BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE

IN RE:	:	**7 CFR Parts 1005, 1006, and 1007**
	:	
Milk in the Appalachian,	:	**Docket No. 23-J-0019**
Southeast, and Florida	:	
Marketing Areas	:	**AMS-DA-23-0003**

Franklin, Tennessee

February 28, 2003

Testimony of Elvin Hollon
(Part 1)

On behalf of the Dairy Cooperative Marketing Association

Proposed Amendments to the Orders Regulating the Handling of Milk in the Appalachian, Southeast and Florida Marketing Areas

I am Elvin Hollon. My business address is Post Office Box 131, Liberty, Missouri 64069. I am here today representing the nine Capper-Volstead cooperatives who are members of the common marketing agency, Dairy Cooperative Marketing Association, Inc. (DCMA). The members of DCMA are all recognized by the Department as qualified cooperatives. The complete list of DCMA members is shown in **Exhibit _____ Members Dairy Cooperative Marketing Association**. Unless noted differently, we will use the term DCMA to represent all nine of the Agency members throughout this statement as all nine members support Proposals 1 through 5 and oppose Proposals 6 and 7. DCMA supports Federal Order regulation and knows that the regulations are beneficial to its individual members' business operations as well as the dairy industry as a whole. DCMA members together market and pool milk in the Appalachian Order (Federal Order 5), the Florida Order (Federal Order 6), and the Southeast Order (Federal Order 7).

DCMA PRODUCER MILK VOLUMES ORDERS 5, 6 AND 7 FOR OCTOBER 2021

For comparison purposes we have compiled producer milk data for Orders 5, 6 and 7 to show the relative position of DCMA milk production on the Orders. Using October 2021 as a proxy for a typical month, the total pounds of producer milk on the three Orders, as reported by the Market Administrator, was 1,024,617,582 pounds. Of this total, DCMA poolings were 823,427,739 pounds or 80.4% of the total producer milk pooled that month. **Exhibit _____, Comparison DCMA Members' Total Milk Pooled on Orders 5, 6 and 7 October 2021 and Comparison of DCMA Member Farms Meeting the Definition of a Small Business October 2021**, details this information.

SMALL BUSINESSES REPRESENTED BY DCMA

The Small Business Act defines a small business as a business concern that is organized for profit; has a place of business in the U.S.; operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor; is independently owned and operated; and is not dominant in its field on a national basis. The business may be a sole proprietorship, partnership, corporation, or any other legal form. The Office of Small and Disadvantaged Business Utilization provides definitions of small businesses for U.S. businesses that fit a specified North American Industry Classification System (NAICS) business definition. A dairy farm is NAICS code 112120 - Dairy Cattle and Milk Production. It is classified as a small business if it has ***annual*** receipts of less than $3,750,000. Based on this definition, of the 2,628 farms pooled on Orders 5 and 7 in October 2021, DCMA members pooled 1,258 farms that were small businesses. These small business farms represent 48 percent of all the farms pooled on the Orders. It is likely that the proportion of DCMA member farms pooled on Orders 5, 6, and 7 which would qualify as a small business is actually greater than 48% since some farms can be pooled on both Orders in the same month.

We have requested this hearing to address the urgent need for assistance in providing adequate supplies of fresh fluid milk to distributing plants in the southeastern United States. Specifically, DCMA requested that the Department convene a hearing for the purpose of amending Federal Milk Marketing Orders 5, 6, and 7 pursuant to the five (5) proposals for amendments which we have detailed and submitted.

Since its implementation, the existing transportation credit system has worked to help defray milk import costs from out of area farms. However, cost components have changed and are eroding the effectiveness of the existing program. We are here today to recommend needed updates to keep

the provisions in place which have worked very well since the 1990s. To increase returns and sustainability to Southeast dairy farms we propose to update and modernize the existing transportation credit provisions **already in** Orders 5 and 7. Implementation of the updating changes in proposals 1 and 2 will allow the Transportation Balancing Credit Fund (TCBF) program to return nearer to its effectiveness as originally designed. Moreover, proposals 3, 4, and 5 will adopt near identical provisions, as the TCBF program, but will apply to milk deliveries that take place, with limited exception, from farms located inside the Order to pool distributing plants of the Order.

The data we will present supports the conclusion that operating a dairy farming enterprise in the Southeast is difficult. While the most economical source of milk supplies for Southeast consumers is from Southeast dairy farms, the cost of delivering milk to pool distributing plants from both in area and out-of-area farms has risen sharply due to the increase in diesel fuel and non fuel costs. The increase in non fuel costs can be partially offset through our proposed updates to the base mileage rate in the credit formula. Likewise, the increase in diesel fuel costs, which is creating unprecedented increases in hauling costs which the transportation credit system is designed to address, can be mitigated if kept more current. The DCMA proposals will address hauling costs from both in-area and out-of-area sources of supply.

DCMA requested that this hearing be held on an expedited basis and that evidence be taken to allow the Secretary to implement these amendments at the earliest possible date.

While we will provide more detail about our proposals later in our testimony, two specific data points provide a reasonable summary of the basis of our request. DCMA conducted a survey of its members to capture cost details about their supplemental milk purchases. Summarizing that data revealed for October 2020 the average transport distance for a supplemental milk haul was 774 miles. The exhibits submitted for the 2006 hearing (Exhibit #25 pages G1 – G3) showed October

2003 transport haul mileages that averaged 511 miles. This reveals an increase of 51% in the average miles necessary to procure a load of supplemental milk. This extra distance reflects an increase in costs that the transportation credit system is not currently structured to reimburse and is a significant issue to correct.

The most salient point we will present is perhaps best represented by the changes in diesel fuel costs. During the period chosen by the proponents to support the process of updating the existing transportation credit system - May 4th 2020 through November 9th 2020 - diesel fuel averaged $2.2617 per gallon. The Federal Order 5 published "*ANNOUNCEMENT OF ADVANCED CLASS PRICES AND PRICING FACTORS FOR FEBRUARY 2023*" reports the EIA average diesel fuel price to be $4.428 per gallon – an increase of $2.1663 or 196% more per gallon. This increase consumes assessment dollars and pushes the payment rate for transported miles to be prorated severely forcing milk suppliers to absorb much more of the transport cost. It is difficult, if not nearly impossible for suppliers to pass on this increase as rapidly as it occurs and in some cases pass it on at all. This is counter to the intended policy underlying the transportation credit system and threatening to both the supply of and the orderliness of the marketing of milk in the region.

PROPOSALS 1 AND 2: MODIFY THE TRANSPORTATION BALANCING FUND PROGRAM IN FEDERAL ORDERS 5 AND 7 AND CREATE A NEW DISTRIBUTING PLANT DELIVERY CREDIT PROGRAM FOR ORDERS 5, 6 AND 7.

The DCMA proposals are twofold: the initial focus of our effort is to update the existing transportation credit system designed to partially reimburse the cost to transport supplemental milk from farms that are not located within the marketing area into the market to meet needs at pool distributing plants. This system was first implemented in these orders in 1996, revised as the result of a 2006 hearing, and not updated in 17 years. It is woefully inadequate in addressing the needs of the regional marketplace today.

Proposals 1 and 2 deal with DCMA's requested changes to the current transportation credit calculations in Federal Orders 5 and 7. The proposed changes apply to Section .81, Section .82 and Section .83 of both Orders. Our proposals request updates to the calculation of the Mileage Rate Factor; adjustments to the portion of the mileage that can be claimed for payment of a transportation credit by converting the flat mileage deduction to a percentage of the miles that can be claimed and make that percentage subject to adjustment by the Market Administrator; modification of transportation credit payments to handlers for the month of February, making it optional rather than mandatory; and increasing the assessment that funds the transportation credit functions. No changes are being proposed to the provisions defining what milk is eligible for transportation credits.

Secondly, Proposals 3, 4, and 5 will create a new Section .84 in the three Orders to provide for a Distributing Plant Delivery Credit program for milk generally produced inside the marketing areas of the three Orders which is delivered to pool distributing plants of the Orders. A provision will also be requested for farms located outside the Marketing Areas of Orders 5, 6, and 7 that have historically been delivered to the market on a year-round basis.

The provisions and calculations for the new distributing plant transportation credit system are much the same as the existing system. There are, however, additional provisions added to the proposed language which call for the Market Administrator to diligently examine requests for payments for the Distributing Plant Delivery Credit to ensure that uneconomic milk movements are not taking place on credits applied for.

The significant need for updating the current order provisions is demonstrated in **Exhibit _____, Comparison of Mileage Rate Factor Components Current and DCMA Proposed.** This is a summary of the key components of the mileage rate factor (MRF) as currently in the Order

language and calculations and those same components as proposed by DCMA with the percentage change for each. Note, the existing components were put in place in December 2006 and DCMA' member cost survey was for 2020 data. The Base Fuel rate has increased by 59% and it is likely higher currently than for the period surveyed. The average miles per gallon achieved by milk transport equipment have improved by 13%. The base haul rate – costs that are not fuel-related - have increased by 92% and also are likely higher currently than for the period surveyed. In addition, the average tank load weight has increased by 4%. With two key components, fuel costs and base haul rate, showing sizable increases it is certainly time for USDA to review and increase the cost factors in the transportation credit calculation.

These proposed changes in the payment provisions of the transportation credit system will increase payments from the respective funds to handlers supplying the market. Consequently, if increases in the credit are justified then changes in the assessment rates will be necessary.

For the purpose of Proposals 1-5, a transportation credit is a partial reimbursement of the transportation cost of milk purchased to meet fluid milk demand at distributing plants in Federal Orders 5, 6, and 7. This activity, as proposed for Sections .81 through .84 of Orders 5, 6, and 7, continues to meet the definition of a marketwide service as it benefits producers, handlers, and consumers but the cost of the service is not borne equally by all producers and handlers in the market.

PREVIOUS HEARINGS IN SOUTHEASTERN ORDERS RELATIVE TO TRANSPORTATION CREDITS

Since 1996, Orders 5 and 7 have compensated handlers providing the marketwide service of importing supplemental milk supplies through the Orders' Transportation Credit Balancing Funds. These Order provisions, funded by assessments on Class I pooled milk, have defrayed a

portion of the transportation cost of bringing milk into the Orders on a seasonal basis, as needed, to meet Class I demands. In 2006, demonstrating the continuing need and justification, the Transportation Credit provisions were updated in several respects: a fuel cost adjuster was built into the system to provide current reflection of changes in diesel costs and the maximum assessment rate was increased to compensate for the increased volumes and costs of required supplemental supplies. The most recent review and updating of the payment components of the Transportation Credit system was done at a 2006 Hearing, published as a Proposed Rule in 2014, 75 Fed. Reg. 12985 (March 7, 2014) (Milk in the Appalachian and Southeast Marketing Areas; Final Partial Decision). **Citations from the March 2014 decision will be helpful to demonstrate the fact that Transportation Credit provisions have a long history in the Southeastern Orders, that the rationale for their inclusion in these Orders then are still warranted now and updating them has been and now is again necessary and warranted.** The Hearing Summary section of the Proposed Rule notes the following (emphasis added) situations:

> This final decision proposes to permanently ***adopt revised transportation credit balancing fund provisions for the Appalachian and Southeast milk marketing orders. Specifically, this document establishes a variable mileage rate factor using a fuel cost adjuster to determine the transportation credit payments of both orders; increases the transportation credit assessment rate for the Appalachian Order to $0.15 per cwt***; and establishes a zero-diversion limit standard on loads of milk requesting transportation credits. Separate decisions will address the proposed adoption of an intra-market transportation credit provision for the Appalachian and Southeast Orders and for ***increasing the transportation credit rate assessment for the Southeast order.***
>
> 75 Fed. Reg. at 12985c3

> The amendments that are recommended for permanent adoption in this decision ***revise the transportation credit provisions of the Appalachian and Southeast Orders***.
>
> ...

The adopted amendments establish a variable mileage rate factor that would be ***adjusted monthly by changes in the price of diesel fuel (a fuel cost adjuster) as reported by the Department of Energy*** for paying claims from the transportation credit balancing funds of the Appalachian and Southeast orders. ***Prior to their interim adoption, the mileage rate of both orders was fixed at 0.35 cents per cwt per mile.***

...

The ***adopted amendments establish an increase of the transportation credit assessment rate*** for the Appalachian order. Specifically, the maximum assessment rate for the Appalachian order is increased to $0.15 per cwt.

The higher assessment rate is intended to minimize the proration and depletion of the order's transportation credit balancing fund during those months when supplemental milk is needed. The higher assessment rate for the Appalachian order adopted in this decision is necessary due to expected higher mileage reimbursement rates arising from escalating fuel costs, the transporting of milk over longer distances, and the expected continuing need to rely on supplemental milk supplies arising from declining local milk production in the marketing areas.

75 Fed. Reg. at 12986c2

Findings/Discussion

The issue before USDA in this decision is the consideration of changes to the transportation credit and closely related provisions of the Appalachian and Southeast Milk Marketing Orders. ***Transportation credit provisions have been a feature of the current orders (and their predecessor orders) since 1996.***

...

The record reveals that the Appalachian marketing area, and in particular, the Southeast marketing area, are chronically unable to meet Class I demands. Local milk production relative to demand has declined and is expected to continue declining. Consequently, local milk production is not always able to fulfill the Class I needs of the markets, which necessitates the need for supplemental milk from distant locations. ***As local milk production has eroded, the volume of supplemental milk needed for fluid use has increased, while at the same time the distance from the marketing areas from which the supplies are obtained has increased.*** This development is particularly evident for the Southeast marketing area. ***These combined factors have caused the transportation credit balancing fund (TCBF) to be insufficient in covering requested transportation credit***

payments. The TCBF will likely not be able to cover future requested payments unless the amendments contained in this decision are adopted.

75 Fed. Reg. at 12994c3

Evidence shows that the trend of declining production relative to demand will result in an increased need for supplemental milk supplies and it is likely that this trend will continue into the foreseeable future.

75 Fed. Reg. at 12995c1 (Emphasis added throughout).

We have arrived at the foreseeable future. This brief review of the Transportation Credit history and findings based in prior decisions states the rationale for the provisions adopted in the previous hearing which are the same for this hearing. The Secretary has continually upheld the transportation credits as necessary and allowable tools to assure orderly marketing in the two Order marketing areas. Unequal costs of handlers and returns to producers serving the Class I needs of a marketing area have consistently been held to be a source of market disorder. Today, as in prior years, the costs of acquiring supplemental milk for Orders 5 and 7 are falling disproportionally on cooperative associations and their members. The more the transportation credit provisions fail in reflecting a fair portion of the real cost of hauling supplemental milk supplies, the more the costs of hauling those supplemental milk supplies fall unequally to market participants. The more unequal the distribution of these costs, the more market disorder, and the more likely the orderly flow of milk to the marketplace will be threatened.

MARKETING DISORDER IN THE SOUTHEAST: POPULATION INCREASE, POSSIBLE DEMAND INCREASE, LOSS OF DAIRY FARMS, LOSS OF MILK PRODUCTION, SEASONAL FLUCTUATION IN SUPPLY AND DEMAND CONDITIONS, AND SIGNIFICANT CLOSURES OF MILK PROCESSING PLANTS INCREASE MARKETING COSTS

An overview of key marketing characteristics in the Southeast - at present and since the current order provisions for transportation credits were adopted - documents the challenging marketing conditions and supports the urgent need for this hearing. **Exhibit _____, Population Data US Census Bureau 2020 and 2021**, points to a positive factor for the Southeastern dairy industry – an increasing population which means potentially more milk demand. The Census Bureau divides the U.S. into four geographic areas the Northeast, Midwest, South and West regions. U.S. population as a whole is shown to have an increase of 0.12% for the period. While the Northeast (-0.64%) and Midwest (-0.14%) are showing declines, the Southeast (0.65%) and the West (0.05%) show gains. The Southeast subset of 11 states reveals population increases in nine of the eleven states. Additionally a review of data compiled by the MilkPep organization **Exhibit _____, Milk Sales Per Capita 2019 Versus 2020**, shows in a tracking of All Channel milk sales by region, an increasing trend in milk consumption in the Southeast (the largest population region) - up 2.6% in 2020 versus 2019. The study also indicates that the increase in consumption may well be partially fueled by older generations of retirees who are higher imbibers of milk.

These two data points indicate a positive trend for fluid milk consumption in the Southeast. Unfortunately, these two data points are the end of possibly positive trends and the erosion of the impact of the transportation credit program means reduced revenues for the milk producers who supply the market. To the extent the reduction in farm numbers represent local farms, the milk necessary to fill customer and consumer demands will come from farther distances and at a higher

transportation cost to serve the market. The following tables and charts demonstrate the decline in both southeastern dairy farms and milk production.

Exhibit _____, Licensed Dairy Farms, Southeast States, 2017 – 2021, details the trends for licensed dairy farms in the eleven Southeast states for the period 2017 – 2021 as published by USDA in the February issue of the USDA National Agricultural Statistics Service's ***Milk Production Report***. Over the five year period, the total farm count decreased by 719 farms. Every southeastern state had fewer farms in 2021 than in 2017. More recently, of the eleven states only Arkansas did not show a decrease in farm numbers between 2020 and 2021 as it recorded 35 dairy farms in both periods. **Exhibit _____, Trend in Farms in Southeast States 2017 – 2021**, is the graphical depiction of the licensed dairy farms data.

Exhibit _____, Number of Total Farms and In Area Farms Appalachian, Southeast and Florida Orders 2000 and 2015 – 2022, provides additional detail into the farm structure of the southeastern Orders by reviewing the number of farms located within each of the three Order boundaries. Considering the recent five year period of 2017 – 2022, it was not unexpected that the number of farms had decreased but the magnitude of the decline is perhaps more than might have been expected. In October 2017, the Appalachian Order showed 1,040 dairy farms within the Order area. By 2022, that number had declined to 650 or a decrease of 38%. A similar comparison for the Southeast Order showed 1,124 in area farms in 2017 and 489 in 2022 for a decline of 56%. The Florida Order had a decline of 45% for the same period with 89 farms, in 2017 and 49 in 2022.

Exhibit _____, Annual Milk Production, Southeast States, Million Pounds 2017--2021, is the near twin of the farm count data as milk production data exhibits the same trend. Total regional milk production over the period declined 12.8% or 1.214 billion pounds. Every state decreased production over the five year period. Only two states, Georgia (1.5%) and North Carolina

(2.4%) increased production in the most recent period 2020 - 2021. **Exhibit _____, Trend in Milk Production in Southeast States 2017 – 2021**, is the graphical presentation of the milk production data.

The dim plight of the Southeast dairy industry is starkly depicted in **Exhibit _____, Change in US Milk Production 2011 – 2021**, showing that the increase in milk production over the entire United States is certainly leaving out the Southeast region. This map shows the increase or decrease in milk production for each of the the lower 48 states for the ten year period 2011 - 2021. States colored by red and pink have decreased milk production and those colored light and dark blue have increased. The darker the red color the more the decrease; the darker the blue color the greater the increase.

Of the 25 states showing decrease, nine are in the traditional Southeast states region. Of those nine, six are the darkest red with decreases more than 25%. They are South Carolina, Tennessee, Arkansas, Louisiana, Mississipppi, and Alabama. Kentucky (-16.8%), Virginia (-14.4%) and Florida (-4.4%), were the remaining states with decreasing growth trend. Only two Southeast states, North Carolina and Georgia, show an increase over the five year period.

Market Administrator data for monthly average producer milk receipts, as shown in **Exhibit _____, Producer Milk Receipts – 2000 Monthly Average by Order**, and **Exhibit _____, Producer Milk Receipts – 2021 Monthly Average by Order**, provide a deeper examination of milk production by Federal Order as the Orders boundaries do not always coincide with state borders. Of the 10-Order comparison (note that the 2021 data includes the California Order which was not in place in 2000) six Orders increased in producer receipts – the Northeast, Mideast, Upper Midwest, Southwest, Arizona, and Pacific Northwest and four decreased Central, Appalachian, Southeast, and Florida. Quite likely pooling strategies were the cause of reduced producer receipts

in the Central Order. But pooling strategies are highly unlikely to impact the southeastern Orders where depooling rarely occurs. Thus, the cause of the reduction here was attributable to producers exiting dairy farming as noted earlier.

Exhibit _____, FO 5 Milkshed – 2021 Appalachian Marketing Area, shows the percentage sources of milk for each of the southeastern Orders for calendar year 2021. For the Appalachian Order, 54% of the milk pooled on the Order was produced in the marketing area of the Order. The remaining 46% of the total was produced predominatly in other Orders. The sources were Mideast Order (16%); Southeast Order (14%); unregulated counties (8%); Northeast Order (5%), and Other (3%) (not detailed for reasons of confidentially). Clearly, the Appalachian Order must depend on milk supplies from other Orders to meet the demand of its pool distributing plants.

This situation is similar for the Southeast Order but the reliance on outside marketing area milk supplies is much greater. As shown in **Exhibit _____, FO 7 Milkshed – 2021 Southeast Marketing Area**, only 44% of the Order's milk supplies originate from within the Order marketing area while 56% of the supply originates outside. The Central Order is the largest outside supplier with 19% of the deliveries, while the Southwest supplies 16%, the Mideast supplies 12%, Appalachian supplies 4%, Florida supplies 4%, and 1% comes from other areas. Clearly, the Appalachian Order, and to a greater extent, the Southeast Order are very dependent on distant supplemental milk supplies to meet demands from distributing plants.

The Florida Order also draws significant volumes of supplies from sources outside Order 6. **Exhibit _____, FO 6 Milkshed – 2021 Florida Marketing Area.** There, 82% of milk supplies to meet fluid use demands originate inside the marketing area and 18% from outside. The majority of the 18% comes from farms located in Georgia. Due to proximity, the Georgia milkshed has been the most common source of supplemental milk supplies for the Florida Order for many years.

Noteably, in August 2022, the monthly milk production for Georgia surpassed that of Florida for the first time. Local sources indicate this will be a continuing and increasing trend and Georgia milk may well be a more integral part of the every day milk supply for pool distributing plants in the Florida Order. We will discuss this further with our testimony for Proposals 3 – 5.

As shown in **Exhibit _____**, distant supplemental milk supplies have been, are, and will be significant components to meeting the demands of pool distributing plants in the Apalachian and Southeast Orders. Examining the shortfall thru **Exhibit _____, FO 5 Daily Average In-area Producer Milk and Pool Distributing Plant Demand 2019 – 2021**, sharpens the picture. The vertical bars represent in-area Producer milk – that milk that is produced in the marketing area and delivered to Order 5 Pool Distributing plants. While some milk produced in Order 5 is delivered to other Order plants, the majority of deliveries are to pool distributing plants located inside the marketing area. The horizontal line represents demand from Order 5 pool distributing plants. Each data point is a three year average of demand and supply for 2019 – 2021. Averaging each data point would "smooth out" unusual fluctuations that might be due to situations such as weather conditions or plant closures. Both, the line and the bars, reflect known seasonality factors in the southeastern Orders such as demand falling off reflective of the school calendars in the late spring to mid-summer months and recovering thru the early fall and to year end. The graphs also depict milk production tapering noticably in the summer months due to heat and slowly recovering by the end of the fall. The peak shortfall month for Order 5 occured in October with a need of 4.9 million pounds per day. Using a load size of 49,700 pounds, 99 loads of supplemental milk **per day were required**.

Exhibit _____, FO 7 Daily Average In-area Producer Milk and Pool Distributing Plant Demand 2019 – 2021, depicts with all the same types of data the marketing conditions for that

Order. The largest shortall month for Order 7 was September with an average daily shortfall of 6.5 million pounds **per day** or 131 loads.

Note, this is an average daily calculation so the shortfall would be an every-day problem for market suppliers in the designated month. The DCMA cooperatives are the predomiant suppliers in the southeastern Orders. Their task in making supply arrangements includes finding multiple suppliers as few individual supply sources, if any, have the noted large volumes needed to fill demand, along with enough transport equipment and labor to move the milk volumes long distances and get the transport equipment back for the next distant pickup. While we can calculate an average daily volume, the actual daily volume, for weekly or holiday milk demand is rarely a level average so the arrangements made will need to accommodate variation. Supplemental milk suppliers also have their own sales and demand variation that have to be allowed for.

The Transportation Credit system is a key tool in making these arrangements. As currently structured, the system is modeled to direct monies to the time of most need. While there may be supplemental milk needed in months other than the pay-out months, the current system focuses available monies to the most needed period. Our proposal will convert the month of February from a mandatory payout month to an optional payout month in response to the principle of directing available funds to the months of the most need.

The closure of fluid milk distributing plants increases marketing costs for the remaining Southeast dairy farms. **Exhibit _____, Number of Pool Distributing Plants Southeastern Orders December 2000 and December 2022**, details the trend of pool distributing plant closures using a count from December of each year. The count shows a steady decrease in all three Orders: down 10 plants (38%) in Order 5; down 4 (33%) in Order 6; and down 17 (53%) in Order 7. Assuming most farms deliver milk to their closest plant if they can, fewer plants mean longer distances and

higher haul costs from farm to plant for the remaining dairy farms. In some cases this can mean closure of the farm. We are unaware of any new construction for fluid milk plants in the Southeast currently.

Another reason supporting a review and update of Transportation Credit provisions is detailed in **Exhibit _____, Comparison of the Deficit in In-area Milk Production and Class I and II Use December 2020 and May 2021 Appalachian, Florida and Southeast Federal Orders**. This table outlines a comparison of the pounds of in-area milk production versus Class I and Class II use in the southeastern Orders for December 2020 and May 2021. May and December are the two months of the year where the Market Administrators routinely publish **all** milk production produced within the marketing area and pooled on **any** Federal Order. Consequently, the data shows that only in May 2021, in the Florida Order, did in-area milk production meet Class I use in any of the three Orders through the six comparisons. In all the other five comparisons supply was less than demand, ranging from 67% to 97% of demand. When Class II demand is added to the total demand, the ability to fill all orders is much lower ranging from a low of 54% (Order 7) to a high, but less than full, 92% of orders for milk at Florida Order plants. There is no reason to think the outcome would be significantly different in any of the other ten months. Clearly, demand is greater than in-area supply and the southeastern Orders must reach to other Orders for supplemental supplies to meet demand. Furthermore, as previously noted, the distances from which the supplemental milk is obtained continue to increase as in-area production declines and the number of farms decrease. These marketing conditions cause the transportation credit balancing funds to be depleted at a rate faster than the rate at which handlers are assessed.

A second example of the need to review and update the Transportation Credit system is shown in **Exhibit _____, Transportation Credit System Data, Federal Orders 5 and 7, 2020 –**

2022. Transportation Credit System data is reviewed here for the years 2020 – 2022 for both Order 5 and 7. The situation in these years is very similar to earlier years. Columns 1 and 9 are the Assessment rates for each of the two Orders for the years shown. Columns 2 and 10 are the Class I pounds for each of the two Orders for the years shown. Columns 3 - 5 and 11-13 are the total assessment dollars generated in each Order, the total credits paid in each Order and the total credits claimed in each Order. Columns 6 and 14 are the total pounds claimed in each Order and Columns 7 and 15 are the prorated percentage of Claims paid in each Order for each month. Columns 8 and 16 are the annual average of the prorations over the months that are eligible for making a claim for reimbursement.

Based on this data showing claims for partial reimbursement for transportation made to fill distributing plant demands for milk, significant volumes of supplemental milk are needed in the southeastern Orders. In the Appalachian Order, for the three years shown, milk that met the definition for transportation credit eligibility totaled 912.033 million pounds or approximately 18,364 tankers of milk (using a 49,700 payload)– milk that would never be needed if enough local milk was available. The loads per year were in 2020, 5,374, for 2021, 6,347 and for 2022, 6,642 – a steadily increasing trend. While getting a transportation credit is a desirable outcome, credits are deliberately constructed to pay out less than the total hauling cost, they are not a reason standing alone to seek distant milk supplies unless absolutely necessary. Note that in Order 5, 100% of all claims made were paid. That too is a desirable outcome; but as we will show in later testimony the current transportation credit payout calculations are woefully underfunded as they have not been reviewed and updated since the 2006 hearing and thus, fall far short of providing a reasonable partial reimbursement of current, actual transportation costs.

The Southeast Order data for the same three-year period shows 2.663 billion pounds of milk or 53,590 tankers were accompanied by a claim for transportation credit. There were claims for 15,869 tankers of supplemental milk made in 2020, 19,505 in 2021 and 18,217 for 2022. For all the same reasons, this situation too would not occur unless absolutely necessary to fill a demand order. Furthermore, in the Southeast Order only 74% of all claims made were paid over the three-year period as the level of reimbursement was compromised by too few dollars available to pay all claims.

Columns 7-8 and 15-16 show the percent of prorated transportation credit payments monthly for the months in which payments were made and the annual average for both Orders for both years. Federal Order 5 paid all claims in both years as shown in Columns 7 and 8. However, Federal Order 7 paid only 90%, 67% and 66% (Columns 15 and 16) of eligible claims submitted.

No party can claim that the current transportation credit reimbursement is excessive or yields a payment greater than actual cost. Two of the most critical components in computing the transportation credit payment amount are the base diesel fuel price and the base haul rate per mile charged by transport carriers. These two components are key in the process of updating the Mileage Rate Factor (MRF). and as noted in the 2014 Final Rule for the 2006 hearing, were $1.42 per gallon of diesel fuel and base haul rate of $1.91 per loaded mile. Today those same factors which DCMA is proposing as part of the updating process are $2.26 per gallon for diesel fuel and $3.67 per loaded mile for the base haul rate. Updated data which we will present shortly (**Exhibit _____, Calculation of Mileage Rate Factor 2020 – 2022**) could increase the mileage rate factor by approximately 65%. And, if adopted, provide reimbursement much closer to the current calculated actual cost. Additionally, as noted earlier, the reimbursement process is compromised by the fact that the

assessment rate that funds the transportation credit payments is insufficient to fully pay the claims made by milk suppliers.

Exhibit _____, Comparison of Portion of Class I Transportation Cost to Amount Covered by Federal Order Transportation Payment 2020 – 2022, combines the updated MRF calculation that DCMA will propose and the shortfall caused by the need to prorate payments. For 2020, in both Orders, the annual average actual MRF calculation was $0.00436 per hundredweight per loaded mile against a DCMA proposed cost of $0.00745 per hundredweight per loaded mile accounting for 58.5% of the cost incurred by the buyer. For Order 5, this rate, albeit short of the estimated cost, was paid to the claimant. But, in Order 7, the reimbursement payment was further reduced to only 52.6% of the rate allowable due to the proration impact. In 2021 following the same logic and an estimated MRF of $0.00760, the final payments amounted to 59.9 % of calculated costs in Order 5 and 40.0% in Order 7. And, in 2022 with an estimated MRF of $0.00817 the final percentage of cost covered was 63.8% for Order 5 and 42.3% for Order 7. Clearly an updating of the transportation credit components needs serious review.

It is instructive to note that the pounds claimed is a good barometer of total market need as it is in the claimants' best interest to file for any and all eligible milk. If 100% of all claims were paid, one would want to collect as much reimbursement as possible and if the payments are prorated, everyone is prorated equally so if a claimant chose not to submit an eligible pound the benefit would accrue to a competitor.

Additionally, some short season supplemental milk contractual arrangements that I have been familiar with from both the viewpoint of seller and buyer have provisions that allow the buyer to take less milk than the maximum contracted but with a "stay home fee" paid to the seller for the volumes not taken. This allows the seller to earn a return on milk not taken on short notice and the

buyer to save on some of the premium cost and all of the freight cost on milk not taken. This allows the buyer to better manage the amount of supplemental milk actually purchased and transported.

So, combining the fact that the suppliers purchase milk that is transportation credit deficit, choose to contract for more than they think they will need so no customer is short their orders and agree to pay a fee for milk they don't even take, we have a good indication that the market is short and can use the benefit of updating the Transportation Credit system.

Exhibit _____, Example of Shortfall in Current Transportation Credit Cost Coverage, will demonstrate how much the existing provisions have become eroded. Four different supply/demand scenarios are outlined contrasting the return from existing transportation credit calculations and the updated transportation credit calculations as proposed by DCMA. The four scenarios are typical sources for supplemental milk arrangements and would be representative of many of the actual arrangenents.

Scenario 1 (the methodology is identical for each of the other three scenarios) compares a load of milk from Muleshoe, TX, a common west Texas supplemental supply location to the Southeast, with a delivery to a plant located in Atlanta, GA. Column 1 titles the base constants of the calculation. Row "A" lists the location where the load of supplemental milk originated from; Row "B" the location where it was delivered; Row "C" lists the miles between each location; Row "D", 85 miles, is from the current provisions and is the number of miles used to reflect the haul obligation of the supplier; Row "F" is the DCMA suggested provision of using a 15% reduction in the total miles of the haul; Rows "G" and "H" are the Class I differential first for the shipping location and following for the delivery location.

The calculation section is in Columns 2 and 3. Column 2 reflects calculations based on the annual average current provision MRF and Column 3 the same calculations, but using the annual average DCMA proposed provision MRF for 2021 of $0.00762.

Row "J" - Mileage Rate Factor – is the resulting calculation from using the provision language and the four factors in the table above. Calculations in Column (2) flow from the existing MRF and Column (3) from the proposed MRF. The MRF x Adjusted Miles row performs the two multiplications: one using the miles less 85 provision and the other less 15% of miles.

The next row, difference differential Row "L", is the result of subtracting the supply location differential from the delivery location differential. The difference in differential is then subtracted from the MRF x Adjusted Miles calculation and then multiplied by the Tank Weight per CWT of 500 Row "O". The Transportation Credit Payment is the final calculation. For the Muleshoe to Atlanta scenario, the resulting payment from the use of current factors is $1,843 and from the proposed factors $3,180 a shortfall of $1,337. The existing transportation credit payment covers only 58% of the credit payment as calculated using the proposed MRF factors.

The other three examples follow all the same calculation steps. For the Rensselear, IN location the current provision payment would cover 25% of the payment as calculated by the updated MRF provision; from Lancaster, PA the coverage would be 54% and 35% from Orrville, OH. These from/to choices are representative of the market as a whole and in no case does the current payment system come close to reimbursing the payment required today.

CONSTRUCTION OF THE MILEAGE RATE FACTOR

DCMA proposes several changes to the MRF to update its calculation from the last time changes were made. The calculation process for computing the transportation credit was initially a

static fixed rate formula where all the components were fixed unless changes were made at a hearing. This greatly limited the ability of the payment amount to reflect changing market conditions. The formula construction was later changed to allow the mileage rate factor to adjust monthly with changes in diesel fuel prices which allows some reflection of more current changes in transportation costs. Adjusting hauling cost rates for changes in fuel costs is common practice in the industry. The DCMA proposal continues that practice.

At this point, we will reconstruct the MRF with more current data. Once reconstructed we will use it to calculate assessments necessary to fund the transportation credits as historically applied for by handlers and show to what extent the newly calculated funds cover the applied for credits. We will make certain choices for time frames and the costs of milk movement associated with the chosen time frames. Obviously, different time frames will yield differing results and it is our task to justify our choices. We understand that the movement of these time frames, a few months forward or backward, will yield slightly different results but the general results will be very similar.

The process we used to compute adjustments to the MRF was to seek a recent period where diesel fuel prices were reasonably constant establishing a base diesel fuel price. Then, we surveyed base haul rates during that period, reviewing the miles per gallon for combination trucks from the Federal Highway Administration, (supporting that data by industry experience where necessary) and finally survey the tank size of transport equipment used to haul supplemental milk into the southeastern Orders. Once done, the resulting changes were reviewed against the assessment rate to determine at what level it should be set to ensure that eligible transportation costs could be paid. The entire process was also reviewed to ensure that a balance has been established between the need for an adequate reimbursement rate versus a rate that might incent uneconomic activity given competitive conditions in the marketplace.

MILEAGE RATE FACTOR COMPONENTS

BASE RATE DIESEL PRICE

To track diesel fuel costs and calculate a base diesel fuel price, the DCMA proposal supports continued use of Energy Information Administration of the United States Department of Energy (EIA) data. It is a common dairy industry fuel cost reference and is readily available.

EIA publishes weekly diesel price data for nine U.S. sub-regions. Given the geographic alignment, the continued use of the Lower Atlantic and Gulf Coast EIA regions in computing the monthly MRF would be appropriate for the Appalachian and Southeast Orders marketing areas. The EIA Lower Atlantic region is comprised of the states of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida. The EIA Gulf Coast region is comprised of the states of Alabama, Mississippi, Arkansas, Louisiana, Texas, and New Mexico. **Exhibit _____, Weekly No 2 Diesel Prices Lower Atlantic (PADD 1C) Gulf Coast (PADD 3) Retail Prices (Dollars Per Gallon)**, and **Exhibit _____, Weekly EIA Diesel Fuel Prices Lower Atlantic and Gulf Coast Regions 2020 – 2023**, show the steps and results of establishing the proposed base diesel fuel rate.

DCMA reviewed weekly diesel fuel prices for 2020 and 2022. When graphed, the weekly prices for May 4, 2020 through November 9, 2020, stood out as a 28-week period of relatively stable prices. Visually, these weeks had the best combination of low fluctuation in price and a longer time span for stable prices. Diesel fuel prices for the two regions averaged $2.262 per gallon with a median price of $2.244 supporting the adoption as a stable period. Note, that the current MRF calculation uses a base diesel fuel price of $1.42 per gallon. This difference demonstrates the need to update the factors in the calculation and the DCMA proposal supports using $2.26 as the base diesel fuel price.

MILES PER GALLON – COMBINATION TRUCKS

The DCMA proposal supports using miles per gallon fuel efficiency data from the US Department of Transportation, Federal Highway Administration, Highway Statistics (Washington, DC: Annual issues), Table VM-1, available at http://www.fhwa.dot.gov/policyinformation/statistics.cfm as of Jan. 12, 2020 for combination trucks. This information is shown on **Exhibit _____, Table 4-14M: Combination Truck Fuel Consumption**.

The definition for a combination truck per FHWA is, "A power or tractor unit with one or more semi-trailers or converted to trailers by means of a converter gear." This definition describes a dairy transport tanker. This data set is readily available and has been used in previous hearings for this purpose. However, there is a lengthy lag in the reporting. The most recently published miles per gallon rate is 6.0478 for 2019. An estimate was made to calculate a value for 2022 by using the average five-year change in miles per gallon per year for 2014 – 2019. The five- year average was 0.0430 per year and ranged from a high of 0.0958 to a low/decrease of 0.0252 in 2018. Adding 0.0430 to the 2019 published 6.0478 and then repeating that process for each year resulted for 2022 in a miles per gallon estimate of 6.1770. Consulting with members of DCMA that maintain transport operations would indicate a miles per gallon of 6.2 for 2022 would be a reasonable fleet average across an operation with varying transport tasks and varying ages of equipment.

It should be noted that the higher the presumed combination truck fuel economy, the lower the resulting Mileage Rate Factor. The proponents' proposal to use a Miles Per Gallon fuel economy rate on the upper end of the likely range is an additional protection against the possibility of establishing a rate which promotes uneconomic movements of milk.

BASE HAUL RATE

To determine a base haul rate, DCMA members were surveyed for their actual haul rate experience during September and October 2020. This period was months of heavy supplemental milk purchases; hence, many haul bills were generated. The sample period was within the weeks of May 4, 2020, through November 9, 2020, the same period that the average diesel fuel rate was drawn from at $2.26 per gallon. Members were asked to provide a date, day, transport firm and its location, the state from which the milk was purchased, the plant delivered to, the load weight, the miles travelled, the rate per mile and the total amount billed for that haul. The data was aggregated by the DCMA Administrator to retain confidentiality purposes and summary data was provided for this record. **Exhibit _____, DCMA Haul Cost Survey September and October 2020**, is an example of the data survey form for review. There were 1,225 observations in September and 1,726 in October. Purchases were made from nine states, Indiana, Kansas, Maryland, Michigan, New York, Ohio, Oklahoma, Pennsylvania and Texas. All are traditional sources of supplemental milk purchases over various periods of time for various customers across the Southeast Orders. **Exhibit _____, Plants Included in DCMA Haul Cost Survey September 2020**, lists by Order the plants, cities and states where information was drawn from. As you can see, the geographic reach is expansive. Of the nine DCMA members, two did not have any data to report as they did not procure any supplemental milk supplies for which a transportation credit could be claimed.

Exhibit _____, Transport Haul Survey DCMA Members September and October 2020, is a summary of the haul cost survey and generated several specific data points for the updating of the MRF. The total number of observations for the two-month period was 2,951. The average load weight was 49.665 pounds. The rate per loaded mile ranged from a low of $1.27 per mile to a high of $6.88 per mile and averaged $3.67 per mile. Loads travelled an average of 818

miles with some as close as 272 miles and some as distant as 1,490 miles. The average bill for the transport cost on a load of supplemental milk was $3,003.

CALCULATION OF MILEAGE RATE FACTOR

With all the components of the MRF determined and updated, **Exhibit _____, Sample Calculation Mileage Rate Factor Per DCMA Proposal**, combines them into a sample MRF calculation as outlined in Section .83 of each Order using all the defined rounding directions from the Order language. Using the **Exhibit _____, December Market Administrator Announcement of Advanced Class Prices and Pricing Factors**, as a starting point, the EIA average diesel price for the Lower Atlantic and Gulf Coast regions for the most recent 4 weeks is posted in the Announcement as $3.553 per gallon. From that price, subtract the Base Diesel Price of $2.26, as determined by DCMA, resulting in the change (in this case increase) in diesel fuel prices from the Base Price of $1.293 per gallon. Divide the Base Diesel Price by the Combination Truck miles per gallon factor of 6.2 to yield a change in haul cost per loaded mile due to fuel of $0.209. The Base Haul Cost per loaded mile determined by the DCMA survey was $3.67 per mile. Adding the adjusted fuel cost per loaded mile to the Base Haul Cost yields an Adjusted Haul cost per loaded mile of $3.879. Dividing the Adjusted Haul cost per loaded mile by the average load size from the DCMA haul survey of 497 hundredweights results in a Mileage Rate Factor of $0.00780. It should be noted that the higher the presumed quantity of milk on a typical load, the lower the resulting Milage Rate Factor. The proponents' proposal to round up the quantity of milk on a standard load is an additional protection against the possibility of uneconomic movements of milk.

Exhibit _____, Calculation of Mileage Rate Factor 2020 – 2022, compares the proposed MRF calculation data for each month with the actual MRF factor as announced by the Order in the *Announcement of Advanced Class Prices and Pricing Factors*. The current published MRF factor

averages 59% of the actual cost **as calculated** by DCMA for 2020-2021. Obviously, holding the base components of the MRF calculation constant has been a significant cause for the transportation credit payments to fall short of the actual hauling costs incurred. Note, that the portion of the DCMA MRF represented by fuel costs has varied with actual market costs, but the portion represented by other costs in the base hauling rate of **$3.67 per mile** such as purchasing and maintaining equipment, labor, benefits, management and overhead costs are constant in the formula in spite of the fact that they have certainly increased since the 2020 survey was done. Additionally, the shortfall does not reflect the fact that transportation payments have been subject to proration when assessments collected were insufficient to pay all claims. The shortfalls in both Orders can be reduced by reviewing and increasing the assessment to an amount that is sufficient to fund the claims presented. As we have shown in earlier testimony, the MRF is well short of current costs so that in the Southeast Order the funding for transportation credit claims is prorated down to as low as 32% of claims made being paid. Comparing the current MRF with the cost updated DCMA proposal shows how much the MRF has eroded.

Comparison of MRF 2020 - 2021

	Proposed	Current	Current X 150%
MRF 2020	$ 0.00745	$0.00436	$0.00655
MRF 2021	$ 0.00762	$0.00457	$0.00685
Average MRF	$ 0.00754	$0.00447	$0.00670
Maximum MRF	$ 0.00780	$0.00478	$0.00717
Minimum MRF	$ 0.00737	$0.00428	$0.00642

Column 1 of this table recaps various MRF calculations made using the DCMA data for the full calendar years, 2020 – 2021. For 2020, the proposed MRF calculated to $0.00745 per mile versus the actual announced MRF of $0.00436; and for 2021, the calculations were $0.00762 versus $0.00457. For the two years combined, the updated average was $0.00754 versus $0.00447 per hundredweight per mile. Over the two years, the updated MRF's single month high was $0.00780 in December 2021. There was a minimum value of $0.00737 in November 2020. Column 3 provides additional comparisons for reference by increasing the announced MRF by 50%. With a 50% increase, in every month the comparison remains well below the adjusted DCMA proposed MRF calculations.

ASSESSMENT RATE CHANGE

Exhibit _____, History of Transportation Credit Balancing Fund Assessment, 2000 – 2022, Appalachian and Southeast Orders, details the history of Transportation Credit Payment assessments since 2000. In this 22-year period, rates in the Southeastern Orders have changed seven times. Four times in the Appalachian Order (twice up and twice down) and 3 times in the Southeast Order (all increases).

The current assessment rate in the Appalachian Order of $0.07 per cwt was set in May 2021 as a decrease from the prior month's assessment of $0.10 per cwt. The maximum rate remains at $0.15 per cwt set in December 2006. Market conditions in the Order allowed the Market Administrator to reduce the rate, as authorized by regulation, to $0.07 per cwt.

In the Southeast Order the current assessment is $0.30 per cwt which is the maximum allowable under the Order. This rate was set in May 2008 with an increase of $0.10 from the then current maximum assessment rate of $0.20.

Having adjusted the MRF and discussed the results of those adjustments for 2020 and 2021, we need to determine what level of assessment on the Class I pounds in the two Orders is necessary to fund the transportation credits at a level adequate to avoid prorating the payments, if possible, while generating monies necessary to fund the MRF at a level reflecting current costs as much as possible.

Exhibit _____, Transportation Credit Assessment and Payment Detail, Federal Order 5 and 7, 2020-2022, lists the **actual historical** data necessary to support the various Assessment rates to fund the Transportation Credit payments supplied by the Market Administrator. For our purposes, we will utilize data from 2020 and 2021 including the 12 months of assessment and 8 months of payments for each year. Of particular interest is the FO Class I Pounds, the dollars of credits paid and claimed. Note, that while Order 5 has more Class I pounds than Order 7, the dollars claimed and paid in Order 7 are much greater. This is due primarily to the greater distance between Order 7 and the necessary supplemental milk supplies and the decrease in in-area milk production.

In order to support the need for increased Transportation Credits, Order 7 currently has twice the maximum assessment, $0.30 per cwt versus $0.15 per cwt, as Order 5. Both Orders pay and collect in the same months. The Appalachian Order does not need to prorate its payments and has reduced its Assessment as previously noted. Not so in the Southeast Order, however, where payments were prorated three of eight months in 2020 and six of eight in 2021 with October paying only 32.21% of the claims made.

Columns 1 -7 contain data for Federal Order 5 with Column 1, the monthly assessment rate; Column 2, the Class I Pounds; Column 3, the dollars generated by the assessment; Column 4, the total credits paid; Column 5, the total dollars claimed; Column 6, the total pounds claimed;

and Column (7) the prorated percentage of claims paid versus claims made. The data repeats for Federal Order 7. Each table includes annual totals where needed for future use.

We used the proposed DCMA calculated MRF with all the updated components and data from **Exhibit _____, Federal Order 5 Transportation Credit Mileage Rate Factor Scenarios, 2020 – 2022**, to create several assessment alternatives. This Exhibit was created by the Market Administrator for 2020 and 2021 using two different ***annual average*** MRFs in place of the monthly Announced MRF. **Exhibit _____, Federal Order 7 Transportation Credit Mileage Rate Factor Scenarios, 2020 – 2022**, is the same calculations but for Order 7. The objective is to determine and contrast the impact of changes in the MRF on the Transportation Credit payment and the resulting impact on the level of assessment needed to fund the payments. ***Because the proponents will request that February become an optional payment month, we will show calculations forward from this point with no payments made in February.***

Each table contains Column 1, the pool period; Column 2, the announced MRF; and Column 3, the actual transportation credit claims paid that month. The next column, Column 4, the same transportation credit pool calculation but using a MRF of $0.00642 – from the summary table above representing the lowest ***announced*** MRF for 2020 and 2021 multiplied by 150%. Column 5 is the monthly total Federal Order 5 Transportation Credit Payment using this MRF. Column 6 is the difference between the actual payment (Column3 and the calculated payment using this MRF (Column 5. Column 7 is an MRF of $0.00754 from the summary table representing the annual average MRF for the two-year period computed by DCMA as discussed previously in this testimony. Columns 8 and 9 represent the same calculations as outlined for Columns 5 and 6 using Scenario 2 MRF. Viewing the three scenarios will give representative views of the dollars generated by the current MRF and two alternative calculations using a low and high alternative MRF. **Exhibit**

_____ is a duplicate set of calculations for Federal Order 7. Columns 5 and 8 of each Table yield **summary dollars using an annual average MRF as calculated above** that are necessary for computing the level of assessment to fund the transportation credit payments.

For Order 5, using the MRF of $0.00642 and the total pounds submitted for transportation credit payment, an annual total of $4.31 million would be generated in 2020 and $5.40 million would be generated in 2021. Performing the same calculation but using a MRF of $0.00754 generates $5.468 million in 2020 and $6.866 million in 2021.

For Order 7, using the MRF of $0.00642 and the total pounds submitted for transportation credit payment, an annual total of $18.120 million would be generated in 2020 and $21.767 million would be generated in 2021. Performing the same calculation but using a MRF of $0.00754 generates $22.584 million in 2020 and $27.250 million in 2021.

These totals can now be used to estimate an assessment rate that would generate monies to cover the increase in the MRF and avoid any proration of payments. This calculation is outlined in **Exhibit ____, Estimated Transportation Credit Assessment Rates, Changing Federal Order Mileage Rate Factor to $0.00642 and $0.00754, Federal Orders 5 and 7, 2020 – 2021.** For 2020 in Federal Order 5, the **$0.00642** MRF generated $4.310 million an increase of $2.266 million more than the existing MRF. Divided by calendar year 2020 Class I pounds of 3,931,555,220 resulted in an assessment rate necessary to enable the full value of the MRF to be paid of $0.11 per hundredweight. The same calculation for calendar year 2021 for Order 5 resulted in a rate of $0.14 per hundredweight.

For Order 7 in calendar year 2020, an assessment of $0.56 would be needed to pay the full value of the MRF and in calendar year 2021 an assessment of $0.70 would be needed to accomplish the same.

Shifting to the MRF of **$0.00754**, which is the average of calendar year 2020 and 2021 with fully updated data the same calculation as above returns assessment rates needed for Order 5 in 2020 of $0.14 per cwt and for 2021 of $0.18. For Order 7, the calculated values for the 2020 assessment would be $0.70 and for 2021 of $0.88.

Exhibit _____ , Summary of Class I TCBF Assessment Necessary to Fund Credits, Federal Orders 5 and 7, 2020 – 2021.

DCMA proposes to increase the assessment in the Appalachian Order from a maximum of the current authorized rate of $0.15 per cwt to $0.30 per cwt. The provisions as written in Section 1005.81 will all remain unchanged except that the maximum rate will be set at $0.30 per cwt.

For the Southeast Order, the current maximum authorized assessment of $0.30 per cwt is proposed to increase an additional $0.30 per cwt to $0.60 per cwt. As in the Appalachian Order, all the provisions of Section 1007.81 will all remain unchanged except that the maximum rate will be set at $0.60 per cwt.

DCMA members reviewed an extensive amount of available data and calculations in order to arrive at the proposed assessment levels. Each member reviewed its own business plans and options, and collectively reached the proposed rates based on their collective evaluation of marketing conditions. We expect that in the Appalachian Order the initial assessment change will likely be reduced swiftly as the maximum amount proposed ($0.30 per cwt) should be more than sufficient to pay estimated claims. But the maximum assessment will also allow for a level of cost

increase to be reimbursed via the transportation credit in the future. **Exhibit _____, Calculation of Total Dollars and Percentage of Claims Paid DCMA Proposal Federal Order 5**, displays these results from the proposed assessment of $0.30 per cwt. Columns 1 -6 were actual Order data as published. Column 7, the new assesment rate; Column 8, the total dollars in the assessment pool including any remaining dollars from December 2019; Column 9, the monthly MRF as calculated by DCMA; Column 10, the total claims requested **at the new rate including claims for February**; Column 11, the total claims paid **at the new rate including claims paid in February**; Column 12, the percent of claims paid **including claims paid in February**; Column 13, the total claims paid **at the new rate NOT including claims made in February**; Column 14, the percent of claims paid **not including claims made for February. The annual totals as displayed in Column 8 show the cumulative assessment from the new rate as $23,033,948.44 versus $6,939,617.54 currently.**

The new assessment total is somewhat inflated as calculations in Columns 11 and 13 show fewer dollars would have been needed to fund all claims made and the Market Administrator could reduce the assessment rate as is being done currently or waiving the rate entirely if conditions warranted (Sections 1005.81 and 1007.81). Nonetheless, for Order 5, the assessment rate of $0.30 per cwt appears adequate to fund all claims at this time and likely well into the future.

The details shown by Column 11 and 13 are intended to demonstrate the possible benefits of converting February from a mandatory payment month into a requested payment month. The impact of this is only apparent in a time period when payments are prorated – which is not the case thus far, nor anticipated in the near future for Order 5.

Columns 11 and 13 show clearly the impact of the increased MRF payment on total payments made for the 2020–2021 time period and with or without a payment made in February.

Column 11 shows that $13.3 million would be generated and paid with the updated MRF and slightly less $12.1 million if no payment were to be made in February. All claims made would be paid with no proration, the same situation as current – but with more dollars.

Not so for the Southeast Order, as data and calculations indicate that even with an increased MRF and the proposed assessment of $0.60 per cwt, proration of payments will still result but total dollars paid will be increased. **Exhibit _____, Calculation of Total Dollars and Percentage of Claims Paid DCMA Proposal Federal Order 7**, outlines this in detail. Each column is labled the same as the previous Exhibit for Order 5. Column 8 shows an Assessment total of $38.0 million versus a previous actual amount of $19.0 million. Columns 12 and 14 show the result of the new assessment in terms of percentage of claims paid. In 2020, the same total dollars were paid out since there were prorated months that zero out the assessment pool. But in the months paid, there is one more month of 100% payments and October had a higher percent of claims paid if February is a non-payment month. This directs more dollars to the months needed as expected.

In 2021, the payment scenario is similar. Considering the comparison between the payment status of February, one more month returns a full payment of claims and the remaining months pay one more month with a higher payment and two with the same. While not the perfect answer to the market situation, it is nonetheless, a significant improvement over current conditions.

As referenced earlier, DCMA proposes to change the payment status of February from a mandatory payment month to a requested payment month in both Order 5 and 7. Handlers could petition the Market Administrator to make payments in February if they felt it necessary in order to deliver milk as requested by distributing plants. Handlers would be responsible to provide data and rationale to the Market Adminstrator to support the request. As indicated in **Exhibit _____ and Exhibit _____**, it is likely that the requested assessment made by proponents will still generate

prorated payments for transportation credits in Order 7 in the fall months when the need for supplemental milk is the greatest. By changing February to an optional payment month more monies to make payments will be deferred into the period of most need.

DCMA also requests that the mileage adjustment made within the payment formula in Section 82(d)(3)(iii) be changed from a flat mileage deduction of 85 miles for loads delivered directly from farms to distribution plants to a percentage basis. Proponents offer the mileage for which payment be made be reduced by fifteen percent and then multiplied by the mileage rate factor. This step would be taken for every claim submitted by a handler.

A fifteen percent reduction is an appropriate value to initiate this change in the payment calculation. Data submitted by DCMA indicates an average haul mileage of 818 miles (**Exhibit _____**) for the period that data was collected. The current 85 mile deduction represents 10.4% of an average haul and in keeping with Federal Order policy of less than full reimbursement of cost, the 15% reduction would be a conservative initial change.

In the future, this percentage would be subject to adjustment by the Market Administrator if requested and justified by handlers. By making the mileage percentage adjustment subject to Market Adminsitrator review, the industry has a more responsive method to better tailor the transportation credit program to market situations without asking, preparing and funding a hearing yet still be responsible to make the case for a change in the program.

Additionally, this change would more equitably and simarily treat long haul and short haul loads and every haul would get some benefit of the transportation credit program. The current use of a flat mileage deduction heavily penalizes shorter hauls and in some cases completely eliminates a payment even though there is a cost. Also in some, albeit few, cases a handler might choose a

longer haul in order to collect a larger payment than a shorter haul that might be eliminated or reduced due to the 85 mile limit. Thus, the provision as written in this case would violate the policy intent of encouraging the shortest haul possible. While not definitive proof that this circumstance may be occurring, the fact that the minimum distance supplemental milk moved into the Orders was 272 miles during the September and October 2020 period, lends some credence to this concern. See **Exhibit _____.**

Lastly, Proponents make no change to the language Section 82(d)(2)(iv) and 82(d)(3)(vi). The result of this paragraph, when there is a positive difference, computed by the paragraph immediately prior will result in a reduction in the value of the credit payment and, if there is a negative difference no subtraction is made, leaving no residual adjustment to the mileage payment calculation. Given the current state of milk production, farm numbers and plant numbers, we see no need to change these paragraphs.