

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006, and 1007

[Docket No. 23–J–0019; AMS–DA–23–0003]

Milk in the Appalachian, Southeast, and Florida Areas; Notice of Hearing on Proposed Amendments to Marketing Agreements and Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held to consider and take evidence on proposals to amend the inter-market transportation credits in the Appalachian and Southeast Federal milk marketing orders (FMMOs) and adopt distributing plant delivery credits (intra-market transportation credits) in the Appalachian, Southeast, and Florida FMMOs.

**DATES:** The hearing will convene at 9 a.m. on Tuesday, February 28, 2023.

**ADDRESSES:** The hearing will be held at the Franklin Marriott Cool Springs Hotel, 700 Cool Springs Blvd., Franklin,

Tennessee 37067. Telephone (615) 261–6100.

Copies of this notice of hearing and the respective orders may be procured from the Market Administrator of the Appalachian, Florida, and Southeast marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue SW, Washington, DC 20250–9200.

Copies of the transcript will be made available online at: <https://www.ams.usda.gov/rules-regulations/moa/dairy>.

**FOR FURTHER INFORMATION CONTACT:** Erin Taylor, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Stop 0225—Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0225, (202) 720–7311, email: [Erin.Taylor@usda.gov](mailto:Erin.Taylor@usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact Jason Nierman, Market Administrator, a minimum of three days before the start of the hearing at (502) 499–0040 ext. 2222, or email: [nierman@malouisville.com](mailto:nierman@malouisville.com).

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of 5 U.S.C. 556 and 557 and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Franklin Marriott Cool Springs Hotel, Franklin, Tennessee, beginning at 9 a.m. on Tuesday, February 28, 2023, with respect to proposed amendments to the

orders regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act), and the applicable rules of practice and procedure governing amendments to marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the marketing orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Actions under the FMMO program are subject to the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA). The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is a “small business” if it has an annual gross revenue of \$3.75 million<sup>1</sup> or less, and a dairy products manufacturer is a “small business” if it has no more than the number of employees listed in the chart below (13 CFR 121.201):

NAICS code	NAICS U.S. industry title	Size standards in number of employees
311511 .....	Fluid Milk Manufacturing .....	1,000
311512 .....	Creamery Butter Manufacturing .....	750
311513 .....	Cheese Manufacturing .....	1,250
311514 .....	Dry, Condensed, and Evaporated Dairy Product Manufacturing .....	750

Most parties subject to a FMMO are considered a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may

suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil

Justice Reform. They are not intended to have a retroactive effect.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen

<sup>1</sup> The Small Business Administration has issued a final rule, effective December 19, 2022, increasing the size of a small business dairy farm to an annual

gross revenue of less than \$3.75 million. See: <https://www.federalregister.gov/documents/2022/11/17/2022-24595/small-business-size-standards->

[adjustment-of-monetary-based-size-standards-disadvantage-thresholds.](#)

access to Government information and services, and for other purposes.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under sec. 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the USDA would rule on the petition. The Act provides that the United States District Court in any district in which the handler is an inhabitant or has its principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an appeal is filed not later than 20 days after the ruling is issued.

Interested parties who wish to introduce exhibits at the hearing should provide the Administrative Law Judge with (4) copies of such exhibits for the Official Record. Additional copies should be made available for use by other hearing participants. Any party that has submitted a proposal noticed herein, when participating as a witness, is required to make their testimony—if prepared as an exhibit—and any other exhibits, available to USDA officials prior to the start of the hearing on the day of their appearance. Individual dairy farmers are not subject to this requirement.

The hearing will continue until such time as determined to have ended by the presiding Administrative Law Judge. If necessary, the schedule for the next session will be announced at the time of adjournment. Such reconvening date and time will also be posted on the AMS-Dairy Programs website at: <https://www.ams.usda.gov/rulesregulations/moa/dairy>.

Testimony is invited on the following proposals or appropriate modifications to such proposals.

**Proposal 1 (§§ 1005.81 Through 1005.83, Excluding § 1005.82(c)): Submitted by the Dairy Cooperative Marketing Association**

This proposal seeks to update the transportation credit provisions in the Appalachian milk marketing order. Specifically, the proposal recommends increasing the maximum assessment rate on Class I milk, updating the components of the mileage rate calculation with current costs, revising the months of mandatory and discretionary payment, and revising the

non-reimbursed mileage factor. These proposed changes would be mirrored in the Southeast milk marketing order (see Proposal 2).

**Proposal 2 (§§ 1007.81 Through 1007.83, Excluding § 1005.82(c)): Submitted by the Dairy Cooperative Marketing Association**

This proposal seeks to update the transportation credit provisions in the Southeast milk marketing order. Specifically, the proposal recommends increasing the maximum assessment rate on Class I milk, updating the components of the mileage rate calculation with current costs, revising the months of mandatory and discretionary payment, and revising the non-reimbursed mileage factor. These proposed changes would be mirrored in the Appalachian milk marketing order (see Proposal 1).

**Proposal 3 (§§ 1005.30, 1005.32, and 1005.84): Submitted by the Dairy Cooperative Marketing Association**

This proposal seeks to establish distributing plant delivery credits (intra-market transportation credits) in the Appalachian milk marketing order. Specifically, the proposal recommends establishing a Distributing Plant Delivery Credit Fund (DPDCF) and payment program, setting an initial and a maximum assessment rate for the DPDCF, granting the Market Administrator authority to adjust the assessment rate, establishing geographical eligibility criteria, establishing a reimbursement rate, establishing a range for the reimbursed portion of the farm to plant mileage, setting an initial reimbursed mileage percentage, and establishing monitoring requirements for the Market Administrator. These proposed changes would be mirrored in the Florida and Southeast milk marketing orders (see Proposals 4 and 5).

**Proposal 4 (§§ 1006.30, 1006.32, and 1006.84): Submitted by the Dairy Cooperative Marketing Association**

This proposal seeks to establish distributing plant delivery credits (intra-market transportation credits) in the Florida milk marketing order. Specifically, the proposal recommends establishing a Distributing Plant Delivery Credit Fund and payment program, setting an initial and a maximum assessment rate for the DPDCF, granting the Market Administrator authority to adjust the assessment rate, establishing geographical eligibility criteria, establishing a reimbursement rate, establishing a range for the reimbursed

portion of the farm to plant mileage, setting an initial reimbursed mileage percentage, and establishing monitoring requirements for the Market Administrator. These proposed changes would be mirrored in the Appalachian and Southeast Milk marketing orders (see Proposals 3 and 5).

**Proposal 5 (§§ 1007.30, 1007.32, and 1007.84): Submitted by the Dairy Marketing Cooperative Association**

This proposal seeks to establish distributing plant delivery credits (intra-market transportation credits) in the Southeast milk marketing order. Specifically, the proposal recommends establishing a Distributing Plant Delivery Credit Fund and payment program, setting an initial and a maximum assessment rate for the DPDCF, granting the Market Administrator authority to adjust the assessment rate, establishing geographical eligibility criteria, establishing a reimbursement rate, establishing a range for the reimbursed portion of the farm to plant mileage, setting an initial reimbursed mileage percentage, and establishing monitoring requirements for the Market Administrator. These proposed changes would be mirrored in the Appalachian and Florida milk marketing orders (see Proposals 3 and 4).

**Proposal 6 (§§ 1005.xx Through 1005.xx): Submitted by Prairie Farms Dairy, Inc.**

This proposal seeks to establish an Assembly Performance Credit in the Appalachian milk marketing order. Specifically, the proposal recommends establishing an Assembly Performance Credit Fund (APCF) to provide assistance for the assembly, dispatch, and delivery of producer milk to fluid plants. The Assembly Performance Credit would be uniformly shared with all producer milk delivered to a pool distributing plant regulated by the Order. Distributing plants would contribute to the APCF based on Class I volume. Payment from the fund would be per hundredweight and would be the same for every pound of milk that delivered to the fluid plant. Similar credits are proposed to be adopted in the Florida and Southeast Milk marketing orders (see Proposals 7 and 8).

**Proposal 7 (§§ 1006.xx Through 1006.xx): Submitted by Prairie Farms Dairy, Inc.**

This proposal seeks to establish an Assembly Performance Credit in the Florida milk marketing order. Specifically, the proposal recommends:

establishing an Assembly Performance Credit Fund (APCF) to provide assistance for the assembly, dispatch, and delivery of producer milk to fluid plants. The Assembly Performance Credit would be uniformly shared with all producer milk delivered to a pool distributing plant regulated by the Order. Distributing plants would contribute to the APCF based on Class I volume. Payment from the fund would be per hundredweight and would be the same for every pound of milk that delivered to the fluid plant. Similar credits are proposed to be adopted in the Appalachian and Southeast milk marketing orders (see Proposals 6 and 8).

**Proposal 8 (§§ 1007.xx Through 1007.xx): Submitted by Prairie Farms Dairy, Inc.**

This proposal seeks to establish an Assembly Performance Credit in the Southeast milk marketing order. Specifically, the proposal recommends establishing an Assembly Performance Credit Fund (APCF) to provide assistance for the assembly, dispatch, and delivery of producer milk to fluid plants. The Assembly Performance Credit would be uniformly shared with all producer milk delivered to a pool distributing plant regulated by the Order. Distributing plants would contribute to the APCF based on Class I volume. Payment from the fund would be per hundredweight and would be the same for every pound of milk that delivered to the fluid plant. Similar credits are proposed in the Appalachian and Florida milk marketing orders (see Proposals 6 and 7).

**Proposal 9 (§ 1005.82(c)(2)): Submitted by Prairie Farms Dairy, Inc.**

This proposal seeks to amend the transportation credit provisions of the Appalachian milk marketing order. Specifically, the proposal recommends expanding geographic eligibility for transportation credits to milk produced inside the marketing area and expanding eligibility for transportation credits to a producer located outside the marketing area if more than 50 percent (50%) of their milk from March to May is delivered to a pool distributing plant within the Order, or if more than 45 days of that producer's milk is delivered to a pool distributing plant within the Order. These proposed changes would be mirrored in the Southeast milk marketing order (see Proposal 10).

**Proposal 10 (§ 1007.82(c)(2)): Submitted by Prairie Farms Dairy, Inc.**

This proposal seeks to amend the transportation credit provisions of the

Southeast milk marketing order. Specifically, the proposal recommends: expanding geographic eligibility for transportation credits to inside the marketing area and expanding eligibility for transportation credits to a producer located outside the marketing area if more than 50% of their milk from March to May is delivered to a pool distributing plant within the Order, or if more than 45 days of that producer's milk is delivered to a pool distributing plant within the Order. These proposed changes would be mirrored in the Appalachian milk marketing order (see Proposal 9).

**Proposal 11: Submitted by Michael P. Sumners, Dairy Farmer**

This proposal seeks to prohibit the diversion of milk to nonpool plants from milk delivered to a pool distributing plant and receiving any form of transportation credits. The prohibition would apply in the Appalachian, Florida, and Southeast milk marketing orders.

**Proposal 12: Submitted by Dairy Programs, Agricultural Marketing Service**

Make such changes as may be necessary to make the respective marketing orders conform with any amendments thereto that may result from this hearing.

As referenced in each of the above proposals, the regulatory text pertaining to each proposal is provided sequentially by marketing order in the section below and will be addressed individually by proposal at the hearing.

Copies of this notice of hearing and the respective orders may be procured from the Market Administrator of the Appalachian, Florida, and Southeast marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue SW, Washington, DC 20250–9200.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing. Copies of the transcript will also be made available online at: <https://www.ams.usda.gov/rules-regulations/moa/dairy>.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, USDA employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular

proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture  
Office of the Administrator, Agricultural Marketing Service  
Office of the General Counsel  
Dairy Program, Agricultural Marketing Service (Washington, DC, Office and the Offices of all Market Administrators)

Procedural matters are not subject to the above prohibition and may be discussed at any time.

**List of Subjects in 7 CFR Parts 1005, 1006, and 1007**

Milk marketing orders.

The proposed amendments to 7 CFR parts 1005, 1006, and 1007, as set forth below, have not received the approval of the USDA.

**PART 1005—MILK IN THE APPALACHIAN MARKETING AREA**

■ 1. The authority citation for part 1005 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

- 2. Amend § 1005.30 by:
  - a. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(7) through (11);
  - b. Adding new paragraphs (a)(5) and (6);
  - c. Redesignating paragraph (c)(3) as (c)(4) and revising it; and
  - d. Adding new paragraph (c)(3).

The additions and revision read as follows:

**§ 1005.30 Reports of receipts and utilization.**

(a) \* \* \*

(5) Receipts of producer milk described in § 1005.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred;

\* \* \* \* \*

(c) \* \* \*

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1005.84, all of the information required in paragraphs (a)(5) and (6) of this section.

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information

required in paragraphs (a)(7) through (9) of this section.

\* \* \* \* \*

■ 3. Revise § 1005.32 (a) to read as follows:

**§ 1005.32 Other reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1005.30(a)(5) and (6), and any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(7), (8), and (9).

\* \* \* \* \*

■ 4. Amend § 1005.81 by revising the first sentence of paragraph (a) to read as follows:

**§ 1005.81 Payments to the transportation credit balancing fund.**

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by \$0.30 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–February period. \* \* \*

\* \* \* \* \*

■ 5. Amend § 1005.82 by:

■ a. Revising the first sentence of paragraph (a)(1), the first sentence of paragraph (b), and paragraphs (c)(2) and (d)(3)(iii); and

■ b. Adding paragraph (d)(3)(viii).

The revisions and addition read as follows:

**§ 1005.82 Payments from the transportation credit balancing fund.**

(a) \* \* \*

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each of the months of January, and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk

directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. \* \* \*

(b) The market administrator may extend the period during which transportation credits are in effect (*i.e.*, the transportation credit period) to the month of February or June if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use.

\* \* \*

(c) \* \* \*

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants.

(d) \* \* \*

(3) \* \* \*

(iii) Subtract 15 percent (15%) of the miles from the mileage so determined;

\* \* \* \* \*

(viii) The market administrator may revise the factor described in paragraph (d)(3)(iii) of this section (the mileage adjustment factor) if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such revision is necessary to assure orderly marketing, efficient handling of milk in the marketing area, and an adequate supply of milk for fluid use. The market administrator may increase the mileage adjustment factor by as much as ten percent (10%) up to twenty-five percent (25%) or decrease it by as much as ten percent (10%), to a minimum of five percent (5%). Before making such a finding, the market administrator shall notify the Deputy Administrator of Dairy Programs and all handlers in the market that a revision is being considered and invite written data, views, and arguments. Any decision to revise the mileage rate factor must be issued in writing prior to the first day of the month for which the revision is to be effective.

■ 6. Amend § 1005.83 by revising paragraphs (a)(2) through (5) to read as follows:

**§ 1005.83 Mileage rate for the transportation credit balancing fund.**

(a) \* \* \*

(2) From the result in paragraph (a)(1) of this section subtract \$2.26 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 6.2, and round

down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to \$3.67;

(5) Divide the result in paragraph (a)(4) of this section by 497;

\* \* \* \* \*

■ 7. Add § 1005.84 to read as follows:

**§ 1005.84 Distributing plant delivery credits.**

(a) *The Distributing Plant Delivery Credit Fund.* The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1005.84(b) and out of which shall be made the payments due handlers pursuant to § 1005.84(d). Payments due a handler shall be offset against payments due from the handler.

(b) *Payments to the distributing plant delivery credit fund.* On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.84 by a per hundredweight assessment rate of \$0.55 and thereafter not greater than \$0.60 as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) Payments from the distributing plant delivery credit fund. Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant, a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

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

(5) The Market Administrator shall provide monthly, to producers who are not members of a qualified cooperative association, a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received at a pool distributing plant as producer milk directly from dairy farms located within the marketing areas of Federal Orders 5 and 7; in the following counties in the Commonwealth of Virginia: Albemarle, Amelia, Appomattox, Charlotte, Clarke, Culpeper, Cumberland, Fauquier, Frederick, Goochland, Greene, Hanover, James City, King and Queen, King William, Madison, Nottoway, Orange, Page, Prince Edward, and Shenandoah; and in the counties of Berkeley and Monroe in the state of West Virginia. The Market Administrator may add Virginia and West Virginia counties (not in a federal order marketing area) to this list upon the request of a pool handler and provision of proof satisfactory that the county is a source of regular supply of milk to order distributing plants. The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool plant regulated pursuant to § 1005.7(c) or (d) to a pool distributing plant regulated pursuant to § 1005.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(3) The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and that the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations, the market administrator will include in the evaluation the general supply and

demands for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market administrator shall give the handler on such milk sufficient notice that an investigation is being considered, and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

(f) Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%).

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located from the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in paragraph (f)(1)(i) of this section by the monthly mileage rate factor for the month computed pursuant to § 1005.84(h).

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section.

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section.

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate of an adjustment rate not greater than ninety-five percent (95%) and not less than seventy-five percent (75%); and

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in paragraph (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to § 1005.84(h);

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this section from the rate determined in paragraph (f)(2)(iii) of this section.

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

(g) The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to paragraphs (f)(1) and (6) of this section to the actual miles used for computing pool distributing plant credits and announced by the market administrator shall always be the same percentage.

(h) Mileage rate for the distributing plant delivery credit fund. The mileage rate for the distributing plant delivery credit fund shall be the mileage rate computed by the market administrator pursuant to § 1005.83.

(i) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the mileage rate factor pursuant to paragraph (h) of this section for the following month.

■ 8. Add § 1005.xx to read as follows:

**§ 1005.xx Assembly performance credit fund.**

The market administrator shall maintain a separate fund known as the Assembly Performance Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1005.xx and out of which shall be made the payments due handlers pursuant to § 1005.xx. Payments due a handler shall

be offset against payments due from the handler.

■ 9. Add § 1005.xx to read as follows:

**§ 1005.xx Payments to the assembly performance credit fund.**

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator an assembly performance credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by \$0.50 per hundredweight.

(b) The market administrator may increase or decrease by up to \$0.20 the payment rate specified in paragraph (a) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable payment rate must be issued in writing at least fifteen days before the effective date.

■ 10. Add § 1005.xx to read as follows:

**§ 1005.xx Payments from the assembly performance credit fund.**

(a) Payments from the assembly performance credit fund to handlers and cooperative associations shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90), the market administrator shall pay to each handler that received milk directly from producers' farms as specified in paragraph (b) of this section.

(2) The market administrator shall distribute the balance available in the assembly performance credit fund to all producer milk delivered to pool distributing plants on a pro rata basis using the rate derived by dividing the balance in the fund by the total producer milk delivered to pool distributing plants regulated under the Order.

(3) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to

§ 1005.30(c)(3) prior to the date payment is due, the assembly performance credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Assembly performance credits shall apply to bulk milk received directly from the farms of dairy farmers at pool distributing plants.

**PART 1006—MILK IN THE FLORIDA MARKETING AREA**

■ 11. The authority citation for part 1006 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

■ 12. Amend § 1006.30 by:

■ a. Redesignating paragraphs (a)(5) through (9) as (a)(7) through (11);

■ b. Adding new paragraphs (a)(5) and (6); and

■ c. Adding paragraph (c)(3).

**§ 1006.30 Reports of receipts and utilization.**

(a) \* \* \*

(5) Receipts of producer milk described in § 1006.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred;

\* \* \* \* \*

(c) \* \* \*

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1006.84, all of the information required in paragraphs (a)(5) and (6) of this section.

\* \* \* \* \*

■ 13. Revise § 1006.32 to read as follows:

**§ 1006.32 Other reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1006.30(a)(5) and (6).

(b) In addition to the reports required pursuant to §§ 1006.30, 1006.31, and 1006.32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

■ 14. Add § 1006.84 to read as follows:

**§ 1006.84 Distributing plant delivery credits.**

(a) The Distributing Plant Delivery Credit Fund. The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to paragraph (b) of this section and out of which shall be made the payments due handlers pursuant to paragraph (d) of this section. Payments due a handler shall be offset against payments due from the handler.

(b) Payments to the distributing plant delivery credit fund. On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1006.44 by a per hundredweight assessment rate of \$0.80 and thereafter not greater than \$0.85 as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) Payments from the distributing plant delivery credit fund. Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1006.30(a)(5), bulk unconcentrated

milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant, a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1006.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1006.30(c)(3) prior to the date payment is due, the distributing plant delivery credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(5) The Market Administrator shall provide monthly to producers who are not members of a qualified cooperative association a statement of the amount per hundredweight of distributing plant delivery credit which the distributing

plant handler receiving their milk is entitled to claim.

(e) Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received at a pool distributing plant as producer milk directly from dairy farms located within the marketing area; or located within the Georgia counties of Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Brooks, Calhoun, Charlton, Chattahoochee, Clay, Clinch, Coffee, Cook, Colquitt, Crisp, Decatur, Dodge, Dooley, Dougherty, Early, Echols, Grady, Irwin, Lanier, Lee, Lowndes, Jeff Davis, Macon, Marion, Miller, Mitchell, Pierce, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Telfair, Terrel, Thomas, Tift, Turner, Ware, Webster, Wilcox, and Worth, and received at pool distributing plants. The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool plant regulated pursuant to § 1006.7(c) or (d) to a pool distributing plant regulated pursuant to § 1006.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(3) The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations the market administrator will include in the evaluation the general supply and demands for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market



administrator shall give the handler on such milk sufficient notice that an investigation is being considered, and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

(f) Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%).

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located from the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in (f)(1)(i) of this section by the monthly mileage rate factor for the month computed pursuant to § 1006.84(h).

(iv) Subtract the difference in Class I prices computed in paragraph (f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section.

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section.

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to § 1006.84(h);

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this section from the rate

determined in paragraph (f)(2)(iii) of this section.

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

(g) The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to paragraphs (f)(1) and (2) of this section the actual miles used for computing pool distributing plant credits and announced by the market administrator shall always be the same percentage.

(h) Mileage rate for the distributing plant delivery credit fund. The market administrator shall compute a mileage rate factor each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent four (4) weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (h)(1) of this section subtract \$2.26 per gallon;

(3) Divide the result in paragraph (h)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (h)(3) of this section to \$3.67;

(5) Divide the result in paragraph (h)(4) of this section by 497;

(6) Round the result in paragraph (h)(5) of this section down to five decimal places to compute the mileage rate.

(i) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the mileage rate factor pursuant to paragraph (h) of this section for the following month.

■ 15. Add § 1006.xx to read as follows:

**§ 1006.xx Assembly performance credit fund.**

The market administrator shall maintain a separate fund known as the Assembly Performance Credit Fund into

which shall be deposited the payments made by handlers pursuant to § 1006.xx and out of which shall be made the payments due handlers pursuant to § 1006.xx. Payments due a handler shall be offset against payments due from the handler.

■ 16. Add § 1006.xx to read as follows:

**§ 1006.xx Payments to the assembly performance credit fund.**

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator an assembly performance credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1006.44 by \$0.50 per hundredweight.

(b) The market administrator may increase or decrease by up to \$0.20 the payment rate specified in paragraph (a) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable payment rate must be issued in writing at least fifteen days before the effective date.

■ 17. Add § 1006.xx to read as follows:

**§ 1006.xx Payments from the assembly performance credit fund.**

(a) Payments from the assembly performance credit fund to handlers and cooperative associations shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90), the market administrator shall pay to each handler that received milk directly from producers' farms as specified in paragraph (b) of this section;

(2) The market administrator shall distribute the balance available in the assembly performance credit fund to all producer milk delivered to pool distributing plants on a pro rata basis using the rate derived by dividing the balance in the fund by the total producer milk delivered to pool distributing plants regulated under the Order.

(3) In the event that a qualified cooperative association is the



responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1006.30(c)(3) prior to the date payment is due, the assembly performance credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Assembly performance credits shall apply to bulk milk received directly from the farms of dairy farmers at pool distributing plants.

## **PART 1007—MILK IN THE SOUTHEAST MARKETING AREA**

■ 18. The authority citation for part 1007 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

■ 19. Amend § 1007.30 by:

■ a. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(7) through (11);

■ b. Adding new paragraphs (a)(5) and (6);

■ c. Redesignating paragraph (c)(3) as (c)(4) and revising it; and

■ d. Adding new paragraph (c)(3).

The revisions and additions read as follows.

### **§ 1007.30 Reports of receipts and utilization.**

(a) \* \* \*

(5) Receipts of producer milk described in § 1007.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred;

\* \* \* \* \*

(c) \* \* \*

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1007.84, all of the information required in paragraphs (a)(5) and (6) of this section.

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a)(7), (8), and (9) of this section.

\* \* \* \* \*

■ 20. Revise § 1007.32(a) to read as follows:

### **§ 1007.32 Other reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1007.30(a)(5) and (6).

\* \* \* \* \*

■ 21. Amend § 1007.81 by revising the first sentence of paragraph (a) to read as follows:

### **§ 1007.81 Payments to the transportation credit balancing fund.**

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by \$0.60 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June through February period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June through February period. \* \* \*

\* \* \* \* \*

■ 22. Amend § 1007.82 by:

■ a. Revising the first sentence of paragraph (a)(1), the first sentence of paragraph (b), and paragraph s (c)(2) and (d)(3)(iii); and

■ b. Adding paragraph (d)(3)(viii).

The revisions and addition read as follows:

### **§ 1007.82 Payments from the transportation credit balancing fund.**

(a) \* \* \*

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each of the months of January, and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are

available in the transportation credit balancing fund. \* \* \*

(b) The market administrator may extend the period during which transportation credits are in effect (*i.e.*, the transportation credit period) to the month of February or June if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use.

\* \* \*

(c) \* \* \*

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants.

(d) \* \* \*

(3) \* \* \*

(iii) Subtract 15 percent (15%) of the miles from the mileage so determined;

\* \* \* \* \*

(viii) The market administrator may revise the factor described in (d)(3)(iii) of this paragraph (the mileage adjustment factor) if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such revision is necessary to assure orderly marketing, efficient handling of milk in the marketing area, and an adequate supply of milk for fluid use. The market administrator may increase the mileage adjustment factor by as much as ten percent (10%) up to twenty-five percent (25%) or decrease it by as much as ten percent (10%), to a minimum of five percent (5%). Before making such a finding, the market administrator shall notify the Deputy Administrator of Dairy Programs and all handlers in the market that a revision is being considered and invite written data, views, and arguments. Any decision to revise the mileage rate factor must be issued in writing prior to the first day of the month for which the revision is to be effective.

■ 23. Amend § 1007.83 by revising paragraphs (a)(2) through (5) to read as follows:

### **§ 1007.83 Mileage rate for the transportation credit balancing fund.**

(a) \* \* \*

(2) From the result in paragraph (a)(1) of this section subtract \$2.26 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

- (4) Add the result in paragraph (a)(3) of this section to \$3.67;
- (5) Divide the result in paragraph (a)(4) of this section by 497;

\* \* \* \* \*

■ 24. Add § 1007.84 to read as follows:

**§ 1007.84 Distributing plant delivery credits.**

(a) The Distributing Plant Delivery Credit Fund. The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1007.84(b) and out of which shall be made the payments due handlers pursuant to § 1007.84(d). Payments due a handler shall be offset against payments due from the handler.

(b) Payments to the distributing plant delivery credit fund. On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by a per hundredweight assessment rate of \$0.45 and thereafter not greater than \$0.50 as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) Payments from the distributing plant delivery credit fund. Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter)

after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant, a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

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

(5) The Market Administrator shall provide monthly to producers who are

not members of a qualified cooperative association a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received at a pool distributing plant as producer milk directly from dairy farms located within the marketing areas defined in 7 CFR 1005.2 and 1007.2. The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool supply plant regulated pursuant to § 1007.7(c) or (d) to a pool distributing plant regulated pursuant to § 1007.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(3) The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations the market administrator will include in the evaluation the general supply and demands for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market administrator shall give the handler on such milk sufficient notice that an investigation is being considered, and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements

prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

(f) Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Determine the absolute value of the per hundredweight difference between the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located and the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in (f)(1) of this section by the monthly mileage rate factor for the month computed pursuant to § 1007.84(h).

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section.

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section.

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located.

(iii) Multiply the adjusted miles so computed in paragraph (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to § 1005.84(h);

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this section from the rate determined in paragraph (f)(3)(iii) of this section.

(v) Multiply the remainder computed in paragraph (f)(2)(iv) of this section by

the hundredweight of milk described in paragraph (e)(2) of this section.

(g) The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to (f)(1) and (2) of this section to the actual miles used for computing pool distributing plant credits and announced by the market administrator shall always be the same percentage.

(h) Mileage rate for the distributing plant delivery credit fund. The mileage rate for the distributing plant delivery credit fund shall be the mileage rate computed by the market administrator pursuant to § 1007.83.

(i) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the mileage rate factor pursuant to paragraph (h) of this section for the following month.

■ 25. Add § 1007.xx to read as follows:

**§ 1007.xx Assembly performance credit fund.**

The market administrator shall maintain a separate fund known as the Assembly Performance Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1007.xx and out of which shall be made the payments due handlers pursuant to § 1007.xx. Payments due a handler shall be offset against payments due from the handler.

■ 26. Add § 1007.xx to read as follows:

**§ 1007.xx Payments to the assembly performance credit fund.**

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator an assembly performance credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by \$0.50 per hundredweight.

(b) The market administrator may increase or decrease by up to \$0.20 the

payment rate specified in paragraph (a) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable payment rate must be issued in writing at least fifteen days before the effective date.

■ 27. Add § 1007.xx to read as follows:

**§ 1007.xx Payments from the assembly performance credit fund.**

(a) Payments from the assembly performance credit fund to handlers and cooperative associations shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter), the market administrator shall pay to each handler that received milk directly from producers' farms as specified in paragraph (b) of this section;

(2) The market administrator shall distribute the balance available in the assembly performance credit fund to all producer milk delivered to pool distributing plants on a pro rata basis using the rate derived by dividing the balance in the fund by the total producer milk delivered to pool distributing plants regulated under the Order.

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

(b) Assembly performance credits shall apply to bulk milk received directly from the farms of dairy farmers at pool distributing plants.

**Erin Morris,**

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