues to be a shortage of milk in portions of the southeast region and that Dean Foods had adjusted its bottling schedule to accommodate the temporary shortage. However, he said, the Dean Foods plant at Athens, Tennessee, currently has an adequate supply of milk available to meet the plant's needs.

According to the witness, Dean Foods and other processors in the State of Florida agreed in June to accept a 73-cent per hundredweight increase in over-order premiums to help producers recover some of the costs for transporting supplemental milk into the region. Dean Dairies in Florida has agreed to a 40-cent increase for the month of October, he indicated. The witness also testified that processors in Florida have been paying from $1.00 to $1.75 per hundredweight in over-order premiums. Additionally, he stated, Dean Foods, Athens, Tennessee, agreed to 15-cent and 20-cent per hundredweight increases in over-order premiums for the months of September and October, respectively.

The witness for Dean Foods stressed that negotiations between buyers and sellers of milk remain the best mechanism to recover the costs associated with purchasing supplemental milk. He argued that the Federal Order system was not designed to remedy short-term aberrations in the market or provide relief to cooperatives for poor business decisions.

The general manager for Gold Star also testified in opposition to the proposed fluid milk surcharge for the 6 Federal milk marketing orders. The witness indicated that Gold Star is a handler regulated under the Southeast order but that a significant portion of its sales are in the Texas marketing area. If the surcharge were imposed, Gold Star would be at a competitive disadvantage compared to handlers regulated under the Texas order, he claimed, because those handlers would not be subject to the surcharge. These arguments were reiterated in Gold Star's post-hearing brief.

The representatives of Gold Star and Southern Belle claimed that the proposed fluid milk surcharge would have an impact on each handler's fluid milk sales. The representatives argued that in an industry where most sales are determined on fractions of a cent per gallon, the handlers would not be able to pass the cost on to its customers in areas where its competing handlers would not be subject to the surcharge. The Southern Belle representative stated that Southern Belle competes with handlers located in Ohio, Kentucky, West Virginia, Indiana, and Virginia, all of whom would not be subject to the surcharge.

Southern Belle also filed a post-hearing brief in opposition to the proposed fluid milk surcharge. Southern Belle stated that the crisis, if there was one, is now over for the Tennessee Valley marketing area. Southern Belle also indicated that it acquired its own supplemental milk without the assistance of cooperatives and no longer needs any supplemental milk. The handler added that it should not be required to pay an additional amount for its milk to compensate producers or cooperatives for services that it did not receive and will not need.

Tillamook County Creamy Association (Tillamook), a cooperative

association located in Tillamook, Oregon, opposed the proposed fluid milk surcharge at the hearing and in its post-hearing brief. Tillamook contended that the continued existence of Class III–A pricing was and is a major contributing factor to any perceived problem of production and delivery of Grade A milk into the Southeast during the past summer.

Tillamook indicated that the amount of milk allocated to Class III–A in Orders 5, 11, and 46 was about 1.4 million pounds in August 1995 compared to 270 thousand pounds in August 1994, and further noted that Federal Order 7 had approximately 2.1 million pounds of milk allocated to Class III–A in August 1995. Additionally, Tillamook pointed out that record data indicates that while handlers and cooperatives located in the Southeast were purchasing supplemental milk supplies from as far as Minnesota and El Paso, significant volumes of milk were being allocated to Class III–A in Federal Orders 4 (Middle Atlantic marketing area), 33 (Ohio Valley marketing area), 36 (Eastern Ohio-Western Pennsylvania marketing area), 40 (Southern Michigan marketing area), and 126 (Texas marketing area).

Tillamook recommended that the Secretary suspend Class III–A pricing nationwide to free up milk needed for fluid use in the Southeast and to continue uniform pricing throughout the Federal order program. The cooperative claimed that the fluid milk surcharge benefits a small portion of the dairy industry, while the suspension or alteration of Class III–A on an emergency basis would increase all dairy farmers' income. Therefore, Tillamook urged the Secretary to deny the proposed fluid milk surcharge and grant relief on Class III–A immediately.

In a post-hearing brief, Milkco opposed the revised proposal for a fluid milk surcharge for the 6 Federal milk orders, specifically the 10-cent surcharge for Order 5. Milkco indicated that it has approximately 44.5 percent of its total Class I sales in the Southeast and Tennessee Valley marketing areas. It stated that the proposed amendment would require it to pay 5 cents per hundredweight more than handlers regulated under Orders 7 and 11. Accordingly, Milkco contended, the amount of the surcharge should be the same for Orders 5, 7, and 11.

The Agricultural Marketing Agreement Act, as amended, clearly authorizes the Secretary to include provisions for payments to handlers that provide facilities to furnish additional supplies of milk needed by the market, but the Act does not provide for an automatic increase in the Class I price to offset such payments. If there had been a stronger record supporting adoption of the proposed transportation credit, the balance might have weighed in favor of taking the action for a temporary period of time. However, the evidence presented by the handler opposition to the proposals, in conjunction with the lack of clarity in the record concerning the magnitude of the problem and any needed increase in Class I prices, leads us to conclude that the transportation credit should not be adopted and, consequently, the Class I surcharge to pay for the transportation credit need not and should not be adopted either.

5. Whether Emergency Marketing Conditions in the 6 Regulated Areas Warrant the Omission of a Recommended Decision and the Opportunity To File Written Exceptions Thereto

Proponents of Proposals 1–2 and 4–5 requested that the Secretary handle these issues on an expedited basis by omitting a recommended decision and the opportunity to file exceptions thereto. This request was denied in the recommended decision and the issue is now moot.

Non-material Issues: Correction to § 1007.50(d). Paragraph (d) of Section 50 of the Southeast order should be corrected to reflect the appropriate order language. The changes resulting from the 27-market Class III–A proceeding (DA–91–13) and included in the December 31, 1993, Federal Register at 58 FR 63286 were adopted by reference at 60 FR 25036 in the final decision for the Southeast order. However, in the process of preparing the final decision and final order for the Southeast marketing area, the revised language in § 1007.50(d) was inadvertently overlooked.

Correction to § 1007.92(c). A typographical error in paragraph (c) of Section 92 of the Southeast order also should be corrected. The word ''four,'' where it appears for the third and final time, should be changed to read ''three.'' There are 6 months in the base-building period of the order, but the market administrator only uses the high 4 production months to compute a base. If a producer does not have 4 complete months of production for one of the reasons stated in that paragraph, the producer must notify the market administrator that he or she does not have 4 complete months of production because during ''three'' or more months his/her production was reduced. Instead of stating ''three or more'' months, however, the order now states ''four or more''. Therefore, the word ''four'', where it appears for the third time, should be changed to ''three'' to remove the inconsistency that now exists.

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

The following findings are hereby made with respect to the Southeast tentative marketing agreement and order:

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

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the

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

Marketing Agreement and Order

Annexed hereto and made a part hereof is an order amending the order regulating the handling of milk in the Southeast marketing area, 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 order be published in the Federal Register.

Determination of Producer Approval and Representative Period

December 1995 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Southeast 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.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

Dated: March 18, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Order Regulating the Handling of Milk in the Southeast Marketing Area

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

Findings and Determinations

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing 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 Southeast order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The Southeast order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; 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 the Southeast marketing area shall be in conformity to and in compliance with the terms and conditions of the Southeast order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the Southeast order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on December 18, 1995, and published in the Federal Register on December 27, 1995 (60 FR 66929), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

1. The authority citation for 7 CFR Part 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1007.2 [Amended]

2. In § 1007.2, *Zone 11,* the words ''(more than 20 miles from the Mobile city hall)'' are removed following the word ''Mobile'' and the words ''(north of State Highway 16)'' are added following the word ''Tangipahoa''.

3. In § 1007.2, *Zone 12,* the words ''Alabama counties: Mobile (within 20 miles of the Mobile city hall).'' are removed and the words ''Tangipahoa (south of State Highway 16)'' are added following the word ''St. Mary,''.

§ 1007.50 [Amended]

4. In § 1007.50(d), the words ''value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month'' are removed and the words ''times 35 and rounded to the nearest cent'' are added in their place.

5. In § 1007.92(c), the word ''four'', where it appears for the third and final time, is changed to read ''three''.

[FR Doc. 96–6985 Filed 3–21–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1205

[CN–96–002]

1996 Proposed Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposes to amend the Cotton Board Rules and Regulations by raising the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This action is required by this regulation on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to that paid on domestically produced cotton. The proposed value reflects the 12-month average price received by U.S. farmers for Upland cotton for calendar year 1995.

DATES: Comments must be received by April 22, 1996.