

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: ) Docket Nos. AO-14-A70; DA-02-01  
)  
)  
Milk Marketing Order Hearing- )  
To Consider Proposals to Make )  
Various Changes to the Northeast )  
Federal Milk Marketing Order )

**Certification of Transcript**

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. § 601 *et seq.*), and the applicable Rules of Practice and Procedures Governing the Formulation of Marketing Agreements and Orders (7 C.F.R. Part 900), I hereby certify as follows:

1. A hearing pursuant to the notice of hearing was held September 10-13, 2002, in Alexandria, Virginia, by Administrative Law Judge Dorothea A. Baker.
2. Proposed corrections of the transcript were to be filed by January 10, 2003, and briefs were to be filed by January 31, 2003.
3. Upon Judge Baker's retirement on January 2, 2003, the matter was reassigned to the undersigned on January 8, 2003.
4. Due to problems encountered with the transcription of the hearing by the court reporting service, the Agricultural Marketing Service (AMS) made corrections to the transcript and electronically provided the parties with copies of the corrected transcript. To the best of my knowledge and belief, the attached AMS-corrected transcript, with the following proposed corrections submitted by Marvin Beshore, Esq. and Charles M. English, Jr., Esq., which the Hearing Clerk is directed to make, is a true, correct and complete transcript of the testimony given at the hearing except for various spelling, typographical, or other apparent or immaterial errors.

## CORRECTIONS TO RECORD - September 10, 2002

| Page | Line(s)              | Correction  |
|------|----------------------|---|
| 16   | 3                    | Change "Levine from Thelen Reid and Priest" to "Yoviene from Thelen Reid & Priest"  |
| 20   | 17                   | Change "Eric" to "Erik"   |
| 111  | 14                   | Change "Eric" to "Erik"   |
| 128  | 1                    | Change "--" to "is"   |
| 130  | 10                   | Change "happened one time" to "happened at times"   |
| 132  | 14                   | Change "transfer milks" to "transfer milk"  |
| 160  | 1<br>7               | Change "Detrick's" to "Dietrich's"<br>Change "Detrick's" to "Dietrich's"  |
| 210  | 5<br>9               | Change "school" to "soon"<br>Change "legally" to "really"   |
| 212  | 1                    | Change "Shad" to "Schad"  |
| 215  | 4                    | Change "DMA's" to "MA's"  |
| 217  | 7                    | Change "Choose" to "Cheese"   |
| 221  | 8                    | Change "combined --" to "combined square mileage"   |
| 223  | 18                   | Change "pool" to "fluid"  |
| 225  | 14                   | Change "marking" to "marketing"   |
| 226  | 8                    | Change "42" to "32"   |
| 228  | 5                    | Change "Northeast" to "Northeast Order's"   |
| 229  | 13<br>20<br>21<br>22 | Change "at -- at their" to "and at their"<br>Change "Northeast" to "Northeast Order"<br>Change "4" to "4."<br>Change "using" to "Using" and change "Class 1. The" to "Class I, the" |

September 10, 2002 (Continued)

| Page | Line(s) | Correction   |
|------|---------|--|
| 236  | 12      | Change "Chataugay," to "Chateaugay,"   |
|      | 15      | Change "Chataugay" to "Chateaugay"   |
| 239  | 15      | Change "specific --" to "specific rate"  |
| 248  | 11      | Change "second -- coach my --" to "second, Marvin coach me"                                    |
| 254  | 20      | Change "Dietrich's" to "Dietrich's plants"   |
| 255  | 9       | Change "DFA," to "and,"  |
| 258  | 17      | Change "wasn't --" to "wasn't included in my Figure."  |
| 260  | 11      | Change "know --" to "know you can't say it gets pooled in Class IV."                           |
| 262  | 2       | Change "-- something" to "They could have something"   |
| 264  | 7       | Change "That's --" to "That's my point"  |
| 268  | 12      | Change "for" to "if we are" and change "-- where" to "-- we are"                               |
| 271  | 24      | Change "employment" to "development"   |
| 281  | 11      | Change "star" to "stay"  |
| 282  | 9       | Change "cows to producer" to "cows to produce" and change "enough mil kin" to "enough milk in" |
|      | 23      | Change "reserved" to "reserves"  |
| 283  | 5       | Change "reserved" to "reserves"  |
|      | 16      | Change "reserved" to "reserves"  |
| 284  | 1       | Change "reserved" to "reserves"  |
|      | 3       | Change "to by zero in June and rages" to "to be zero in June and ranges"                       |
|      | 11      | Change "uner0used" to "under-used"   |
|      | 19      | Change "reserved" to "reserves"  |
|      | 23      | Change "The allocation annual" to "The allocation of annual"                                   |

**September 10, 2002 (continued)**

| <b>Page</b> | <b>Line(s)</b> | <b>Correction</b>  |
|-------------|----------------|--|
| 285         | 3              | Change "reserved" to "reserves"  |
|             | 7              | Change "reserved" to "reserves"  |
|             | 19             | Strike "studies"   |
| 286         | 16             | Change "for" to "for"  |
| 298         | 1              | Change "reserve" to "reserves"   |
| 305         | 4              | Change "more than" to "more, then"                                       |
| 310         | 3              | Change "\$30,000--30,000 period and \$36 per" to "30,000 - \$33,336 per" |
| 311         | 15             | Change "-- federal" to "for federal"                                     |

**CORRECTIONS TO RECORD - September 11, 2002**

| <b>Page</b> | <b>Line(s)</b> | <b>Correction</b>   |
|-------------|----------------|---|
| 336         | 17             | Change "reserved" to "reserves"   |
| 381         | 20             | Change "Q" to "A"   |
| 383         | 23             | Change "producer" to "produce"  |
| 389         | 24             | Change "III" to "3"   |
| 390         | 3              | Change "III" to "3"   |
| 394         | 19             | Strike "upgrade"  |
| 406         | 22             | Change "Milk Street in -- Massachusetts." to "Milk Street, Methuen, Massachusetts." |
| 407         | 10             | Change "Agramark" to "Agri-Mark"  |
|             | 14             | Change "Agramark" to "Agri-Mark"  |
| 408         | 22             | Change "Agramark" to "Agri-Mark"  |
|             | 23             | Change "Agramark" to "Agri-Mark"  |

**September 11, 2002 (Continued)**

| <b>Page</b> | <b>Line(s)</b> | <b>Correction</b>   |
|-------------|----------------|---|
| 409         | 6<br>22        | Change "Agramark" to "Agri-Mark" and "Cappra" to "Capper"<br>Change "Agramark" to "Agri-Mark"   |
| 473         | 18             | Change "hood" to "Hood"   |
| 479         | 17             | Change "(inaudible) -- of 3A pricing" to "inception of III-A pricing"                           |
| 480         | 17             | Change "Agramark." to "Agri-Mark."  |
| 483         | 2              | Change "Agramark made of" to "Agri-Mark made or"  |
| 486         | 7              | Change "Agramark" to "Agri-Mark"  |
| 506         | 4<br>20<br>21  | Change "dean" to "Dean"<br>Change "Westland" to "West Lynn"<br>Change "Westland" to "West Lynn" |
| 509         | 18             | Change "Agramark" to "Agri-Mark"  |
| 513         | 9              | Change "Garelic" to "Garelick"  |
| 514         | 16             | Change "Agramark" to "Agri-Mark"  |
| 531         | 22             | Change "organization -- over-order" to "organization able to charge over-order"                 |
| 540         | 1              | Change "Oatka" to "O-AT-KA"   |
| 542         | 19             | Change "Garelic" to "Garelick"  |
| 570         | 22             | Change "SPEAKER:" to "MR. BESHORE:"   |
| 571         | 16             | Change "BESHORE" to "ENGLISH"   |
| 572         | 9              | Change "own farm, -- Farms." to "own farm, Findale Farms."                                      |
| 582         | 7<br>18        | Change "BESHORE" to "ENGLISH"<br>Change "BESHORE" to "ENGLISH"                                  |
| 585         | 8              | Change "Vernon" to "Byrne"  |

**September 11, 2002 (Continued)**

| <b>Page</b> | <b>Line(s)</b> | <b>Correction</b>   |
|-------------|----------------|---|
| 587         | 13             | Change "USA" to "USDA"  |
|             | 21             | Change "Vernon" to "Byrne"  |
| 588         | 5              | Change "Vernon" to "Byrne"  |
| 594         | 1              | Change "chips" to "checks"  |
|             | 14             | Change "They've" to "We've"   |
| 595         | 15             | Change "small business" to "a small business"                                       |
| 601         | 1              | Change "Proposal" to "Exhibit"  |
| 603         | 4              | Change "require" to "acquire"   |
|             | 11             | Change "require" to "acquire"   |
| 604         | 3              | Change "require" to "acquire"   |
| 609         | 13             | Change "Tollman" to "Tolling"   |
| 612         | 23             | Change "bank" to "plant"  |
| 613         | 1              | Change "Agramark" to "Agri-Mark"  |
| 618         | 15             | Change "and" to "an"  |
| 619         | 16             | Change "other" to "hundred"   |
| 623         | 18             | Change "as will as a state legislator" to "as well as before a state legislator"    |
| 626         | 13             | Change "Cappra Volstead" to "Capper-Volstead" and change "nationally" to "national" |
|             | 14             | Change "known ship base" to "membership base"                                       |
| 633         | 18             | Change "line -- realizes" to "line minimizes"                                       |
| 636         | 12             | Change "Morganmaid" to "Marva-maid"   |
|             | 13             | Change "Morganmaid" to "Marva-maid"   |

September 11, 2002 (Continued)

| Page | Line(s) | Correction  |
|------|---------|---|
| 640  | 9       | Change "is more (inaudible)" to "is one"  |
|      | 10      | Change "supply plants" to "supply plant"  |
|      | 20      | Change "Fernham" to "Perham"  |
| 641  | 17      | Change "Olive" to "Holly"   |
| 643  | 2       | Change "receive (inaudible)" to "receive market service payments"   |
| 645  | 24      | Change "Olive" to "Holly"   |
| 647  | 5       | Change "Olive" to "Holly"   |
| 653  | 14      | Change "venture with the SEC" to "venture with filings with the SEC"  |
| 654  | 16      | Change "Olive" to "Holly"   |
| 660  | 23      | Change "ADCNE is more a -- it's not a marketing agency requirement" to "ADCNE is not a market-agency-in-common" |
|      | 24      | Change "so we're not trending that kind of information" to "so we're not trading that kind of information"      |
| 661  | 1       | Change "by ourselves" to "among ourselves"  |
| 676  | 7       | Change "I -- I did pounds of total size." to "I did pounds of total solids."                                    |
|      | 8       | Change "of (inaudible) total solids." to "of total products."   |
| 687  | 6       | Change "Fernham" to "Perham"  |
| 689  | 2       | Change "Olive" to "Holly"   |

**CORRECTIONS TO RECORD - September 12, 2002**

| <b>Page</b> | <b>Line(s)</b>                  | <b>Correction</b>  |
|-------------|---------------------------------|--|
| 720         | 1<br>19                         | Change "DFA" to "DMS"<br>Change "balancing" to "balancing"   |
| 721         | 14<br>19                        | Change "the milk, to" to " <del>the milk, to</del> "<br>Change "to" to "through"   |
| 732         | 9<br>12                         | Change "producers by" to "procured by a"<br>Change "dairy" to "Byrne dairy"  |
| 733         | 11                              | Change "diverted" to "delivered"   |
| 734         | 11                              | Change "and" to "in"   |
| 740         | 7                               | Change "option" to "options"   |
| 754         | 18<br>19<br>21                  | Change "it is" to "it is"<br>Change "we" to "we"<br>Change "Class I" to "Class I plant"  |
| 755         | 12<br>16                        | Change "DMA" to "DMA"<br>Change "of the" to "of the balancing costs"   |
| 758         | 7<br>11<br>14<br>15<br>17<br>19 | Change "600" to "on average 600"<br>Change "we" to "they"<br>Change "weekend, on a bad day in the spring" to "on a weekend,<br>or on a bad day in the spring, which is far different"<br>Change "not" to "not"<br>Change "you know" to "you know"<br>Change "needling" to "noodling" |
| 768         | 17                              | Change "-- delivery" to "location and components"  |
| 769         | 13<br>14                        | Change "appropriate people," to "appropriate people,"<br>Change "including" to "including"   |
| 770         | 19                              | Change "venue" to "to them"  |
| 771         | 21                              | Change "that business" to "DMS" and change "much --" to<br>"much larger that we ship far in excess of the minimum<br>percentages anyway."  |



September 12, 2002 (continued)

| Page | Line(s) | Correction   |
|------|---------|--|
| 772  | 21      | Change "compared," to "compared to manufacturing,"   |
| 773  | 14      | Change "Well, at times they," to "Well, at times they have,"   |
| 775  | 12      | Change "plans." to "plants."   |
| 778  | 22      | Change "members" to "members"  |
|      | 24      | Change "data" to "cooperative"   |
| 779  | 3       | Change "Canisius" to "Conesus" and change "United" to "Oneida"   |
| 781  | 23      | Change "novelty" to "monopoly"   |
| 782  | 2       | Change "novelty" to "monopoly"   |
| 783  | 1       | Change "it --" to "it Middlebury"  |
|      | 2       | Change "road--" to "road to get there"; change "greater" to "greater than"; and change "get" to "get it" |
|      | 24      | Change "tweaked" to "tweaks us"  |
| 785  | 4       | Change "pay" to "charge"   |
|      | 10      | Change "we --" to "that you"   |
|      | 11      | Change "the United States" to "New York State"   |
| 786  | 6       | Change "Everly" to "Eberly"  |
|      | 10      | Change "And the question," to "And to that question, the"  |
|      | 11      | Change "exceed the overboard" to "exceed the over-order Board"   |
| 789  | 12      | Change "another" to "an under"   |
|      | 13      | Change "another" to "under"  |
|      | 17      | Change "reduced to loss" to "reduced the loss"   |
| 797  | 9       | Change "Terrell" to "Garelick" and change "Linnsville" to "Lynn"   |
|      | 21      | Change "Flores" to "Florence"  |
|      | 23      | Change "Company." to "Cumberland."   |
| 800  | 14      | Change "Lyleville" to "Lowville"   |
|      | 15      | Change "C-op" to "Co-op"   |
| 801  | 5       | Change "others" to "there have been others"  |
|      | 6       | Change "take" to "taken"   |

September 12, 2002 (continued)

| Page | Line(s) | Correction  |
|------|---------|---|
| 803  | 2       | Change "one of the" to " <del>one of the</del> "  |
|      | 3       | Change "of" to "to"   |
|      | 6       | Change "pick you need to do" to "pay to meet the competitive"   |
| 804  | 10      | Change "negative or" to "an individual"   |
|      | 19      | Change "refined" to "defined"   |
| 805  | 15      | Change "under" to "a hundred"   |
| 807  | 9       | Change "towing cost" to "tolling cost"  |
| 808  | 19      | Change "There is --" to "There is sharing of economics at the plant based on the 3 owners use of the plant so" and change "at the plant, then -- so" to " <del>at the plant, then -- so;</del> "                          |
| 811  | 13      | Change "and" to "and"   |
|      | 16      | Change "and then net" to "and they net"   |
|      | 17      | Change "they -- independent" to "independent nets that together"  |
|      | 21      | Change "So, here is a -- paid" to "maybe"   |
|      | 23      | Change "shrink" to "shrink some"  |
| 813  | 19      | Change "it goes out on" to "on going right now"   |
|      | 20      | Change "but," to "but say,"   |
|      | 21      | Change "a lot" to "another load"  |
|      | 23      | Change "special" to " <del>special</del> " and change "-- that distributor" to "especially with those Class I distributors that have their own producer supplies so that we are this big target. Likely that distributor" |
| 814  | 1       | Change "you know" to "when"   |
| 815  | 2       | Change "around until" to "around from farm to farm until"   |
|      | 3       | Change "put that" to "get that"   |
|      | 19      | Change "Packer" to "Patent"   |
| 816  | 5       | Change "Packer" to "Patent"   |
| 825  | 8       | Change "refer" to "prefer"  |
| 826  | 13      | Change "position" to "business"   |

September 12, 2002 (Continued)

| Page | Line(s)        | Correction  |
|------|----------------|---|
| 829  | 24             | Change "price --" to "price we have to pay producers"   |
| 830  | 5<br>17        | Change "at" to "a"<br>Change "either method, producer," to "proprietary handlers to their" and change "and handlers" to "and handlers";   |
| 832  | 17<br>21<br>23 | Change "that" to "that are shown in the table"<br>Change "certainly" to "certainly this spring the next"<br>Change "farther, before we did" to "full and the -- plants were full and we had to"                                   |
| 833  | 2<br>4         | Change "California" to "California of all places"<br>Change "have" to "operate"   |
| 834  | 11<br>18       | Change "generally" to "generally more often than not"<br>Change "plan" to "plant"   |
| 835  | 17             | Change "develop" to "divulge"   |
| 839  | 7<br>10<br>11  | Change "and" to "and they would be"<br>Change "another is a non-" to "compared to the one independent producer the mega cooperative"<br>Change "member shipping milk to a cooperative" to "member shipping milk to a cooperative" |
| 845  | 14             | Change "eluded" to "alluded"  |
| 846  | 12             | Change "Furnace Point" to "Byrne's plant in"  |
| 848  | 7-8            | Change "in the neighborhood of" to "there were" and change "price" to "price hardly"  |
| 855  | 2              | Change "D&L" to "P&L"   |
| 871  | 20             | Change "independence" to "independents"   |
| 872  | 23             | Change "SHINBECK" to "SCHANBECK"  |
| 873  | 1              | Change "SHINBECK" to "SCHANBECK"  |

**September 12, 2002 (Continued)**

| <b>Page</b> | <b>Line(s)</b>            | <b>Correction</b>  |
|-------------|---------------------------|--|
| 926         | 20                        | Change "available supply of Class I marketed" to "available to supply Class I marketing"   |
| 935         | 6                         | Change "dolt" to "dog"   |
| 939         | 7                         | Change "Class I" to "Class IV"   |
| 943         | 4<br>8                    | Change "Bern" to "Byrne"<br>Change "Bern" to "Byrne"   |
| 947         | 10                        | Change "mill" to "milk"  |
| 995         | 12                        | Change "Burn" to "Byrne"   |
| 1002        | 6<br>10<br>12<br>13<br>17 | Change "Bern" to "Byrne"<br>Change "Bern" to "Byrne"<br>Change "Bern" to "Byrne"<br>Change "Bern" to "Byrne"<br>Change "Bern" to "Byrne" |
| 1005        | 1                         | Change "quacks a like duck" to "quacks like a duck"  |
| 1014        | 17                        | Change "NEPCO" to "NEDCO"  |
| 1019        | 2                         | Change "NEPCO" to "NEDCO"  |
| 1033        | 23-24                     | Change "proprietary information you would provide" to "proprietary data, information would you provide"                                  |
| 1034        | 19                        | Change "full" to "pool"  |
| 1062        | 4<br>13                   | Change "Which one" to "Which is one"<br>Change "preserve" to "reserve"   |
| 1068        | 9                         | Change "billion" to "million"  |

**CORRECTIONS TO RECORD - September 13, 2002**

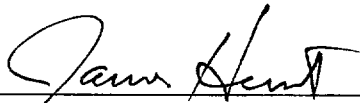
| <b>Page</b> | <b>Line(s)</b> | <b>Correction</b>                                 |
|-------------|----------------|---|
| 1160        | 18             | Change "balanced. Quotes" to "balanced quotes"    |
| 1161        | 4              | Change "that one report" to "that on one report"  |
| 1198        | 9              | Change "ENGLISH" to "VETNE"                       |
|             | 18             | Change "ENGLISH" to "VETNE"                       |
| 1213        | 8              | Change "ENGLISH" to "VETNE"                       |
| 1230        | 14             | Change "Chuck" to "Chip"                          |
| 1246        | 5              | Change "Acme" to "ADCNE"                          |
|             | 6              | Change "Producers" to "Foods"                     |
| 1253        | 19             | Change "Dairy Lakes" to "Dairylea"                |
| 1257        | 23             | Change "You think" to "Do you think"              |
| 1258        | 1              | Change "or to pay" to "than they pay"             |
| 1259        | 10             | Change "English" to "Vetne"                       |
|             | 11             | Change "English" to "Vetne"                       |
|             | 14             | Change "English" to "Vetne"                       |
| 1260        | 2              | Change "English" to "Vetne"                       |
|             | 4              | Change "English" to "Vetne"                       |
|             | 6              | Change "English" to "Vetne"                       |
|             | 14             | Change "BESHORE" to "ENGLISH"                     |
| 1261        | 6              | Change "BESHORE" to "STEVENS"                     |
| 1265        | 9              | Change "there's no uniform" to "there's uniform"  |
| 1319        | 22             | Change "in order to pay" to "in order not to pay" |
| 1328        | 16             | Change "first year stamp" to "105% rate"          |
| 1359        | 9              | Change "plan" to "plant"                          |

September 13, 2002 (Continued)

| Page | Line(s) | Correction  |
|------|---------|---|
| 1361 | 11      | Change "(9,300 farms X 3,333 pounds per" to "(300 farms X 31 days)"                 |
|      | 12      | Change "farm per day X 31 days)" to "farm per day <del>X 31 days)</del> "           |
|      | 14      | Change "milk on" to "milk 9,300 farms X 3,333 pounds per farm per day X 31 days on" |
| 1365 | 7       | Change "16" to "1.6"  |
|      | 8       | Change "51" to "5.1"  |
| 1380 | 10      | Change "period" to "grid"   |
| 1391 | 23      | Change "great economic" to "greatest economic"                                      |
| 1409 | 8       | Change "disregulation" to "deregulation"  |

5. Attached to the transcript are the exhibits, numbered 1 thru 30, which were received into evidence.

February 13, 2003

  
\_\_\_\_\_  
JAMES W. HUNT  
Administrative Law Judge