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October 28, 2022

WRITER'S EXT. NO. 169
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October 27, 2022

Via Overnight Mail

Bruce Summers, AMS Administrator
Agricultural Market Service
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 2055-S, STOP 0201
Washington, DC 20250-0201

Re: Request for hearing to amend Federal Orders 5, 6, and 7

Dear Mr. Summers:

Enclosed please find four (4) copies of the Request for Hearing for amendments to Federal Milk Marketing Orders 5, 6, and 7 to be filed with your office on behalf of the Dairy Cooperative Marketing Association.

Thank you.

Very truly yours,

JOHNSON, DUFFIE, STEWART & WEIDNER

Marvin Beshore

MB/tls
Enclosures
cc: Dana Coale, Deputy Administrator
1400 Independence Avenue, SW
Room 2968-S
Washington, DC 20250

1457434



LEMOYNE • CHAMBERSBURG • WYOMISSING

WRITER'S EXT. NO. 169
mbeshore@johnsonduffie.com

October 26, 2022

Via electronic mail to: Dana.coale@usda.gov

Ms. Dana Coale, Deputy Administrator
Agricultural Marketing Service
United States Department of Agriculture
USDA-AMS-1400 Independence Avenue, SW
Washington, D.C. 20250-0225

Re: Request for a hearing to amend Federal Milk Marketing Orders 5, 6, and 7
on an expedited basis

Dear Ms. Coale:

To address the urgent need for assistance in providing adequate supplies of fresh fluid milk to distributing plants in the southeastern United States, the Dairy Marketing Cooperative Association ("DCMA") hereby requests 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 are enclosed with this letter and detailed herein. DCMA requests 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.

Proponent DCMA, its members, and their role in marketing in the southeast

DCMA is a common marketing agency consisting of nine (9) Capper-Volstead cooperative members. The members of DCMA are all recognized by the Department as qualified cooperatives. All nine operate market milk as handlers in one or more of the southeastern marketing orders, Federal Orders 5, 6, and 7, 7 C.F.R. §§ 1005, 1006, and 1007. (Collectively, the "southeastern orders.") The DCMA members and the order(s) in which each is recognized as a handler are:

DCMA Cooperative	Order as Coop Handler
Appalachian Dairy Farmers Cooperative	5
Cobblestone Milk Cooperative, Inc.	5, 7
Cooperative Milk Producers Association	5
Dairy Farmers of America, Inc.	5, 6, 7

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Lanco Dairy Farms Co-op	5, 7
Lone Star Milk Producers, LC	5, 7
Maryland and Virginia Milk Producers Cooperative Association, Inc.	5, 7
Select Milk Producers, Inc.	5, 7
Southeast Milk, Inc.	5, 6, 7

The DCMA members have long been the predominant suppliers of the Class I needs of distributing plants in the southeastern federal order markets and have been active supporters of the federal order program and the orderly marketing framework which it provides. The role of the DCMA cooperatives in the southeast is reflected in their collective milk marketing volumes and farmer-members in the southeastern 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 members pooled 823,427,739 pounds or 80.4% of the total producer milk pooled that month. Additionally, of the 2,598 farms pooled on Orders 5 and 7 in October 2021, DCMA members represented 1,238 farms that were small businesses. These small business farms represent at least¹ 47.7% of the farms pooled on the Orders.

Marketing disorder in the southeast: milk deficit, production loss, population increase

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. Regionally, dairy farm numbers and milk production have declined steadily for several decades while the population in the region has increased, exacerbating the gap between supply and demand for fluid milk products. The transportation credits, first implemented in these orders in 1996 and last revised in 2006, have not been updated in 16 years and are woefully inadequate in addressing the needs of the regional marketplace today.

In the 2006 interim final decision implementing the current Transportation Credit Balancing Fund (“TCBF”) provisions in Orders 5 and 7, the Secretary made the following prescient findings: “The record reveals that the Appalachian and especially the Southeast marketing areas are chronically unable to meet Class I demands. Local milk production relative to demand has declined and is expected to continue declining.... [T]he trend of declining production relative to demand . . . is likely to continue into the foreseeable future.” Developments in the southeast since that time have shown that the Secretary’s findings were all too accurate.

Milk production in the southeast 2006 to 2021. On the supply side, the table below shows the decline in production in the eleven (11) southeastern states from 2006 to 2016, a decade later, and up to 2021. The aggregate regional percentage decline over the period of 32.4% equals nearly four (4) billion pounds of production annually.

¹ Since farms can be pooled on more than one order in the same month, the total farms in Orders 5, 6, and 7 is likely somewhat overstated and the percentage of proponent small business farms is likely somewhat higher.

Regional Production (millions of pounds, annual)

State	2006	2016	2021	Volume Lost	Percentage Change
AL	203	94	39	164	-80.8%
AR	358	82	60	298	-83.2%
FL	2,171	2,496	2,170	1	0.0%
GA	1,404	1,830	1,798	-394	28.1%
KY	1,303	1,047	907	396	-30.4%
LA	396	170	126	270	-68.2%
MS	344	143	106	238	-69.2%
NC	944	965	917	27	-2.9%
SC	277	250	159	118	-42.6%
TN	1,049	695	508	541	-51.6%
VA	1,771	1,723	1,471	300	-16.9%
Southeast	12,226	9,495	8,261	3,965	-32.4%

Dairy farm numbers in the southeast 2006 to 2021. The numbers at the farm level are even worse than for milk production. The table below shows the number of licensed farms in the southeast states in 2006, 2016, and 2021. The aggregate decline in numbers is 64.1%, with five (5) states losing more than 70% of their licensed dairy farms in the period.

Licensed Farms

State	2006	2016	2021	Number Change	Percentage Change
AL	75	35	15	-60	-80.0%
AR	190	60	35	-155	-81.6%
FL	160	120	75	-85	-53.1%
GA	300	210	110	-190	-63.3%
KY	1,240	630	420	-820	-66.1%
LA	250	100	70	-180	-72.0%
MS	190	75	50	-140	-73.7%
NC	345	210	140	-205	-59.4%
SC	95	60	35	-60	-63.2%
TN	650	300	160	-490	-75.4%
VA	775	615	421	-354	-45.7%
Southeast	4,270	2,415	1,531	-2,739	-64.1%

Population and demand in the southeast, 2006-2020. During the same period, the region's population and demand for fluid milk products has had a quite different trajectory. While dairy farms and milk production have been declining, the regional population has been increasing. As the table below shows, from 2006 to 2020, the regional population increased by over 10 million, from 73.2 million to 83.5 million, a 14% increase. While, as we all know, the per capita demand for fluid milk has decreased in this period², the region's production has declined from approximately 90 % of fluid demand in 2006 to approximately 70% of demand in 2020. Since the marketing areas of the federal orders are not coterminous with the states in the region, and therefore the regional population, a more pertinent measure of the magnitude of regional production decline versus demand may be seen in federal order sales data. The 2020 *Annual Summary of Federal Order Statistics* (Table 45) reports that 2020 in-area package sales of fluid milk products for Orders 5, 6, and 7, totaled 10.068 billion pounds. By that measure, the regional decline in volume of production since 2006, more than 4 billion pounds, means that the capacity to produce nearly 40% of the region's Class I needs was lost since 2006. By any measure, the region's structural deficit in production to demand has increased substantially since the current order provisions for transportation of needed milk supplies were adopted.

Population 2006 – 2020

State	2006	2020	Change 2006-2020
AL	4,629	5,024	8.5%
AR	2,822	3,011	6.7%
FL	18,167	21,538	18.6%
GA	9,156	10,712	17.0%
KY	4,219	4,505	6.8%
LA	4,303	4,658	8.3%
MS	2,905	2,961	1.9%
NC	8,917	10,439	17.1%
SC	4,358	5,118	17.4%
TN	6,089	6,911	13.5%
VA	7,674	8,631	12.5%
Southeast	73,239	83,508	14.0%

The extraordinary costs of meeting the regional demand. Fewer, sparser farms in the region means longer distances and higher haul costs from farm to plant for many of the remaining dairy farms. The cost of longer hauls from farms to plant has been exacerbated for the proponents by the extent to which the costs of balancing the needed supplies for southeastern order distributing plants has fallen predominately on the DCMA cooperatives and their farmer

² A review of data compiled by the Milk Revitalization Alliance which tracks all channel milk sales by region shows an increase in milk consumption in the southeast up 2.6% in 2020 versus 2019. The study also indicates that the increase in consumption may be partially fueled by older generations of retirees who are milk drinkers.

member-owners. Reduced in-area production has meant more milk from out-of-area supplemental sources and from longer distances. In 2005, the average distance that TCBF milk traveled to Order 7 was about 630 miles. In September and October 2020, the DCMA cooperatives brought milk from an average distance of over 800 miles to meet Order 7 demands. For those deliveries, while the average hauling cost per loaded mile in 2003 (the time period for the cost data built into the current order provisions) was \$1.91, the DCMA cooperatives' costs in September and October of 2020 was a weighted average of \$3.67. For an 800-mile haul with 480 per hundredweight of milk, the difference in those costs is nearly \$3.00 per hundredweight. This extraordinary additional cost is not reflected in the Orders' provisions and represents a gross imposition upon the handlers, primarily the DCMA cooperatives, providing the marketwide service of meeting the Orders' Class I milk needs.

Transportation credits for supplemental supplies. 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, the 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 reflect the increased volumes and costs of required supplemental supplies. However, the base rate of transportation credit, based on 2003 cost data as adopted in 2006, as pointed out above, does not reflect current milk transport costs.

Transportation credits for in-area and year-round supplies. While the TCBF provisions have covered some costs of supplemental milk, the southeastern orders, which themselves cover a very broad geographic area with sparser farms delivering to fewer distributing plants, have never provided transportation compensation for the marketwide service of obtaining milk for Class I needs on a year-round basis. These year-round supplies from in-area or adjacent area farms bear the costs of transporting milk for fluid needs as do the supplemental supplies. This year-round transportation cost burden has fallen on the handlers supplying the Class I needs of the market, predominately the DCMA cooperatives and their members. It is time to address this year-round marketwide service with order provisions that compensate deliveries to distributing plants in a fashion similar to the system which has compensated handlers for imports of supplemental milk. DCMA proposes to address these cost inequities through a program of Distributing Plant Delivery Credits embodied in the proposals in this request.

The proposed amendments

DCMA requests that the Secretary of Agriculture immediately call an emergency hearing pursuant to 7 C.F.R. § 900.1, *et seq.*, to amend Federal Orders 5, 6, and 7. See attachments 1 to 5. The proposals, in summary, would: (1) update the cost reimbursement factors in the current transportation credit balancing funds in Orders 5 and 7; and (2) add Distributing Plant Delivery Credits through a Distributing Plant Delivery Credit fund to be established in Orders 5, 6, and 7. This fund would reimburse costs of delivery to distributing plants from in-area farms and year-

round supplying farms which currently are not eligible for reimbursement from the Transportation Credit Balancing Funds.

Following is an overview of the two sets of proposals as embodied in the language attachments to this letter.

Proposals 1 and 2:

Proposed updating of the current Orders 5 and 7 Transportation Credit Balancing Funds

The TCBF provisions were first implemented in Orders 5 and 7 in 1996. In 2005 the provisions were amended to update the cost reimbursement and add a fuel adjustment formula which automatically adjusts reimbursement for changes in diesel fuel costs. DCMA now proposes to update those provisions in four (4) respects:

- Increase the maximum assessment rate in each Order. Currently, Order 5 provides in 7 C.F.R. § 1005.81(a) for a maximum assessment of \$0.15 per hundredweight of Class I producer milk to fund the TCBF. Our proposal would increase that maximum assessment rate to \$0.30. Currently, Order 7 provides in 7 C.F.R. § 1007.81(a) for a maximum assessment of \$0.30 per hundredweight of Class I producer milk to fund the TCBF. Our proposal would increase that maximum assessment rate to \$0.60.
- Update the components of the mileage rate calculation in each Order with current costs. Currently, Orders 5 and 7, in 7 C.F.R. § 1005.83 and 1007.83, respectively, direct the market administrator to compute an identical mileage rate for handler cost reimbursement from each order's TCBF. The computation formula consists of five (5) factors in 1005.83(a)(1) - (a)(5) and 1007.83(a)(1) - (a)(5). Part (a)(1) which provides the formula for determining the average current diesel fuel cost would not be changed. Our proposal would, however, update factors (2) through (5) to reflect current costs and operating facts, as follows:
 - In (a)(2), the base cost per gallon of diesel fuel, now \$1.42 per gallon, would be increased to \$2.26 per gallon representing the average cost for the period of September – October 2020.
 - In (a)(3), the average miles per gallon (mpg) for over-the-road full milk tankers, now 5.5 mpg, would be increased to 6.2 mpg to reflect increases in truck fuel efficiency.
 - In (a)(4), the average cost per loaded mile, presently \$1.91, would be increased to \$3.67 to reflect cost increases in tank truck operation from 2005 to 2021.
 - In (a)(5), the average payload of a milk tanker delivering to the market, presently 480 per hundredweight, would be increased to 497 to reflect current average load weights.

- Revise the months of mandatory and discretionary payment from the TCBF. Currently, Orders 5 and 7 require payments from the TCBF for qualifying supplemental milk deliveries in the months of July through the following February. The orders allow payment in the month of June if payment is requested and the market administrator finds extension of payment to June “necessary to assure the market of an adequate supply of milk for fluid use.” (7 C.F.R. 1005.82(b); 1007.82(b)) Our proposal would eliminate February as a mandatory payment month and make February a discretionary month, subject to the same criteria and procedure as currently for June.
- Revise the non-reimbursed mileage factor in § 1005.82(d)(3)(iii) to 15% of miles from origination point to delivery plant from the current flat 85 miles and allow the market administrator to adjust that non-reimbursement percentage when necessary. Currently, Orders 5 and 7 direct the market administrator to “subtract 85 miles” from the distance from the origination point of the supplemental milk to the receiving pool plant. The resulting mileage is then eligible for payment on a per-mile basis. Our proposal would revise the subtraction factor from 85 miles in all cases to “15 percent of the miles [from origination point to receiving pool plant]”. DCMA submits that a mileage percentage subtraction will more uniformly and more equitably reimburse all supplemental deliveries.

Proposals 3, 4, and 5:

Proposals for distributing plant delivery credits in Orders 5, 6, and 7 which extend transportation cost reimbursement to local and year-round milk supplies

The southeast markets have not provided transportation cost reimbursement to handlers acquiring in-area and year-round milk supplies for the market’s Class I distributing plants. This inequity is addressed by proposals to implement Distributing Plant Delivery Credits in Orders 5, 6, and 7 as detailed in the language in attached proposals 3, 4, and 5. The proposed order language adds necessary reporting requirement to part .30 and .32 of each order and a new part .84 to each order. These new proposed credits have the following operating provisions:

- Modeled on the TCBF fund, a Distributing Plant Delivery Credit Fund (DPDCF) and payment program is established in Orders 5, 6, and 7. The Distributing Plant Delivery Credits are generally intended to extend to in-area and year-round milk supplies reimbursement for costs of delivery similar to the reimbursement for supplemental milk supplies which occurs via the TCBF program. Therefore, the basic structure of the Distributing Plant Delivery Credit program is modeled on and follows the TCBF structure in many respects including these features: (1) an assessment on Class I producer milk to fund the credits; (2) a set of criteria for the deliveries which qualify for the credit; (3) a reimbursement rate per eligible mile identical to the TCBF rates; (4) a factor setting compensation at less than 100% of the miles from origination point to receiving plant; and (5) granting to the market

administrator the ability to adjust assessment and reimbursement rates under specified conditions. (§§ 1005.84(a); 1006.84(a); and 1007.84(a)).

- A maximum assessment rate and an initial assessment rate are established for the DPDCF in each order, with the market administrator having the authority to adjust the rate up or down as necessary and appropriate. Maximum and initial assessment rates for the DPDCF are proposed to meet market conditions in each order. The maximum and initial rates are: Order 5, maximum \$0.60, initial \$0.55; Order 6, maximum \$0.85, initial \$0.80; Order 7, maximum \$0.50, initial \$0.45. (§§ 1005.84(b)-(c); 1006.84(b)-(c); and 1007.84(b)-(c)).
- The eligibility criteria for the credits is established for each order to include the geographical marketing areas of each order and certain year-round procurement areas outside the marketing areas. Farm milk eligible for the delivery credits is defined in each order to capture the local, year-round supplies for each order, as follows: Order 5; the marketing areas of Orders 5 and 7, plus additional specified counties in the Commonwealth of Virginia; Order 6, the Order 6 marketing area, plus additional specified counties in the State of Georgia; Order 7, the marketing areas of Orders 5 and 7. The intent is to make local and year-round supplies for each order eligible for these year-round delivery credits. (§§ 1005.84(e); 1006.84(e); and 1007.84(e)).
- The reimbursement rate for miles-to-plant for this credit is set at the same rate per eligible mile as for the out-of-area TCBF supplies. The Distributing Plant Delivery Credits will be paid at the identical rate per compensable milk as the supplemental milk supplies under the TCBF system. (§§ 1005.84(h); 1006.84(h); and 1007.84(h)).
- A range for the reimbursed portion of the farm to plant mileage is set at 75% to 95% so that 5% to 25% of total mileage is not reimbursed in the credit program. As with the TCBF program for supplemental milk supplies, the Distributing Plant Credits will not be payable on 100% of the mileage from origination point (farm) to receiving distributing plant. Our proposal establishes a range of mileage reimbursement from 75% to 95% of gross miles (which is equivalent to subtracting 5% to 25% of farm to plant mileage). (§§ 1005.84(f)(1)(i); 1006.84(f)(1)(i); and 1007.84(f)(1)(i))
- The initial reimbursed mileage percentage is requested to be 85% with the market administrator having the authority to move the rate in the established range as market conditions dictate. DCMA proposes that the market administrator have discretionary authority to increase or decrease the applicable percentage upon a request from a market participant and a finding that market conditions of supply and demand make the revision necessary.
- The market administrator is required to monitor closely the credits claimed to identify and disallow credits where any abusive practices and uneconomic movements of milk are found. Because this program of Distributing Plant Delivery Credits is not presently operating as such in any order and out of an abundance of caution to

preserve orderly marketing, DCMA proposes that the market administrator have the obligation to monitor its operation closely and be able to disallow requested credits upon a finding, after due notice to the handler involved and appropriate investigation, that the requested credits involve persistent and pervasive uneconomic milk movements and do not further orderly marketing and efficient milk movements. (§§ 1005.84(e)(3); 1006.84(e)(3); and 1007.84(e)(3)).

Responses to 7 C.F.R. § 900.22 topics

Following are our responses to the 7 C.F.R. § 900.22 questions to be answered by proponents in a Federal Milk Marketing Order hearing request:

§900.22(a). *Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?*

The chronic deficit of milk supply for the southeast orders and the imposition of the costs of supplying the deficit market on the handlers, predominantly the producer cooperatives, providing the required supplies to the distributing plants

§900.22(b). *What is the purpose of the proposal?*

To ameliorate the disorderly marketing conditions by providing additional compensation to the suppliers of milk to distributing plants. Importantly, to recognize the indispensable local suppliers with distributing plant delivery credits, as well as updating the cost reimbursement currently going to support out-of-area supplemental supplies.

§900.22(c). *Describe the current Federal order requirements or industry practices relative to the proposal.*

The industry relies on the cooperative associations and their producer members to provide the lion's share of milk to southeast distributing plants. But the current marketing order provisions do not provide adequate or equitable reimbursement to those suppliers, as well as to non-cooperative handlers serving to provide similar marketwide services.

§900.22(d). *Describe the expected impact on the industry, including on producers and handlers, and on consumers.*

Handlers who incur the costs of serving the market through providing milk to distributing plants will be more equitably reimbursed for that marketwide service. The producers who provide the supply to those handlers will also be appropriately benefited. The costs to consumers will reflect

the necessary expense of dependably making fluid milk products available to the marketplace as needed and when needed by consumers.

§900.22(e). *What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. §601-612)?*

Small businesses, including small dairy farmers and small business handlers, will benefit from the regulated provision of cost-reimbursement for supplies to the fluid market at distributing plants. These unreimbursed costs impact small businesses more greatly than larger business enterprises. Therefore, the proposals will positively impact the position of small businesses in the marketplace.

§900.22(f). *How would adoption of the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the market administrator offices and/or the Secretary?*

There should be no increase in market administration costs. The cost impact to others in the marketing chain is noted in responses to (d) and (e) above.

§900.22(g). *Would a pre-hearing information session be helpful to explain the proposal?*

Because transportation credits have been in the orders for 20 plus years, a pre-hearing information session should not be necessary. Expansion of the credits to in-area supply sources follows the same operations as the longstanding out-of-area credits.

Requested Emergency Hearing: Scope and Procedures

Particularly because of the current inflationary economic environment and since the transportation costs have not been updated for more than 15 years, it is important that these requested order amendments be effective on an expedited basis and that the hearing be limited in scope so that that this objective may be most effectively addressed. Particularly with respect to updating the current transportation credit balancing fund payments factors, expedited treatment should be clearly appropriate. Furthermore, we request that the hearing be strictly limited to the issue of transportation costs for delivery to distributing plants in Orders 5, 6, and 7.

Summary and conclusion

DCMA wishes to thank Secretary Vilsack and the Department in advance for consideration of its request.

Very truly yours,

JOHNSON, DUFFIE, STEWART & WEIDNER



Marvin Beshore
Attorney for DCMA

Enclosures:
Hearing proposals 1 -- 5

cc: All via email
Erin Taylor, AMS Dairy Programs
Jason Nierman, Federal Milk Market Administrator
John A. St. Peter, Esquire
DCMA Cooperatives
Pam Endicott, DCMA Administrator
Elvin Hollon

Proposals

1 - 5

PROPOSAL NO. 1

PROPOSED AMENDMENTS TO APPALACHIAN FEDERAL MILK MARKETING ORDER -- MARKETWIDE SERVICE PAYMENTS

Amend the following provisions of 7 C.F.R. § 1005.81, § 1005.82, and § 1005.83 as indicated (amendments are highlighted):

§ 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) 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 ~~\$0.15~~ **\$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. In the event that during any month of the June-February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

....

§ 1005.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January, ~~February~~ 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. 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 transportation credit balancing 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 (a)(2) of this section.

....

(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. Before making such a finding, the market administrator shall notify the Deputy Administrator of Dairy Programs and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

....

(d) Transportation credits shall be computed as follows:

....

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract ~~85~~ 15 percent of the miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1005.83(a)(6);

(v) Subtract the Class I price specified in § 1000.50(a) applicable for the county in which the origination point is located from the Class I price applicable at the receiving pool plant's location;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) of this section by the hundredweight of milk described in paragraph (d)(3) of this section.

(viii) The market administrator may revise the factor described in (3)(iii) (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 (10%) percent up to twenty-five (25%) percent or decrease it by as much as ten (10%) percent, to a minimum of five (5%) percent. 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.

§ 1005.83 Mileage rate for the transportation credit balancing fund.

(a) The market administrator shall compute a mileage rate 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 (a)(1) in this section subtract ~~\$1.42~~ \$2.26 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by ~~5.5~~ 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 ~~\$1.91~~ \$3.67;

(5) Divide the result in paragraph (a)(4) of this section by ~~480~~ 497;

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

(b) 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 pursuant to paragraph (a) of this section for the following month.

PROPOSAL NO. 2

PROPOSED AMENDMENTS TO SOUTHEAST FEDERAL MILK MARKETING ORDER – MARKETWIDE SERVICE PAYMENTS

Amend the following provisions of 7 C.F.R. § 1007.81, § 1007.82, and § 1007.83 as indicated (amendments are highlighted):

§ 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), each handler operating a pool plant and each handler specified in § 1000.9(c) 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 ~~\$0.30~~ **\$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 - February period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June - February period. In the event that during any month of the June - February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

...

§ 1007.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January, ~~February~~ 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. 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 transportation credit balancing 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 (a)(2) of this section.

....

(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. Before making such a finding, the market administrator shall notify the Deputy Administrator of Dairy Programs and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

....

(d) Transportation credits shall be computed as follows:

....

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract ~~85~~ 15 percent of the miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1007.83(a)(6);

(v) Subtract the Class I price specified in § 1000.50(a) applicable for the county in which the origination point is located from the Class I price applicable at the receiving pool plant's location;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) of this section.

(viii) The market administrator may revise the factor described in (3)(iii) (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 (10%) percent up to twenty-five (25%) percent or decrease it by as much as ten (10%) percent, to a minimum of five (5%) percent. 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.

§ 1007.83 Mileage rate for the transportation credit balancing fund.

(a) The market administrator shall compute the mileage rate each month as follows:

(1) Compute the simple average rounded 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 (a)(1) in this section subtract ~~\$1.42~~ \$2.26 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by ~~5.5~~ 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 ~~\$1.91~~ \$3.67;

(5) Divide the result in paragraph (a)(4) of this section by ~~480~~ 497;

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

(b) 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 pursuant to paragraph (a) of this section for the following month.

PROPOSAL NO. 3

PROPOSED ORDER LANGUAGE – DISTRIBUTING PLANT DELIVERY CREDITS – APPALACHIAN FEDERAL MILK MARKETING ORDER

Amend or add the following provisions to 7 C.F.R. § 1005 as indicated:

HANDLER REPORTS

§ 1005.30 Reports of receipts and utilization.

*(a) ****The introduction and sub-paragraphs (1) through (4) are retained unchanged. The following two subparagraphs are added:*

(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; [existing subparagraphs (5) - (9) are renumbered to (7) - (11)]

*(c)****The introduction and sub-paragraphs (1) and (2) are retained unchanged, and the following subparagraph is added; existing sub-paragraph (3) is renumbered to (4) and revised as shown:*

(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 (a)(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), (a)(8), and (a)(9) of this section.

[existing subparagraph (3) is renumbered to (4) and the references to (a)(5), (a)(6), and (a)(7) in subparagraph 4 are renumbered to (a)(7),(a)(8), (a)(9).]

§ 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) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(7), (8), and (9) any adjustments to distributing plant delivery credit requests as reported pursuant to § 1005.30(a)(5) and (6).

(b) In addition to the reports required pursuant to §§ 1005.30, 1005.31, and 1005.32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

MARKETWIDE SERVICE PAYMENTS

Add part § 1005.84 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), each handler operating a pool plant and each handler specified in § 1000.9(c) 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), 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) 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. 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:

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

(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 (95%) percent and not less than seventy-five (75%) percent;

(ii) Subtract the Class I price specified in § 1000.50(a) 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 subpart (i) of this subparagraph 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 sub-part (ii) of this sub-paragraph from the rate determined in sub-part (iii) of this section.

(v) Multiply the remainder computed in subpart (iv) of this sub-paragraph 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 (95%) percent and not less than seventy-five (75%) percent;

(ii) Subtract the Class I price specified in § 1000.50(a) 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 subpart (i) of this sub-paragraph 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 sub-part (ii) of this sub-paragraph from the rate determined in sub-part (iii) of this section.

(v) Multiply the remainder computed in subpart (iv) of this sub-paragraph 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 (f)(6) 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), the mileage rate factor pursuant to paragraph (h) of this section for the following month.

PROPOSAL NO. 4

PROPOSED ORDER LANGUAGE – DISTRIBUTING PLANT DELIVERY CREDITS – FLORIDA FEDERAL MILK MARKETING ORDER

Amend or add the following provisions to 7 C.F.R. § 1006 as indicated:

HANDLER REPORTS

§ 1006.30 Reports of receipts and utilization.

*(a) ****The introduction and sub-paragraphs (1) through (4) are retained unchanged, and the following two subparagraphs are added:*

(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; [existing subparagraphs (5) - (9) are renumbered to (7) - (11)]

*(c)****The introduction and sub-paragraphs (1) and (2) are retained unchanged, and the following subparagraph is added:*

(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 (a)(6) of this section.

[existing subparagraph (3) is renumbered to (4) and the references to (a)(5), (a)(6), and (a)(7) in that subparagraph are renumbered to (a)(8),(a)(9), (a)(10).

§ 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) 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.

MARKETWIDE SERVICE PAYMENTS

§ 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 § 1006.84(b) and out of which shall be made the payments due handlers pursuant to § 1006.84(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), each handler operating a pool plant and each handler specified in § 1000.9(c) 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) 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) 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. 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:

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

(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 (95%) percent and not less than seventy-five (75%) percent;

(ii) Subtract the Class I price specified in § 1000.50(a) 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) 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)(2) of this section from the rate determined in paragraph (f)(3) of this section.

(v) Multiply the remainder computed in paragraph (f)(4) 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 (95%) percent and not less than seventy-five (75%) percent;

(ii) Subtract the Class I price specified in § 1000.50(a) 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)(6) 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 sub-part (ii) of this sub-paragraph from the rate determined in sub-part (iii) of this section.

(v) Multiply the remainder computed in sub-part (iv) of this sub-paragraph 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 (f)(6) 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 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) in 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), the mileage rate factor pursuant to paragraph (h) of this section for the following month.

PROPOSAL NO. 5

PROPOSED ORDER LANGUAGE – DISTRIBUTING PLANT DELIVERY CREDITS – SOUTHEAST FEDERAL MILK MARKETING ORDER

Amend of add the following provisions to 7 C.F.R. § 1007 as indicated:

HANDLER REPORTS

§ 1007.30 Reports of receipts and utilization.

*(a) ****The introduction and sub-paragraphs (1) through (4) are retained unchanged, and the following two subparagraphs are added:*

(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; [existing subparagraphs (5) - (9) are renumbered to (7) - (11)]

*(c) ****The introduction and sub-paragraphs (1) and (2) are retained unchanged, and the following subparagraph is added:*

(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 (a)(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), (a)(8), and (a)(9) of this section.

[existing subparagraph (3) is renumbered to (4) and the references to (a)(5), (a)(6), and (a)(7) in subparagraph 4 are renumbered to (a)(7), (a)(8), (a)(9).]

§ 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) shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1007.30(a)(5) and (6).

(b) In addition to the reports required pursuant to §§ 1007.30, 1007.31, and 1007.32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

MARKETWIDE SERVICE PAYMENTS

Add part § 1007.84 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), each handler operating a pool plant and each handler specified in § 1000.9(c) 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), 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) 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. 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 area of Federal Orders 5 and 7. 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 (95%) percent and not less than seventy-five (75%) percent;

(ii) Determine the absolute value of the per hundredweight difference between the Class I price specified in § 1000.50(a) 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 sub-part (ii) of this sub-paragraph from the rate determined in sub-part (iii) of this section.

(v) Multiply the remainder computed in subpart (iv) of this sub-paragraph 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 (95%) percent and not less than seventy-five (75%) percent;

(ii) Subtract the Class I price specified in § 1000.50(a) 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 subpart (i) of this sub-paragraph 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 sub-part (ii) of this sub-paragraph from the rate determined in sub-part (iii) of this section.

(v) Multiply the remainder computed in subpart (iv) of this sub-paragraph 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 (f)(6) 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), the mileage rate factor pursuant to paragraph (h) of this section for the following month.