DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006, and 1007

[Doc. No. AMS–DA–23–0003; 23–J–0019]

Milk in the Appalachian, Florida, and Southeast Marketing Areas; Recommended Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes to amend the transportation credit balancing fund provisions for the Appalachian and Southeast Federal milk marketing orders, and establish distributing plant delivery credits in the Appalachian, Florida, and Southeast Federal milk marketing orders.

DATES: Written exceptions and comments to this proposed rule must be submitted on or before September 18, 2023.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0231, (202) 720–7183, email address: *Erin.Taylor@usda.gov.*

SUPPLEMENTARY INFORMATION: This recommended decision proposes amendments to the transportation credit balancing fund (TCBF) provisions in the Appalachian and Southeast Federal milk marketing orders (FMMOs) that would: (1) update the components of the mileage rate calculation; (2) revise the months of mandatory and discretionary payment; (3) revise the non-reimbursed mileage factor; and (4) increase the maximum assessment rate on Class I milk. This recommended decision also proposes establishing distributing plant delivery credit (DPDC) provisions in the Appalachian, Florida, and Southeast FMMOs that would make marketwide service payments to qualifying handlers and cooperatives for milk shipments to pool distributing plants from farms that are year-round, consistent suppliers.

This administrative action is governed by sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866, 13563, and 13175.

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. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing a petition with the United States Department of Agriculture (USDA) 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, USDA would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. A small dairy farm as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that has an annual gross revenue of $3.75 million or less, and a small dairy products manufacturer is one that has no more than the number of employees listed in the chart below:

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

To determine which dairy farms are ''small businesses,'' the $3.75 million per year income limit was used to establish a milk marketing threshold of 1,220,703 pounds per month. Although this threshold does not factor in additional monies that may be received by dairy producers, it should be an accurate standard for most ''small'' dairy farmers. To determine a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 750-employee limit for creamery butter or dry, condensed, and evaporated dairy product manufacturing, the 1,000-employee limit for fluid milk manufacturing, or the 1,250-employee limit for cheese manufacturing, the plant was considered a large business even if the local plant does not exceed the 750, 1,000, or 1,250-employee limit, respectively.

During January 2023, the milk of 2,522 dairy farms was pooled on the Appalachian (1,578), Florida (113), and Southeast (831) FMMOs. Of the total, 1,491 farms on the Appalachian FMMO (94 percent), 69 on the Florida FMMO (61 percent), and 787 on the Southeast FMMO (95 percent) were considered small businesses.

During January 2023, there were a total of 17 plants associated with the Appalachian FMMO (16 fully regulated plants and 1 partially regulated plant), 7 plants associated with the Florida FMMO (all fully regulated), and 16 plants associated with the Southeast FMMO (15 fully regulated plants and 1 partially regulated plant). The number of plants meeting the small business criteria under the Appalachian, Florida, and Southeast FMMOs were 2 (12 percent), 2 (29 percent), and 2 (13 percent), respectively.

Currently, the Appalachian and Southeast orders provide transportation credit balancing fund (TCBF) payments on supplemental shipments of milk for Class I use provided the milk was from producers located outside of the marketing areas who are not regular suppliers to the market. Producer milk received at a pool distributing plant eligible for a transportation credit under the orders is defined as bulk milk received directly from a dairy farmer who: (1) not more than 50 percent of the dairy farmer's milk production, in aggregate, is received as producer milk during the immediately preceding months of March through May of each order; and (2) produced milk on a farm not located within the specified marketing areas of either order. Milk deliveries from producers located outside the marketing area who are consistent suppliers to the market, or from producers located inside the marketing areas are not eligible to receive transportation credits.

This decision proposes to amend the Appalachian and Southeast TCBF provisions. Specifically, the proposed amendments would amend the non-reimbursed mileage level from 85 miles to 15 percent of total miles and update components of the mileage rate factor to reflect more current market transportation costs.

The proposed amendments also would increase the maximum TCBF assessment rates for the Appalachian and Southeast orders. Specifically, the maximum transportation credit assessment rate for the Appalachian and Southeast orders would increase to $0.30 and $0.60 per hundredweight (cwt), respectively. The increases are intended to minimize the proration and depletion of each Order's TCBF to provide more adequate TCBF payments. This decision finds these assessment levels necessary because of escalating transportation costs coupled with the continued decline in milk production in the southeastern region necessitating longer hauls to procure supplemental milk to meet the Class I needs of the region.

This decision also proposes to adopt DPDCs in the Appalachian, Florida, and Southeast FMMOs to provide transportation assistance to handlers and cooperatives procuring year-round, consistent milk supplies for the region. Currently, there are no provisions in any of the three southeastern FMMOs to provide transportation assistance to handlers and cooperatives for these types of milk deliveries.

The proposed DPDCs would operate similar to the TCBF program: (1) funded through an assessment on Class I producer milk; (2) payable to handlers and cooperatives for procuring year-round milk supplies as determined by location and delivery criteria; (3) payment provisions identical to TCBF payments; and (4) contain provisions designed to safeguard against excess assessment collections and prevent persistent and pervasive uneconomic milk movements for the purpose of receiving a DPDC payment.

The proposed TCBF and DPDC provisions would be applied identically to large and small handlers and cooperatives regulated by the Appalachian, Florida, and Southeast FMMOs. Since the proposed amendments would apply to all regulated cooperatives and handlers regardless of their size, the proposed amendments should not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed, and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, since the information is already provided, no new information collection requirements are needed, and the current information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

The Agricultural Marketing Service 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 access to Government information and services, and for other purposes.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap, or conflict with any existing Federal rules.

Prior Documents in This Proceeding

Notice of Hearing: Published January 30, 2023 (88 FR 5800).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the orders regulating the handling of milk in the Appalachian, Florida, and Southeast marketing areas. The hearing was held, pursuant to the provisions of the AMAA, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Franklin, TN, from February 28–March 2, 2023, pursuant to a notice of hearing published January 30, 2023 (88 FR 5800).

The material issues on the record of hearing relate to:

1. Transportation Credit Balancing Fund Provisions
2. Distributing Plant Delivery Credits

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Summary of Testimony and Post-Hearing Briefs

Several witnesses testified on behalf of the Dairy Cooperative Marketing Association (DCMA). DCMA is a common marketing agency operating in the southeast region of the United States (U.S.). Members of DCMA include Appalachian Dairy Farmers Cooperative; Cobblestone Milk Cooperative; Cooperative Milk Producers Association; Dairy Farmers of America, Inc.; Lanco-Pennland Milk Producers; Lone Star Milk Producers Association; Maryland & Virginia Milk Producers Association; Select Milk Producers, Inc.; and Southeast Milk, Inc. According to DCMA, its members market approximately 80 percent of the milk pooled in the three southeastern orders and process and distribute a substantial percentage of the region's Class I fluid milk products through cooperative-owned distributing plants.

Several witnesses testified in support of Proposals 1 and 2 to update the components of the TCBF and mileage rate factor (MRF) contained in the

Appalachian and Southeast FMMOs. A consultant witness for DCMA testified milk production in the southeastern region of the U.S. continues to decline as population increases. As a result, the witness stated, the Appalachian and Southeast marketing areas must continually seek supplemental supplies of milk from outside their normal milksheds. The witness stressed that DCMA members must travel farther distances to obtain supplemental milk while at the same time, diesel and non-fuel costs for shipping supplemental milk have risen sharply. The witness explained these marketing conditions result in milk suppliers absorbing a larger percentage of the transportation costs, diminishing the effectiveness of TCBF credits.

The DCMA witness presented a comparison of current and proposed MRF components: base fuel rates; average truck miles-per-gallon (MPG); base haul rates; and average tank sizes. From 2006 to 2020, the witness stated input costs/factors increased by the following: 59 percent for the base fuel rate, 13 percent for average MPG for transport equipment, 92 percent for the base haul rate (costs other than fuel), and 4 percent for the average tank load weight.

The DCMA witness testified that while both population and milk consumption in the region are increasing, dairy farm numbers are declining, necessitating milk traveling farther distances to serve the market. The DCMA witness testified that over the 5-year period 2017–2021, the USDA National Agricultural Statistics Service (NASS) total farm count in the southeast decreased by 719 farms (declining 38 percent, 45 percent, and 56 percent in the Appalachian, Florida, and Southeast FMMOs, respectively). Looking back from 2000 to 2022, DCMA noted in its post-hearing brief that the Appalachian order lost 77 percent of its farms (2,813 to 650 farms), the Florida order lost 75 percent (194 to 49 farms), and the Southeast order lost 86 percent (3,504 to 489 farms).

Regional milk production showed a similar decline of 12.8 percent from 2017 to 2021, according to the DCMA witness. The witness noted every state in the region experienced decreased production over the five-year period; only North Carolina and Georgia had an annual milk production increase from 2020 to 2021.

The DCMA witness used USDA data to describe sources of milk for each of the southeastern Orders. According to the DCMA witness, USDA data reveals in 2021, 46 percent of milk pooled on the Appalachian FMMO was sourced from outside the marketing area. The witness calculated that during the low production month of October, approximately 99 loads of supplemental milk per day, on average for 2019–2021, were needed to meet the pool distributing plant demand of the Appalachian FMMO. For the Southeast and Florida FMMOs, the witness stated that during that same time period, 56 and 18 percent, respectively, of pool distributing plant demand was met from farms outside the marketing area. The witness noted the supplemental milk meeting Florida demand primarily comes from farms located in Georgia.

The DCMA witness testified the closure of fluid milk distributing plants has increased marketing costs for the remaining dairy farms in the southeast region. Citing USDA data, the DCMA witness said the number of pool distributing plants regulated by the southeastern FMMOs was down significantly when comparing 2000 to 2022; a reduction of 39 percent (26 to 16 plants), 33 percent (12 to 8 plants), and 54 percent (32 to 15 plants) on the Appalachian, Florida, and Southeast FMMOs, respectively. The witness argued fewer plants mean longer distances and higher hauling costs to the dairy farms and cooperative handlers delivering milk to the region. DCMA asserted in its post-hearing brief the average miles to procure a load of supplemental milk in October 2020 was 774 miles; a 51 percent increase from 2003.

The DCMA witness presented data showing milk supply deficits in Class I and Class II use in December 2020 and May 2021. Only in one month (May 2021) did a southeastern order (Florida) have enough in-area production to meet Class I milk needs of pool distributing plants. In the other five monthly comparisons, in-area production ranged from 67 to 97 percent of demand. When DCMA accounted for Class II usage, the witness testified, the ability for in-area production to meet the additional demand was further diminished. The witness emphasized that when demand is greater than in-area supply, the southeastern orders must acquire milk from other FMMO areas to meet the demand.

Milk deficits, in addition to longer distances traveled, according to the witness, causes the TCBF to be depleted at a rate faster than the funds are replenished. The DCMA witness reviewed TCBF data on supplemental milk being delivered to Appalachian and Southeast pool distributing plants from 2020–2022. The witness said TCBF eligible loads increased from 5,374 in 2020 to 6,642 loads in 2022 on the Appalachian FMMO and from 15,869 loads in 2020 to 18,217 loads in 2022 for the Southeast FMMO. According to the witness, this import of large volumes of supplemental milk into the two marketing areas would not occur unless necessary to fill pool distributing plant demand.

In addition to longer hauling distances, explained the witness, the TCBF factors have not been updated since 2006, and consequently fall short of providing a reasonable partial reimbursement of current, actual transportation costs. The DCMA witness described four supply and demand scenarios, representative of actual arrangements, to demonstrate the gap between the existing TCBF provisions and those proposed by DCMA, using 2021 data. In the four scenarios outlined, the current TCBF payment accounted for 25 to 58 percent of the amount calculated using the DCMA proposed changes.

The DCMA witness presented recent data to support the proposed changes contained in Proposals 1 and 2. Regarding the base diesel fuel price, the witness stated DCMA supports continued use of the Energy Information Administration of the United States Department of Energy (EIA) data—specifically, the Lower Atlantic and Gulf Coast EIA regions. The witness reviewed EIA diesel fuel prices and found that May 4 through November 9, 2020, as a 28-week period of relatively stable diesel prices, averaged $2.262 per gallon. The current MRF calculation uses a base diesel price of $1.42 per gallon. According to the witness, the price difference illustrates the need to update the factors, and DCMA supports adopting $2.26 as the base diesel fuel price.

The DCMA witness next evaluated the MPG of combination trucks and supported using U.S. Department of Transportation MPG fuel efficiency data. The most recently published data (2019) showed an MPG rate of 6.0478. The DCMA witness estimated a calculation for 2022 using the five-year change in MPG from 2014–2019 of 0.0430 per year. The witness added this amount annually to the 2019 published rate of 6.0478, yielding a per gallon estimate of 6.1770 in 2022, which DCMA rounded to 6.2. The witness testified DCMA members supported a 6.2 MPG assumption as a reasonable fleet average across operations with varying transport tanks and varying ages of equipment. Additionally, the witness said a higher MPG assumption would lower a TCBF payment and therefore guard against handlers engaging in uneconomic milk shipments to qualify for higher TCBF payments.

The DCMA witness entered data substantiating their proposed base haul rate of $3.67 per loaded mile. According to the witness, DCMA surveyed member haul rates during September and October 2020, representing months of heavy supplemental milk purchases which are included in the May to November 2020 time period used to determine the proposed average diesel fuel price. The witness said the aggregated survey results represented 2,951 supplemental milk hauls from nine states considered traditional sources of supplemental milk to pool distributing plants geographically spread across the three southeastern FMMOs. According to the DCMA witness, the average rate per loaded mile was $3.67, representing an average distance of 818 miles, an average tanker load size of 49,700 pounds, and an average total haul bill of $3,003. The survey results, said the witness, support the DCMA-proposed base haul rate of $3.67 per loaded mile. The surveyed tank size of 49,700 pounds was used to justify increasing the reference load in the MRF calculation. DCMA noted in its post-hearing brief that costs have increased from its calculated 2020 rate, up to as much as $5.10 to $5.25 per loaded mile.

Using the proposed TCBF provisions, DCMA estimated TCBF payments from 2020 through 2022 using USDA data and compared the results with what TCBF payments would have been under current provisions, assuming all claims could have been paid in full. According to the witness, under those assumptions, current TCBF payments represent 59 percent, on average, of what payments would have been using DCMA's proposed updated factors. The witness emphasized the analysis demonstrates how current TCBF provisions are not representative of current transportation costs and should be updated.

Using actual TCBF pounds from 2020–2022, the witness offered an analysis to determine necessary assessment levels under the proposed TCBF provisions. To do so, the witness provided data of TCBF assessments and payments from 2020–2022, including proration. The witness used USDA data to show the impact of various scenarios on the levels of assessment and payments based on two alternative DCMA-proposed MRFs, in comparison to actual TCBF claims and payments. The analysis showed assessment rates needed to fully pay all claims in 2020 could be up to $0.18 and $0.88 per cwt in the Appalachian and Southeast FMMOs, respectively. Based on the analysis, the witness testified DCMA proposes to double the maximum assessment rate in each order, to $0.30 and $0.60 per cwt in the Appalachian and Southeast FMMOs, respectively. DCMA noted in its post-hearing brief a maximum rate of $0.30 per cwt in the Appalachian FMMO would cover full claims immediately and allow room for increases in claims without necessitating proration for some time. Also, according to the brief, a maximum of $0.60 per cwt in the Southeast FMMO will allow for most of the current supplemental milk transportation credits to be paid, with reduced occurrences of proration.

The DCMA witness also elaborated on the proposal to make February an optional, not mandatory, payment month. Since less supplemental milk is needed in February, the witness said it was appropriate for February to no longer be a mandatory payment month so those funds could instead be used in later months when supplemental milk needs are greater. The witness presented data to demonstrate the possible benefits of converting February from a mandatory to an optional payment month. The witness stated the impact of including February as a mandatory payment month is only apparent when payments are prorated, which is not projected to occur in the Appalachian order. For the Southeast FMMO, the witness entered data that showed more dollars would have been directed to the months it was needed in 2020 and 2021, resulting in fewer prorated payment months, had February been an optional payment month rather than a mandatory payment month. The witness reiterated that under DCMA's proposal, a handler could petition the Market Administrator to request February TCBF payments by providing supporting data and rationale.

Last, the DCMA witness explained the flat mileage deduction of 85 miles for loads delivered directly from farms to distributing plants should be changed to a percentage basis, initially set at 15 percent. DCMA argued the change would more equitably reimburse short and long hauls, thus reducing the potential disorderly incentive to import supplemental milk from greater distances. The witness noted the current 85-mile deduction represented 10.4 percent of the 818-mile average haul observed in the DCMA survey and concluded that a 15-percent deduction is an appropriate initial rate.

In its post-hearing brief, DCMA noted there was only nominal opposition from industry participants to its proposals to amend the transportation credit balancing funds. DCMA reiterated testimony by witnesses supporting its proposals: a decreased supply of milk, fewer plants to process local milk, increased distances to bring in milk, and an increased population in the region. Compounding market disruptions, DCMA argues in its brief, is the increase in the cost of moving milk since the TCBF reimbursement rates were implemented in 2006.

The post-hearing brief touched on changes in the movement of milk as a result of these factors, including movements that often lose value going ''against the grain,'' from south to west or south to north. These movements, the proponents argue, are prime examples of disorderly marketing since the Federal Order Class I price grid is intended to reflect lower prices at supply areas and higher prices at demand points. The region's loss of plants, the proponents argue, has caused the Federal order provisions to be out of sync with the marketplace.

The DCMA witness also offered testimony supporting adoption of Proposals 3, 4, and 5, to establish a distributing plant delivery credit (DPDC) in the Appalachian, Florida, and Southeast FMMOs for marketwide service payments to handlers acquiring consistent, year-round milk supplies for pool distributing plants. The DCMA witness reviewed data for each of the southeastern orders showing 54 percent, 82 percent, and 44 percent of Class I demand is met with in-area milk production from the Appalachian, Florida, and Southeast orders respectively. According to the witness, in-area milk supplies face the same cost factors as supplemental supplies. However, because there is no transportation compensation for obtaining in-area milk supplies, the cost burden falls on the handlers supplying Class I demand, primarily DCMA cooperatives and their members. The witness asserted that local milk production should be on equal footing for transportation assistance as supplemental milk supplies, as local deliveries promote transportation efficiency. The witness reiterated earlier market statistics showing declines of in-area milk production, farms, and pool distributing plants throughout the southeastern region as justification for adopting DPDC for year-round, consistent milk supplies.

The DCMA witness described the situation in the Florida order, which currently has no transportation credit assistance. According to the witness, a significant amount of milk production is located in central Florida, which is typically delivered to a plant in Miami over 200 miles away. Because Miami-

Dade County has the highest Class I differential zone in the country, the Class I differential provides some financial incentive to move milk in that direction. However, when demand at the Miami plant is met, the central Florida milk must move north to a lower Class I differential zone. While the distances may be similar, there is no transportation assistance provided through the differentials to cover the transportation cost. Therefore, the witness said, a DPDC in the Florida FMMO is warranted.

The witness explained the compounding transportation situation in the southeastern Orders by presenting a map of pool distributing plants in 2000 vs. 2022, which showed a decrease from 73 plants in January 2000 to 39 in 2022, a 47 percent reduction. The witness said the decline in farms and plants in the region will continue to lead to increased delivery miles and costs and will put availability of local milk supplies at risk.

The DCMA witness explained the DPDC funds would be separate from the producer settlement fund, be payable to handlers providing the marketwide service of meeting Class I demand with consistent, year-round milk supplies, and not impact the Federal order minimum announced producer blend prices. According to the witness, the proposed provisions establish maximum allowable assessments on Class I milk specific to each Order and guidelines for the Market Administrator on how to set or waive the rate and investigate misuse, for example, if a handler consistently moves milk uneconomically to collect payment.

The DCMA witness outlined proposed DPDC eligibility criteria. According to the witness, with fewer farms and pool distributing plants, milk regularly crosses state and Federal order borders of the three southeastern orders; therefore, milk from one Order should qualify for payments when delivered to another Order. For the Appalachian and Florida orders, the witness proposed producer milk originating in certain counties outside of the respective Federal order boundaries that are considered part of the milksheds be eligible for a DPDC payment. For the Appalachian order, DCMA included select unregulated counties in Virginia and West Virginia that provide milk to a fully regulated Appalachian order pool distributing plant in the same unregulated area. The counties are also, according to DCMA, the regular source of milk to Appalachian order pool distributing plants in North and South Carolina. Under these circumstances, DCMA argues, the counties are parts of the regular procurement area for the Appalachian order, and the handlers obtaining milk supplies from these counties should be entitled to receive DPDC for those shipments.

The provisions proposed by DCMA also permit milk from an order pool supply plant to qualify for DPDCs in all three orders. According to DCMA, a pool supply plant located in the Appalachian marketing area assembles milk delivered in farm pick-up trucks from smaller producers. The milk is then shipped in larger transports to Appalachian order pool distributing plants. Transporting via supply plant is a necessary method for these producers whose milk is a consistent supply to the market. According to DCMA's proposal, DPDCs would apply only on the mileage from the supply plant to the order's distributing plant.

The Georgia counties included in the DCMA Proposal 4, according to testimony by its witnesses, are a year-round integral part of the supply for the Florida order; therefore, DCMA believes handlers acquiring milk from those areas should be eligible for DPDCs.

According to the DCMA witness, its members, who supply a majority of the milk on the three Orders, face similar cost factors for both regular and supplemental supplies. Therefore, the witness said, it is appropriate for the DPDC payment provisions to be the same as the TCBF provisions.

The DCMA witness estimated the maximum assessment rates needed to fund DPDC payments in each of the three Orders. DCMA's analysis concluded maximum assessment rates of $0.60, $0.85, and $0.50 per cwt on Class I milk pooled on the Appalachian, Florida, and Southeast FMMOs, respectively, were warranted. The DCMA witness explained the assessment rates should initially be set $0.05 lower than the maximum rates to be initially conservative when implementing this new fund. The proposed provisions allow for the Market Administrator to review and adjust assessment rates in each FMMO, if necessary, after a year of operation.

The witness next discussed the impact changes to the TCBF provisions and establishment of DPDC could have on plant competitiveness in the region. Ultimately, the witness argued, an analysis shows the DCMA proposed assessment levels do not put in-area pool distributing plants at a competitive disadvantage compared to out-of-area plants.

The witness concluded by emphasizing the need for emergency hearing procedures, especially due to the current inflationary economic environment, the fact that transportation costs have not been updated for 15 years, and the changing market structure in the southeastern region. The consequence of not using emergency hearing procedures, the witness claimed, would be more farms going out of business.

A witness from Dairy Farmers of America (DFA), one of the nine cooperative members of DCMA, testified in support of DCMA Proposals 1 through 5. DFA's Southeast Council encompasses the Appalachian, Florida, and Southeast FMMOs, where they have 830 dairy farm members. The witness offered testimony regarding the impact adopting Proposals 1 through 5 could have on the competitiveness of packaged milk delivered into the southeastern marketing areas. The witness analyzed transportation rates for 60 routes both within the southeast FMMOs and the surrounding areas to determine how the cost of transporting packaged fluid milk into the marketing areas compared to the proposed TCBF and DCDP assessments contained in Proposals 1 through 5. According to the witness, the results indicate that even with the proposed assessments on Class I milk, packaged fluid milk moving into the marketing areas would not have a cost advantage over Class I products produced by plants regulated by the three FMMOs and subject to the proposed assessments.

Another witness appearing on behalf of DFA offered testimony on diesel fuel price volatility. To highlight diesel fuel price volatility, the DFA witness charted U.S. EIA monthly retail on-highway diesel fuel prices, both for the U.S. and states comprising the southeast region since 2006 alongside the projection for February 2023 to December 2025. According to the data, since January 2, 2006, diesel fuel prices in the southeast region have averaged $3.19 per gallon, ranging from $1.96 gallon (February 2016) to $5.73 per gallon (June 2022). The witness explained that record low U.S. oil supplies, reduced oil refining capacity, and geopolitical events are all factors driving diesel fuel price volatility and large price ranges. On the demand side, the witness said variability in fuel consumption, the overall health of the U.S. economy and China's rebound from COVID–19 have all contributed.

A witness appearing on behalf of Maryland and Virginia Milk Producers Cooperative (MDVA), a dairy cooperative with approximately 930 dairy farmer members located in 10 states and a member of DCMA, testified in support of Proposals 1 through 5, and specifically on the marketing conditions within the Appalachian marketing area. The witness testified their members' milk is marketed on the Appalachian, Southeast, Northeast, and Mideast orders. MDVA owns and operates two fluid processing facilities within the Appalachian order and supplies milk to several other processors in the region.

The witness testified milk production has sharply declined in the southeast region, down 32 percent over the last 15 years. MDVA therefore relies on supplemental milk from other regions to meet its year-round obligations. The witness testified that during peak demand in late summer and early fall, MDVA requires approximately 25 loads per day of supplemental milk to fulfill demand. The witness stated the MDVA average distance to the market for supplemental supplies from the northeast is 450 miles, and current transportation cost is $4.90 to $5.25 per loaded mile, which equates to roughly $4.43 per cwt of milk. The witness testified that roughly $2.93 per cwt of its cost to transport supplemental milk to the market is not covered by the gain in Class I differential between the supply and demand zones.

In recent years, according to the witness, equipment parts, oil, labor, insurance, and fuel costs have increased. Since TCBF factors have not been updated since 2006, the percentage of the transportation cost covered by the TCBF has decreased. As hauling bills must be paid, the witness said the cooperative relies on either deductions from dairy farmer milk checks or over-order premiums to cover the additional cost. The witness testified regarding MDVA's difficult experience in obtaining and maintaining over order premiums. The witness spoke to the concern of Class I handlers maintaining raw product cost equity with their competitors. The witness said Class I handlers are reluctant to pay over order premiums in the current market environment because they are not assured competitors are also incurring the same cost. In the witness's experience, Class I handlers are more willing to pay for additional transportation costs if it is announced by the FMMO and enforced uniformly on all Class I handlers.

The witness testified Proposals 1 and 2 would align MRF components with current freight rates and adopting those proposals is imperative to maintaining supplemental milk supplies needed to meet Class I demand. Without these updates, the witness stated, handlers will be less willing to provide supplemental milk supplies to the Appalachian order during periods of large deficits, which would negatively impact the region's processing capacity. The witness noted that since the early 2000s, 11 pool distributing plants have closed within MDVA's core area of the Appalachian order. The result is increased distances to the next closest plant, and with it, increased costs to balance Class I demand.

The MDVA witness testified raw milk loads are shuffled based on customer orders to ensure adequate available supplies without exceeding silo capacity. With fewer plants in the network, there are fewer opportunities to use the next plant's silo capacity; this makes the ability to ''stair step'' milk through the region to align supply with demand more difficult and more costly. The witness stated sometimes milk must travel north to find a balancing plant, typically a more costly option.

According to the witness, Class I differentials are not adequately compensating dairy farmers for milk movements within the Appalachian marketing area, which Proposal 3 would address. For example, the witness said, when producer milk is delivered to a plant 200 miles away in a 30 cent-higher differential zone, the change in Class I differential zone only covers about 15 percent of the cost of moving the milk within the market. The witness stated Proposal 3 provides additional compensation and incentives to move milk within the Order and offsets some of the deficiencies in the current Class I differentials.

The witness discussed the challenges of providing supplemental milk to the Appalachian order, such as filling the school milk pipeline and weather-related events such as a snowstorm, which stress already complicated milk marketing and transportation systems. The witness testified to MDVA's efforts last year in meeting increased school demand by assembling, reloading, and then transferring to Class I plants approximately 80 loads of milk from its pool supply plant in Strasburg, Virginia, at great expense to the cooperative. The witness testified that based on their knowledge the MDVA's plant in Strasburg, Virginia, is the only pool supply plant currently operating in this manner in the southeast for the Appalachian, Florida, and Southeast orders. The plant is sourced primarily by small farms in Maryland and Pennsylvania, and much of the milk collected at Strasburg is then reshipped to Appalachian and Southeast FMMO pool distributing plants. The witness opined these deliveries meet the region's Class I demand and should be eligible for DPDC.

The witness also testified in support of extending DPDC eligibility to include unregulated counties in Virginia that supply its plant in Newport News, Virginia, a year-round pool distributing plant on the Appalachian FMMO.

The witness testified that if a handler does not bring in enough supplemental milk, the plant will not have milk for consumers, and consumers will see empty shelves. Consequently, the region's processors face pressure because retailers could go outside of the Order to purchase packaged milk and handlers could lose customers.

The witness stressed that the proposals should be considered on an emergency basis so cooperatives and their dairy farmer-members supplying the region's Class I demand can begin to receive cost recovery that they have been unable to obtain on their own. Without this assistance, the witness opined, more producers in the region would exit the business, further reducing local milk supplies, and negatively impacting local Class I processors.

A witness appearing on behalf of Southeast Milk, Inc. (SMI), a member of DCMA, testified in support of Proposals 1 through 5, and their adoption on an emergency basis. SMI is a dairy cooperative with approximately 135 dairy farmer members pooled on all three southeastern orders.

The SMI witness testified specifically in support of Proposal 4 to adopt DPDCs for the Florida FMMO. Milk produced in and pooled on the Florida FMMO has steadily declined since 2016, according to the witness. The witness cited USDA data showing 87 percent of the Order's milk in 2019 was produced in Florida, compared to 76 percent in 2022. The witness noted that of 24 states in NASS's monthly milk production report, Florida had the largest year-over-year milk production decline in 2022, a decrease of 10.9 percent. In 2022, the state of Florida reported its lowest milk volume since 1984.

According to the witness, reasons for declining milk production in Florida include higher freight costs (a high percent of dairy feed, supplies, and fertilizer are imported into the state), environmental challenges, opportunity costs, urbanization, and lower margins. The witness argued the implementation of Proposal 4 would ease the transportation burden cooperatives face in supplying the Class I market and help slow the decline of Florida milk production.

The SMI witness stressed that less milk produced in Florida means more milk from outside the state is needed to supply the Order's fluid milk needs. The witness testified, based on SMI marketings and personal industry knowledge, a significant portion of milk sourced from outside the marketing area comes from the 49 South Georgia counties included in Proposal 4. While South Georgia historically served as the reserve milk supply for the Florida market, as production has declined in Florida and increased in Georgia, South Georgia is now a regular milk supplier to Florida pool distributing plants. The witness said that at a minimum, South Georgia milk must travel 225 miles from the Florida-Georgia border to the closest pool distributing plant. As these South Georgia counties now serve as a regular source of producer milk for the Florida order, the SMI witness testified, Proposal 4 is needed to provide some level of reimbursement of hauling expense for the distance the milk travels to Florida pool distributing plants.

Similar to other witnesses, the SMI witness discussed the common occurrence of milk moving against the Class I differential surface because there are fewer pool distributing plants. According to the witness, in January 2023 all of SMI's Appalachian order milk moved from a higher ($4.00) to a lower ($3.60) zone. Of the cooperative's milk pooled on the Southeast and Florida FMMOs, 44 percent and 14 percent, respectively, moved from higher to lower Class I differential zones, the witness said. The SMI witness concluded that implementation of Proposal 4 will assist the cooperative in recouping transportation costs for milk, especially for milk that receives no additional assistance through changes in Class I differential zones.

The SMI witness entered transportation costs it has experienced, as SMI owns and operates its own milk hauling fleet. Cost data included average annual diesel fuel prices (up 129 percent from 2020 to 2022), average annual milk hauler wages (up 38 percent from CY2018 to CY2023 YTD), and other increases to purchase new trucking equipment. The witness also spoke to other increases such as, but not limited to, employee benefits, insurance premiums, and equipment maintenance. For January 2023, the witness stated, SMI hauling costs are nearly double what would have been covered by the TCBF under the proposed provisions in Proposals 4, 5, and 6. SMI, the witness testified, attempts to improve efficiency of milk hauling and to control expenses, but those efforts only offset a portion of the higher milk hauling expenses. The cost to haul milk from SMI member farms to pool distributing plants greatly exceeds the proposed DPDC.

This witness also addressed the cooperative's efforts to recover some of the increased costs through over-order premiums. While SMI does collect some over-order premiums, the witness said they do not cover all the costs of servicing the fluid market. Buyers are concerned about competitors and seek to ensure equal raw product cost which, according to the witness, is the key to orderly milk marketing. The witness testified processors prefer to pay through the Federal order system because it provides assurance of equal footing with competitors.

The witness noted that Proposal 4 does not change diversion requirements. Diverted milk would not be eligible to receive the DPDC; only milk delivered to a pool distributing plant could receive the credit.

Finally, regarding the request to consider the proposals on an emergency basis, the SMI witness testified that adopting DPDCs would provide cooperatives, handlers, and subsequently their dairy farmer-members, with much needed cost assistance to continue serving the Florida market.

A third DFA witness testified regarding the marketing conditions in the Southeast FMMO. The witness said the volume of Class I milk pooled on the Southeast order has been declining, but at a slower pace than the in-area milk production decline. This results in increasing volumes of milk being delivered to Southeast order pool distributing plants from outside the marketing area at greater expense, a cost primarily borne by the farmers that supply the market.

The DFA witness stated the cost of milk hauling has increased over the last several years, and clearly has increased since Class I differentials were last updated. The witness said the location of supplemental milk sources varies based on the location of the plant and the distance to the plant. The witness testified there are currently 15 pool distributing plants regulated on the Southeast order, 13 of which likely receive substantial quantities of supplemental milk. According to the witness, the distance to move milk to most of these plants is considerable. The witness said the Southeast order plants in Georgia are generally most-practically served with supplemental milk supplies from the north, and occasionally with milk from the Central and Southwest marketing areas.

The witness testified that hauling costs for moving milk from the Southwest to Southeast order are between roughly $4.85 and $5.10 per loaded mile. In a sample milk haul, incorporating the Class I differential and location value impacts, a blend price gain moving milk into the Southeast order would cover about 45 percent of the cost of hauling. The witness concluded that the expected TCBF payment would cover approximately 16 percent of the real cost of hauling.

The witness emphasized that while the TCBF payment only covers a portion of the cost of hauling, handlers and cooperatives are guaranteed to receive it. Since over-order prices are rarely sufficient to cover the large differences in hauling costs, dairy farmers are left to pay the remainder, the witness stressed. The witness spoke of the difficulty in negotiating and maintaining over-order premiums with a Class I plant. Factors like the location of the receiving plant and the distance the plant is to a viable supplemental milk source, the plant's relative access to local supplies, and its net need for supplemental milk cause additional costs to vary by plant. The witness emphasized that unequal costs of milk is a recognized source of market disorder.

The witness also testified on hauling capacity challenges faced by supplemental suppliers. Challenges include supply chain shortages for trucks and trailers, lack of qualified and willing truck drivers, rules on allowable hours for trucks to run each day, and truck scheduling challenges. Hauling schedules are so tight, the witness noted, even the smallest variation in the daily delivery schedule can disrupt logistics for several days and create additional costs that are borne by the cooperative suppliers.

The DFA witness concluded that Proposals 1 and 2 would benefit consumers with an unimpeded and orderly flow of milk into the region and regulated Class I processors with a continued supply and orderly pricing of milk. Without a properly functioning transportation credit system, the witness argued, the region's milk supply would be threatened.

The third DFA witness also testified in support of Proposals 3, 4, and 5, specifically, why raw milk produced in the state of Georgia and transported throughout the southeastern orders should be eligible for the proposed DPDCs. The witness referenced a map comparing U.S. milk production in 2021 and 2022 showing that of the southeastern states, Georgia was the only state with significant milk production growth. Yet, the witness said, the growth of milk production in Georgia does not compensate for the decline in milk production in Florida alone. Meanwhile, Florida and Georgia are experiencing record population growth, according to the witness, which increases demand for fluid milk.

The DFA witness said the DFA milk supply in Georgia's southern counties delivers daily to Florida pool distributing plants, serving the market's Class I demand. In 2022, the witness testified, 31 percent of the DFA milk in the southern Georgia counties shipped to Florida pool distributing plants.

In addition to Florida, the DFA witness said, Georgia milk production regularly serves the Class I demand and reduces the need for additional milk to serve the region from longer distances and at higher costs. Unfortunately, the witness explained, many of these Georgia milk movements have no Class I differential value gain and cause the cooperative to incur substantial transportation costs. DPDCs, the witness testified, would provide much-needed relief to cooperatives and their local dairy farmer-members who provide consistent milk supplies. The witness noted Proposals 3, 4, and 5 would not change pooling provisions on any of the three FMMOs and would continue to allow diversions on pounds on which a DPDC is requested. The witness supported this provision because there are times during the week, month, and year when milk production is not delivered to pool distributing plants within the local milkshed. However, milk still needs to be marketed, and it is sometimes necessary to divert production to a non-pool plant, according to the witness, and those producers still expect to receive the FMMO blend price.

This DFA witness spoke to the difficulty in recovering transportation costs through over-order premiums as opposed to the FMMO system. The witness testified that for transparency and fairness, buyers prefer to have costs come through the FMMO system and FMMO price announcements.

Finally, the DFA witness testified to the urgency of a decision on the proposals to provide cost recovery to cooperatives handlers and their dairy farmer-members. According to the witness, dairy farmers are going out of business every day, even with higher milk prices in 2022. The witness expects there will be as many going out of business in 2023 as there were in 2022. Many farms are relying on the possibility of additional transportation assistance in the form of TCBF and DPDC payments to their cooperatives. The witness concluded that any delay would cause closure of more businesses, which would place more burden on the remaining local farms.

A Georgia DFA producer-member testified on current dairy market conditions in the region. The witnessed expressed support of updating the Appalachian and Southeast FMMOs' TCBF provisions and implementing a similar program (DPDCs) for locally produced milk in the Appalachian, Florida, and Southeast FMMOs.

The witness further elaborated on the rise in on-farm input costs that farms in the region face. According to the witness, the largest cost increases from 2021 to 2022 included nitrogen fertilizer (289 percent), diesel fuel (89 percent), corn (93 percent), interest (80 percent), and medicine and supplies (70 percent). The dairy farmer witness went on to explain that not only have the dairy farm's input costs risen, but so have the cost to haul milk. The witness explained the two plants closest to their dairy farm closed and now the milk must travel nearly 6 times as far, 292 miles, to a plant in Orlando, FL. The witness said that the cost to haul milk went from $1.32 per cwt in 2021 to between $2.37 and $2.45 per cwt in 2022. The witness claimed these cost increases have tightened margins and impeded the dairy farm's ability to grow.

The witness said the southeastern U.S. has the most significant milk deficit in the country, and it is exacerbated with the simultaneous rise in population and decline in dairy farm and milk production numbers. The witness testified the financial costs of importing supplemental milk and increasing hauls to fluid milk plants (due to plant closures) are primarily the burden of the region's dairy farmers, through their cooperatives, to ensure the market's Class I demand is met. According to the witness, adoption of Proposals 1 through 5 would help correct this imbalance by providing transportation assistance reflective of current market conditions.

Finally, the witness closed by urging USDA to implement updates to the transportation credit programs expediently. The witness cited weakening projected price relative to rising input costs as the primary driver for expediting the process.

A Missouri DFA dairy farmer member testified in support of Proposals 1 through 5. The witness said because their farm is located within the Southeast FMMO marketing area, it is not eligible for TCBF payments. The witness explained that dairy farmers (mostly small businesses) in the state have struggled in recent years. The witness shared data showing how milk production in Missouri declined nearly 50 percent, and the number of dairy herds decreased nearly 70 percent from 2006 to 2022.

The witness claims that with fewer dairy farms, there is a bigger burden on those still in business to supply the market. As a result of plant closings, the witness said their milk must travel further to find a market. The witness testified their annual hauling costs increased, on average, $9,000 in the most recent two-year period. With input costs rising across the board—feed, fuel, fertilizer, crop inputs, and labor—the witness testified to a financial strain faced on their farm and other similar operations in the region. The witness opined the proposals should be considered on an expedited basis, as this issue is of immediate importance.

A North Carolina dairy farmer representing MDVA testified in support of Proposals 1 through 5. The witness said their hauling costs have increased roughly 50 percent in the past decade and their local market has shifted farther away from Charleston, South Carolina, to Asheville, North Carolina.

The witness explained there are times their milk and other MDVA members' milk is not delivered to its closet plant because the cooperative is managing the milk movements of both the members' local supply and the supplemental supply it procures to ensure the region's Class I demand is met. In these instances, the extra hauling cost is borne by all cooperative members through a hauling subsidy paid for by all members. The witness asserted that adoption of the DPDC would provide financial help to the cooperatives and their members.

The witness claimed that the current Class I differentials and current TCBF provisions do not generate enough dollars to cover the true cost of moving milk. According to the witness, dairy farmers in the southeastern region, many of whom are not eligible for a TCBF payment, are doubly burdened. Members not only pay the higher transportation costs to ship their milk to a plant, said the witness, but they also share the transportation costs of procuring needed supplemental milk. The witness urged the rulemaking be conducted on an emergency basis to provide much needed cost relief to the region's cooperative handlers and their dairy farmer members.

A Tennessee dairy farmer-member representing the Appalachian Dairy Farmers Cooperative (ADFC), a member of DCMA, testified in support of Proposals 3, 4, and 5. The witness testified 97 percent of the 71 dairy farmer-members of ADFC producers are small dairies, as are nearly all other dairies in the area. The witness said the area has lost 80 percent of its dairies in the past 20 years, including 70 members of ADFC in the past 5 years.

The witness stated that, while not only having to pay to transport their own milk, ADFC dairy farmer-members also bear the transportation cost of bringing in supplemental milk to ensure Class I demand is met. These costs have significantly increased in part, the witness said, because it is difficult to find haulers. The witness estimated the cost to produce milk represents about 80 percent of their milk check, and hauling costs (which have doubled in the last five years) account for an additional 8 percent.

The witness testified USDA should treat the issues before it is urgent, and use expedited emergency hearing procedures.

In its post hearing brief, DCMA summarized its arguments supporting Proposals 3, 4, and 5 implementing DPDCs in the Appalachian, Florida, and Southeast orders, to reimburse handlers for a portion of the cost of delivering in-area and nearby milk. DCMA reiterated in its post-hearing brief that, for the Appalachian and Southeast orders, the respective marketing areas are considered in-area sources of milk. DCMA argued in its brief that those sources are not eligible for TCBF but should be eligible for DPDC.

In its post hearing brief, DCMA argued it is not possible to obtain transportation relief in the southeast area without adoption of the proposed DPDC. DCMA synthesized points made in its and other witness' testimonies that cooperatives are unable to obtain reimbursement from the market. According to the brief, the main alternative, over-order premiums, are difficult to maintain and challenging to increase. On the other hand, DCMA argued, incorporating a program for transportation costs within FMMO provisions would treat all suppliers and buyers equitably. Their brief indicated cooperatives and handlers are generally more able to pass through Class I costs to buyers that are specifically outlined on FMMO price announcements as would be the case under their proposals.

DCMA concluded in its brief that adoption of DPDCs would provide their customers with the price transparency they prefer through rates published on FMMO price announcements, assuring them of uniform raw milk costs with competing Class I handlers while enabling cooperatives that provide the market with Class I milk to receive transportation cost reimbursement reflective of current market conditions.

In its post-hearing brief, Select Milk Producers, Inc. (Select), a DCMA member cooperative, emphasized support for the FMMO system and its role in promoting efficient milk movements, producer operations, and milk procurement. The brief reiterated support of the transportation credit system in the Southeast due to unique conditions and that program provisions should be updated. Select indicated support for considering the regulatory changes on an emergency basis, and therefore omitting a recommended decision, as transportation credit regulations do not directly impact milk prices. While Proposals 3, 4, and 5 would include additions to their respective Orders, they are operationally and methodologically similar to existing transportation credit provisions and therefore have little economic and regulatory impact, according to the brief.

The dairy farmer proponent of Proposal 11 submitted a post-hearing brief opposing Proposals 1 through 5. In the brief, the farmer opined that doing nothing would lead to a better outcome than adopting the proposals. The dairy farmer argued the distance milk travels should not be treated as a performance standard and receive special treatment. If changes are to be made, however, the farmer insisted on the uniform treatment of all milk.

A witness from Prairie Farms testified in opposition to the proposed DPDC because payments would only apply to out-of-area milk from a select list of counties, instead of all out-of-area counties that regularly deliver to pool distributing plants. The witness claimed giving privilege to a few counties in Georgia, Virginia, and West Virginia, as written in Proposals 3 through 5, is not fair and equitable, especially when year-round deliveries of out-of-area milk is necessary to meet the fluid milk needs of the southeastern FMMOs.

In its post-hearing brief, Prairie Farms summarized its opposition to Proposals 3, 4, and 5 and maintained the record contains abundant evidence showing a growing milk deficit persisting in the southeastern U.S. The record demonstrates that pool distributing plants in the southeastern FMMOs need out-of-area milk on a year-round basis, but Proposals 3, 4, and 5 do not offer any assistance in obtaining year-round transportation assistance on out-of-area milk. They believe qualifying some out-of-area counties to participate in DPDC, but not others, even if they consistently supply milk to pool distributing plants in the region, is discriminatory.

A Prairie Farms witness testified in support of Proposals 6 through 10. According to the witness, Prairie Farms is a Capper-Volstead cooperative with 682 dairy farmer members in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and Wisconsin, and also markets milk for non-cooperative members in Texas. Prairie Farms operates Class I, II and III plants throughout the central U.S., including nine plants regulated on the Appalachian and Southeast FMMOs.

The witness asserted the milk supply in the southeast region has been declining for many years, while population has increased, resulting in milk being imported from outside the region to meet demand. The witness explained this region was historically short in certain seasons, but now faces a year-round shortfall. Describing the lack of flexibility of the current TCBF program, the witness emphasized the importance of simplicity to allow the system to better adjust to future supply and demand changes.

The witness cited USDA data on milk production in the southeastern states in 1997 and 2021, showing that production has declined in greater proportion compared to the decline in consumption. The witness concluded that the data shows the 11 Southeastern states currently produce 73.3 percent of their fluid milk needs, down significantly from 1997.

The witness continued by showing the shortfall of milk in the region that currently exists in the spring flush months of March, April, and May. However, as the current system exists, the witness said, if a handler pools too much of a producer's milk on the Appalachian and Southeast orders in the spring, they are not eligible to claim a TCBF payment on that producer's milk in the fall, despite the market's need for the milk in the spring. The witness supported eliminating the location and delivery criteria in the current TCBF provisions, as contained in Proposals 6 and 7, that currently prevent handlers from qualifying for a fall TCBF payment for producers whose milk is pooled in the spring. The change proposed by Prairie Farms would allow handlers to receive a TCBF payment on milk shipments from these producers.

The witness provided examples of origin to destination locations milk travels as incentivized (or disincentivized) by the existing transportation credit system. One example showed a delivery traveling 21 miles further than necessary, to receive approximately $300 more in a TCBF payment. A second example showed milk traveling 21 miles farther increased the TCBF payment by nearly $700. The witness contended that without the current pool qualification provisions, there would not be financial incentive for these inefficient movements to occur.

According to the witness, removing the current TCBF location qualification provisions would allow producer milk located in the marketing area to be eligible for TCBF payments using the same calculations as milk from outside the marketing area. The witness testified transportation credits available only on milk produced outside the Appalachian and Southeast FMMOS does not incentivize efficient in-area milk movements. Rather, the witness said it would be more equitable and incentivize efficient milk movements for all milk delivered to pool distributing plants, regardless of where it originated, to be eligible for TCBF payments. This, the witness stated, is especially true as the milk supply shrinks in the Southeast and the population increases.

Regarding Proposals 8, 9, and 10, the Prairie Farms witness explained the proposed Assembly Performance Credits (APC) would compensate handlers for assembly, dispatch, and delivery costs incurred on all producer milk received at pool distributing plants. According to the witness, the proposed $0.50 APC assessment is based on the proponents' internal data on the costs of supplying milk to the Appalachian, Southeast, and Central FMMO pool distributing plants, and could be adjusted at the discretion of the Market Administrator. According to the witness, the APC is fair and equitable for both handlers and producers since a uniform assessment rate is applied for the Class I milk, and a uniform credit is received on the producer milk delivered to the distributing plants, regardless of origin.

The witness explained how the APC would offset some milk dispatch costs, which include day-to-day variations in storage capacity and demand on the plant side. As APC payments would not change depending on mileage, the witness said there would not be an incentive to maximize distance.

The witness also addressed the impact of rising costs on Prairie Farms' members. According to the witness, Prairie Farms pays it members FMMO blend prices; therefore, rising costs that are decoupled from FMMO pricing ultimately reduce the cooperative earnings and, consequently, the patronage to their member producers and other cooperative members that supply Prairie Farms plants. The witness spoke to the difficulty in recouping these additional costs through the marketplace, largely because customers claim a lack of visibility and confidence in over-order premiums.

In closing, the witness testified that the combination of the year-round uniformly applied APCs and seasonal TCBF payments applied to all in-area and out-of-area milk will promote efficient producer milk deliveries. The Prairie Farms witness said the APC should be viewed as a marketwide benefit because it would increase returns to cooperatives and their members, which will assist in maintaining and growing the local milk supply, thus resulting in less reliance on supplemental milk supplies to meet Class I demand.

The witness stated that Prairie Farms' preference is for USDA to adopt APCs instead of DPDCs. However, the witness testified that an acceptable alternative would be expanding the list of out-of-area counties eligible for DPDCs to address their concern for handlers acquiring out-of-area milk on a year-round basis to supply the Class I market. In testimony, the witness supported including the same restrictions on diversions for in-area milk as those contained in the TCBF provisions, or removing diversion restrictions in both programs. Prairie Farms requested the rulemaking be conducted on an expedited basis as the milk supply issues of the southeastern FMMOs are critical.

In its post-hearing brief, DCMA argued in opposition to Proposals 6 through 10, stating the proposals would not address the marketing challenges in the Southeastern FMMOs and are not supported by a substantial number of producers in the Southeastern marketing areas. DCMA argued the record does not contain cost justification or analysis supporting any of the changes contained in Proposals 6 through 10. DCMA stated that if location and delivery eligibility provisions were eliminated, as contained in Proposals 6 and 7, TCBF payments would be drastically reduced due to lack of funds. According to DCMA, adoption of Proposals 6 and 7 would double the volume of eligible pounds and would likely result in a payment of less than 10 percent of actual costs. DCMA continued in its brief that even if Proposals 6 and 7 incorporated the new assessment rate and updated the MRF as proposed, the pro rata percentage would result in a very low payment. DCMA argued the proponent of Proposals 6 and 7 had not analyzed the impact of the proposals, and, as a result, the record lacks support for their adoption.

DCMA's post-hearing brief similarly opposed Proposals 8 through 10, arguing the proponent provided no substantial cost-justification for the proposed $0.50 assessment rate. DCMA wrote that the proponent's testimony regarding wide variances in assembly, dispatch, and delivery costs was not supported by any detailed costs. Further, DCMA wrote the record lacks analysis and justification for the proposed assessment and APC payment calculation credit. DCMA argued that by directing new revenues to all producer milk irrespective of its location, the APC proposals continue the disparate treatment of in-area versus out-of-area milk supplies, and do not recognize the unique costs and challenges of in-area milk deliveries. DCMA argued a substantial proportion of the new revenues generated by the APC credit would be allocated to out-of-area producers and not toward supporting the delivery of local in-area producer milk.

A Tennessee dairy farmer testified in support of Proposal 11 which would prohibit milk diverted from a pool distributing plant from receiving any form of transportation credit. The witness discussed milk diversions as milk associated with a pool plant, but not received at a pool distributing plant on a particular day. According to the witness, in the deficit market of the Southeast, diversions are another revenue-source for the cost of moving milk, similar to transportation credits. The witness opined a handler's ability to divert milk should be as limited as possible.

The witness testified changes should be made to the Southeast order to make the value of milk at the plant more transparent and reflective of the true cost. To achieve this, the witness proposed an aggregated, audited publication of the price plants pay for milk in the region. The witness advocated for publication of over-order premiums so dairy farmers could use that information when negotiating with handlers.

According to the witness, when transportation credits were adopted in 1996, they were intended to be used for supplemental milk; however, now they are used to regularly supply the market. The witness said that while a handler can collect transportation credits to haul milk, payments do not reflect the full cost of the haul. The remainder of the cost, according to the witness, is deducted from the local producer's milk check which ultimately leads to less local milk production and greater reliance on more costly supplemental milk deliveries.

A witness representing the Milk Innovation Group (MIG), a group consisting of fluid processors and producers (Anderson Erickson Dairy, Aurora Organic Dairy, Danone North America, Fairlife, HP Hood, Organic Valley/CROPP Cooperative, and Shamrock Foods), testified regarding the proposed APCs. The witness said MIG members support allocating more Class I dollars to producers that are supplying the Class I plants to keep a local milk supply for their plants.

The MIG witness expressed concern over efforts to increase minimum regulated Class I prices through any transportation cost-related assessment on Class I milk as fluid milk sales continue to rapidly decline. While the witness opposed the APC $0.50 per cwt assessment on Class I milk, they were supportive of the APC concept which they believe would better align the Class I supply chain since it is funded out of the pool, not an additional payment on top of the pool that would artificially raise Class I prices. The witness cited current Upper Midwest FMMO assembly credit provisions as a possible alternative.

MIG's post-hearing brief reiterated its opposition to Proposals 6, 7, and 8 due to the price-enhancing nature of the provisions while fluid milk sales continue to decline. MIG maintained FMMOs do not and cannot serve to enhance producer prices, but rather operate to set the minimum price necessary to avoid disorderly marketing and ensure a sufficient supply of fluid milk. MIG concluded that proponents of Proposals 6 through 8 fail to consider consumers when they seek to increase Class I prices without justification, especially during a time of rapid inflation.

In its post-hearing brief, DCMA rejected MIG's argument to fund a transportation assistance program out of existing marketwide pool revenues. DCMA argued that type of funding mechanism would not support the costs to produce milk for or move milk to the region's pool distributing plants. According to DCMA, re-shuffling existing pool revenues would have no effect and provide no actual cost assistance. DCMA concluded that new revenues are needed to target to the cost of delivering milk to the demand points in the marketing areas, as offered in DCMA's proposals.

Discussion and Findings

The purpose of this proceeding is consideration of changes to the transportation credit provisions of the Appalachian and Southeast FMMOs for supplemental milk, and adoption of distributing plant delivery credits (DPDC) or assembly performance credits (APCs) for milk deliveries to pool distributing plants in the Appalachian, Florida, and Southeast FMMOs.

The Appalachian and Southeast FMMOs currently contain transportation credit provisions for supplemental Class I milk deliveries. The provisions were first adopted through a 1996 proceeding (62 FR 39738) to address the need for supplemental milk to meet the Class I needs of the two FMMOs. These transportation credit provisions provide payments to handlers to cover a portion of the cost of hauling supplemental milk supplies into the Appalachian and Southeast marketing areas during months when these deliveries are most needed to ensure Class I demand is met (January, February, and July through December). The provisions were amended in 2006 (71 FR 62377) and 2008 (73 FR 14153) to, among other things, adopt a mileage rate factor. The MRF is adjusted monthly by changes in the price of diesel fuel to ensure current fuels costs are reflected in payments on eligible shipments, amend the qualification requirements for supplemental milk and increase the maximum TCBF assessment rates. The Florida FMMO currently has no transportation credit provisions.

The current transportation credit provisions are tailored to distinguish between producers who regularly supply the market and those primarily delivering milk when the market is most at deficit (considered supplemental suppliers). Under the current provisions, only milk from producers who are located outside of the marketing areas and are not regular suppliers to the market are eligible to receive transportation credits. Producer milk received at a pool distributing plant eligible for a transportation credit under the orders is defined as bulk milk received directly from a dairy farmer who: (1) not more than 50 percent of the dairy farmer's milk production, in aggregate, is received as producer milk during the immediately preceding months of March through May of each order; and (2) produced milk on a farm not located within the specified marketing areas of either order. Milk deliveries from producers located outside the marketing area who are consistent suppliers to the market or from producers located inside the marketing areas are not eligible to receive transportation credits.

The policy objective of the AMAA is ''. . . to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce . . . '' (7 U.S.C. 602(1)). The AMAA further instructs the Secretary to maintain ''. . . an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.'' (7 U.S.C. 602(4)). In the Appalachian and Southeast FMMOs, this policy objective is achieved, in part, through transportation credit provisions that ensure an adequate fluid (Class I) milk supply.

The record reveals that all three orders (Appalachian, Florida, and Southeast) lack in-area milk production to meet the region's Class I demand. Record evidence illustrates this long-standing regional issue which the current transportation credits aim to address through economic incentives for supplemental milk deliveries to the region's pool distributing plants when most needed. While the current transportation credit provisions have been successful in ensuring Class I demand is met, the record reveals the reimbursement levels do not reflect the current transportation cost environment. As a result, handlers and cooperatives who provide the marketwide service of delivering milk to the Class I market incur transportation costs that they cannot recover.

The 2006 Final Decision (79 FR 12985) details the region's milk deficit at that time and recommended changes to existing transportation credit provisions to account for reasonable transportation cost reimbursement for supplemental milk deliveries to Class I plants in the region. Record evidence from the current proceeding reveals the region's milk deficit has continued to worsen. According to the record, the number of licensed dairy farms located within the Appalachian, Florida and Southeast FMMOs have declined approximately 38, 50, and 57 percent, respectively, from 2017 to 2022. Data shows 2021 in-area milk production in the Appalachian, Florida, and Southeast FMMOs represented 54, 82, and 44 percent of their respective milksheds. Put another way, in 2021, 54 percent of the milk pooled on the Appalachian FMMO was produced within the geographic boundaries of the order. Consequently, a significant volume, 46 percent, of the Order's needs had to be met from milk produced outside the marketing area.

An objective of the FMMO system is meeting Class I demand, and the record reveals a consistent lack of in-area milk production to meet demand. In the Appalachian FMMO, from 2019 to 2021, the average daily in-area milk production deficit ranged from 3.3 to 4.9 million pounds below pool distributing plant demand. In other words, on an average day, pool distributing plants needed anywhere from 3.3 to 4.9 million pounds of milk (67 to 99 tanker loads) from outside the marketing area to meet pool distributing plant demand. The same daily deficit in the Florida FMMO ranged from 100,000 pounds to 1.4 million pounds (2 to 28 tankerloads), and 3.8 to 6.5 million pounds (77 to 131 tankerloads) in the Southeast FMMO.[1]

The record also reveals that while handlers and cooperatives are delivering supplemental milk to meet pool distributing plant demand, they are not able to recoup a significant portion of the transportation costs incurred. Cooperative witnesses testified they perform this service despite the financial loss because the consequences of not fulfilling the market's Class I needs outweigh the loss from transportation costs. They spoke of the importance of meeting pool distributing plant demand to ensure these plants remain an open and available market outlet for local producers.

Cooperative handler witnesses testified that their efforts to ensure Class I market needs are met come at a cost to the cooperative and its members. The inability to recover the additional transportation costs through negotiations with milk buyers was a common theme of the testimony. The record shows that not only are local producers paying directly for the increased transportation costs of their milk, but the cooperative often charges a hauling fee to offset the additional cost of bringing in supplemental supplies, which is not covered by either the current transportation credit provisions nor the differences in Class I differential zones between the supply and demand counties.

The record reveals a significant reduction in the number of Class I plants in each of the Southeastern orders and an increase in the distance milk travels to a Class I plant. According to record data, in January 2000, there were 73 Class I plants located in the 3 marketing areas (pool distributing plants and partially regulated distributing plants). By December 2022, the record reveals only 39 plants, a reduction of 46 percent. Consequently, as testified to by several cooperatives and in-area producer witnesses, the average miles traveled and transportation costs for both in-area and supplemental milk movements have increased.

As highlighted above, the record evidence clearly demonstrates the continued milk deficit problem in the three Southeastern orders and its impact on producers, cooperatives, and handlers serving the markets. The overarching issue in this proceeding, which all the proposals seek to tackle, is how to best address the chronic milk deficit problem. Under consideration in this proceeding are two different approaches. The first, offered by DCMA, would amend the current TCBF provisions of the Appalachian and Southeast FMMOs for supplemental milk to reflect current cost factors (Proposals 1 and 2) and simultaneously adopt DPDCs in all three Southeastern orders to aid in moving year-round, consistent milk supplies located within and nearby the marketing areas to meet Class I demand (Proposals 3 through 5). Taken together, these proposals would offer partial transportation cost reimbursement for most milk deliveries to pool distributing plants in the region.

The second approach, offered by Prairie Farms, Inc., would adopt new year-round APCs in all three southeastern orders (Proposals 6 through 8) for all milk deliveries to pool distributing plants in the region, while also making changes to the current TCBF provisions to remove location and delivery eligibility criteria (Proposals 9 and 10). In practice, this would make the same milk deliveries eligible for both APC and TCBF payments.

As explained in the summary of testimony, all milk deliveries to a pool distributing plant would be eligible to receive an APC. The payment rate would be determined by the assessments collected on all Class I milk pooled during the month (proposed to be $0.50 per cwt), divided by all milk deliveries to pool distributing plants. The resulting per cwt payment would not be tied to mileage but would offer partial reimbursement to handlers and cooperatives for the assembly, dispatch, and delivery costs of moving milk to meet Class I demand.

Proponents argued the APC is a better method of cost reimbursement compared to DPDC because it would not encourage inefficient milk movements that could occur with mileage-based cost reimbursement. They also likened the proposed APCs to assembly credits currently in the Upper Midwest (UMW) FMMO, which they contended are sufficient to attract milk away from pool supply plants to pool distributing plants.

The record of this proceeding does not contain adequate evidence to support adoption of an APC. The hearing evidence does not contain data demonstrating how the $0.50 per cwt proposed assessment rate is representative of any of the costs (assembly, dispatch, and delivery) the APC is purported to offset. Furthermore, while proponents referenced use of an assembly credit in the UMW order, marketing conditions in the three southeastern orders are vastly different. The UMW order has abundant milk supplies locally to meet Class I demand, with a 2022 average Class I utilization rate of 7 percent.[2] In contrast, the average 2022 Class I utilization rates of producer milk were 70 percent, 83 percent, and 72 percent, in the Appalachian, Florida, and Southeast orders, respectively. While the UMW assembly credit provisions offer financial incentives for milk movements from pool supply plants to pool distributing plants, the abundance of milk produced, and relatively low percentage of Class I use in the marketing area, does not necessitate long hauls like those regularly occurring in the three orders at issue in this proceeding.

As documented in this hearing record, the market conditions in the southeastern region are vastly different than other regions of the country. Local milk supplies cannot meet Class I demand, necessitating the procurement of significant supplemental supplies from outside the marketing areas. While proponents assert the APC would provide full cost reimbursement for the first 50–60 miles traveled, the proposal does not address the reality that supplemental milk supplies travel over 700 miles, on average, to meet Class I demand. The record does not indicate that a non-mileage-based reimbursement mechanism, such as proposed through the APC, would ensure Class I demand would be met. Accordingly, Proposals 6, 7 and 8 are not recommended for adoption.

Regarding the current TCBF provisions, it is appropriate from time to time to evaluate whether the provisions continue to meet their purpose, and if so, reflect the current transportation cost environment. The TCBF provisions have existed for over 25 years to assist with moving milk to pool distributing plants in the milk deficit Southeastern FMMOs. This decision finds the milk supply/demand imbalance in the Appalachian and Southeast orders continues to persist and the TCBF provisions of those two orders continue to provide necessary transportation cost assistance to ensure Class I needs are met.

Witnesses from multiple DCMA member cooperatives testified that while TCBF payments help offset some of the cost to procure supplemental milk supplies, they have been unable to recoup the remaining transportation cost from the market and are therefore incurring significant financial losses. Hearing evidence indicates current transportation credits cover approximately 58 percent of actual costs, assuming assessments collected

[1] Assuming 49,700-pound tanker.

[2] Upper Midwest Federal Milk Marketing Order Statistics.

do not necessitate prorating claims. However, in the Southeast FMMO where payments are often prorated, hearing evidence suggests costs covered were as low as 40 percent in 2021. The cooperative witnesses questioned their ability to continue to provide adequate supplemental milk supplies in the future without some financial relief in the form of updated provisions to better reflect actual costs.

Ensuring Class I demand is met is essential to the FMMO system in meeting its objective of maintaining orderly marketing conditions. The record reveals a significant decrease in the number of pool-distributing plants operating in the region that provide market access to local producers. Provisions that do not encourage sufficient milk supplies to meet Class I needs may hasten more plant closures, jeopardizing the delicate balance of orderly marketing in the region.

Therefore, given the continued demonstrated need for supplemental supplies in the Appalachian and Southeast orders, this decision finds it appropriate for handlers providing the marketwide service of obtaining supplemental milk to receive adequate transportation cost reimbursement, reflective of current market conditions. Accordingly, this decision proposes to amend the TCBF provisions to reflect current transportation cost factors and increase the assessment rates charged in order to generate funds needed, as described in Proposals 1 and 2.

TCBF provisions using a MRF with a fuel cost adjustor were adopted in 2006 and have not been updated since their adoption. Hearing evidence shows that in the 16 subsequent years, transportation costs have increased and are no longer adequately reflected in the provisions. The three main components that determine a transportation credit payment are: mileage rate factor, reimbursable miles, and eligible milk. This decision proposes changes to the mileage rate and reimbursable miles components, as well as the mandatory payment months and maximum assessment rates.

Mileage Rate Factor

The MRF contains five components, four of which this decision recommends be amended: reference diesel fuel price, reference haul cost, reference truck fuel use, and reference load size. The average diesel fuel cost factor was not proposed to be amended in this proceeding and will remain the simple average for the most recent four weeks of diesel prices for the Lower Atlantic and Gulf Coast Districts, as announced by the U.S. Department of Energy, Energy Information Administration.

Reference Diesel Fuel Price

The current transportation credit provisions contain a reference diesel fuel price of $1.42 per gallon, which was adopted in 2006 and represented relatively stable EIA-announced regional diesel fuel prices between October and November 2003 (79 FR 12995). Since that time, the record indicates diesel fuel prices have increased. In the three most recent years (2020–2022), the annual average price of diesel in the Lower Atlantic region was $2.480, $3.174, and $4.920 per gallon.[3] Similar cost increases were also seen in the Gulf Coast region. Proponents advanced a reference diesel fuel price of $2.26 per gallon, representing the EIA average of the two regions during May through early November 2020. EIA-announced diesel fuel prices were relatively stable during this time and corresponds to the DCMA-surveyed supplemental hauling costs entered into evidence and used to justify the proposed base haul rate.

This decision proposes a reference diesel fuel price of $2.26 per gallon. As the milage rate calculation accounts for current fuel costs through the average fuel cost calculation, it is appropriate to update the reference diesel fuel price to reflect more current marketing conditions. Moreover, as will be discussed, this time period corresponds to the non-fuel related costs that would be reimbursed through the proposed base haul rate.

Reference Haul Cost

Evidence reveals non-fuel costs, such as, but not limited to, purchasing and maintaining equipment, labor, benefits, and overhead, which are represented in the reference haul cost (currently $1.91 per loaded mile), have increased substantially. While monthly variability in diesel fuel prices is captured in the mileage rate factor, changes in non-fuel related costs are not captured and have not been updated since 2006, which was based on 2003 data (79 FR 12995). The proponents propose increasing the base haul rate to $3.67 per loaded mile. DCMA member costs were entered into the record based on a survey of costs for 2,951 supplemental loads that were charged to its cooperative members from September through October 2020. During that time, the survey average base haul rate per loaded mile was $3.67, representing an average distance of 818 miles and an average load size was 49,700. Several witnesses testified to the increases in transportation costs, a large portion being non-fuel related costs.

Based on record evidence this decision proposes to adopt a base haul rate of $3.67 per loaded mile. This rate more accurately reflects current costs incurred to deliver supplemental milk to the southeastern region. Ensuring adequate transportation cost relief is appropriate to ensure Class I demand of the region continues to be met.

Reference Truck Fuel Use

The reference truck fuel use assumption (adopted in 2006), which represents the average number of miles traveled per gallon of fuel use in transporting milk, is currently 5.5. Record evidence indicates truck fuel economy has improved. Evidence indicates the most current published Department of Transportation combination truck fuel economy data (2019) shows an average MPG fuel use of 6.0478. Proponents entered additional information on fuel economy gains through 2022 to estimate a current fuel economy rate of 6.1770 MPG and proposed a rate of 6.2 MPG. This decision proposes to adopt a 6.2 MPG fuel consumption rate. This slightly higher rate would result in a lower TCBF payment, promoting efficiencies and discouraging uneconomic movements of milk.

Reference Load Size

The current TCBF reference load size is 48,000 pounds. However, data entered into the record indicates tanker load sizes have increased. DCMA survey data indicate an average load size on supplemental milk supplies was 49,700 pounds. This decision finds 49,700 pounds a reasonable reference load size. Slightly higher reference truck fuel use (6.2 MPG) and reference load size (49,700 pounds) assumptions would serve as precautionary measures to decrease the likelihood TCBF payments would be in excess of actual costs incurred.

Reimbursable Miles

Also under consideration in this proceeding is amending the miles eligible to receive a TCBF payment. Currently, the first 85 miles of a supplemental milk shipment is not eligible for a TCBF payment. Proponents seek to change the ineligibility to a percentage basis, 15 percent of the miles shipped, making 85 percent of miles eligible for a TCBF payment. DCMA survey data indicate an average haul on its supplemental milk shipments of 818 miles. Under current TCBF provisions,

[3] Official Notice *https://www.eia.gov/petroleum/gasdiesel/.*

the first 85 miles did not receive a TCBF payment, meaning those average supplemental loads received payment on 733 miles, or 89.6 percent of miles traveled. A closer haul, for example 409 miles, would receive payment on 324 miles (79 percent of miles traveled). Under the proposed changes, both scenarios would receive payment on 85 percent of miles traveled.

The analysis indicates a flat 85-mile exemption penalizes shorter milk hauls, which should instead be encouraged as the more efficient movement. Moving to a percentage exemption would establish more equitable treatment of long and short hauls, and consequently encourage more efficient supplemental milk deliveries. Therefore, this decision proposes to adopt a 15 percent mileage exemption, which could be adjusted by the market administrator if requested and found appropriate after an investigation.

Below is an example of the TCBF MRF calculation given the recommended provisions discussed above:

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EIA Weekly Retail On-Highway Diesel Fuel Prices [2]

	Lower Atlantic	Gulf Coast
3/27/2023	4.087	3.882
4/3/2023	4.078	3.887
4/10/2023	4.055	3.883
4/17/2023	4.056	3.876

Monthly average diesel fuel price [3]**:**		**$ 3.976**	**per gallon**
Reference diesel fuel price:	-	$ 2.260	per gallon
Fuel price difference [4]:		$ 1.716	per gallon
Reference truck fuel use:	÷	6.2	miles per gallon
Fuel cost adjustment factor [5]:		$ 0.277	per loaded mile
Reference haul cost:	+	$ 3.670	per loaded mile
Fuel-adjusted haul cost [6]:		$ 3.947	per loaded mile
Reference load size:	÷	497	cwt
May 2023 Mileage Rate Factor [7]**:**		**$ 0.00794**	**dollars per cwt per mile**

1 As announced on April 19, 2023, with the Announcement of Advanced Class Prices.

2 Dollars per gallon. Reported every Monday by the Energy Information Administration of the U.S. Department of Energy.

3 Calculated by rounding down to three decimal places the average of the four most recent weeks of retail on-highway diesel fuel prices for the Lower Atlantic and Gulf Coast EIA regions combined prior to the Advanced Class Price announcement.

4 Calculated by subtracting the reference diesel fuel price of $2.26 per gallon from the calculated average diesel fuel price for the month.

5 Calculated by dividing the fuel price difference by 6.2 miles per gallon fuel use and rounding down to three decimal places.

6 Calculated by adding fuel cost adjustment factor for the month to the reference haul cost of $3.67 per loaded mile.

7 Calculated by dividing the fuel-adjusted haul cost by the number of hundredweights (cwt's) on the reference load size (49,700 pounds = 497 cwt's) and rounding down to five decimal places.

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Payment Months

Testimony was received regarding a proposal to change February from a mandatory to a discretionary TCBF payment month. Under current provisions, TCBF payments are mandatory for the months of January, February, and July through December. Payments may be made for the month of June, if requested by stakeholders and found appropriate by the market administrator to ensure an adequate supply of milk for fluid use. Proponents contend making February a discretionary payment month would allow TCBF monies to be used when supplemental milk supplies are most needed. Data entered into the record demonstrate how payments from the TCBF in the Southeast FMMO often exceed assessments, resulting in payment proration for a significant number of payment months. This decision proposes to change February to a discretionary payment month to allow funds that would have been paid during the month to instead be available to pay in later months, thus lowering the frequency and/or degree of prorated payments. Stakeholders would have the ability to petition the market administrator to make February a payment month if determined TCBF monies were needed to ensure an adequate Class I supply.

TCBF Assessment Rates

If there are often insufficient funds to pay TCBF claims, the provisions fall short of providing for more orderly milk supplies to meet Class I needs. The maximum allowable TCBF assessment rates in the Appalachian and Southeast FMMOs are $0.15 and $0.30 per cwt, respectively. The assessments are collected every month on Class I pooled milk. Both FMMOs use the same formulas for determining payments.

The record reveals under the current TCBF provisions, the assessments collected in the Southeast FMMO are routinely prorated because of the larger volumes and greater distances supplemental milk travels to supply its Class I demand. The lowest proration in the past 14 years was in October 2022, when Southeast FMMO TCBF payments were prorated to 25.9 percent of claims because of lack of funds, despite the assessment level being set at its maximum, $0.30 per cwt.

Conversely, in the Appalachian FMMO, where in-area production supplies a higher percentage of Class I demand and less supplemental milk is needed, the current assessment level is $0.07 per cwt, which is less than the maximum allowable rate of $0.15 per cwt. This rate has been adequate to make full payment on eligible milk shipments in recent years.

Analysis of the proposed provisions indicate adoption would result in higher payments from the TCBF. The record indicates the assessment levels needed to pay claims based on the proposed TCBF provisions could be as high as $0.18 per cwt and $0.88 per cwt in the Appalachian and Southeast FMMOs, respectively. Therefore, this decision proposes to increase the maximum allowable TCBF assessment rates to ensure adequate funds and reduce the need to prorate payments. Specifically, this decision proposes to adopt maximum TCBF assessment rates of $0.30 per cwt and $0.60 per cwt in the Appalachian and Southeast FMMOs, respectively. The rates should ensure adequate funds to make full payments on eligible shipments, or lessen the instances of prorated payments, particularly in the regularly short Southeast. There was no opposition at the hearing to the proposed assessments rates; further data supports these maximum rates as reasonable starting points. The market administrator maintains the authority to evaluate collections and lower assessment rates if warranted.

Distributing Plant Delivery Credits

Promoting efficient, orderly milk movements to make certain Class I demand is met is an objective of the FMMO program. The hearing record details the unique marketing conditions of the southeastern region and the difficulty in obtaining supplies to meet Class I demand. As detailed above, the situation is not new; the region has used transportation assistance provisions for supplemental milk supplies to ensure Class I demand is met for decades. Just as handlers delivering supplemental milk to meet Class I demand provide a marketwide service, the same is true of handlers ensuring regular milk supplies are delivered to Class I plants in the milk deficit southeastern region.

Currently, no provisions within the Appalachian, Florida or Southeast FMMOs provide transportation assistance for the region's regular supply, even though this supply is a vital piece of meeting Class I demand. As discussed in detail previously, plant closures, the reduction of in-area milk production, and higher transportation costs which have impacted the region's supplemental milk supplies have also impacted its regular milk supplies. Without some transportation cost assistance, the record indicates the milk supply deficit in the region will continue, most likely at an accelerated rate, putting more pressure on supplemental supplies to meet Class I demand. This is not only costly but puts increased pressure and strain on local dairy farmers, as revealed in the hearing record. Finding available supplemental supplies depends on many factors, such as the availability of milk in other markets, driver and truck availability for longer, supplemental hauls, and transportation costs.

Cooperative handler witnesses testified regarding the difficulty of obtaining and maintaining over-order premiums to recoup increased transportation costs. Consequently, as described in the hearing record, cooperative producer-members whose milk is a regular supply to the market are bearing the cost burden of the marketwide service provided by their cooperative through an additional deduction on their milk check.

Both cooperative handlers and independent Class I handlers testified the most efficient deliveries to meet Class I demand are from more local milk supplies. As the FMMOs seek to provide for efficient milk movements, such deliveries should be encouraged. The entire market benefits from ensuring Class I demand is met and the responsibility for bearing the cost should not fall solely to the handlers, primarily cooperative handlers, who provide this marketwide service.

The hearing record clearly demonstrates the unique supply/demand imbalance in the southeast region. Similar market conditions do not exist in the eight FMMOs outside the region. Consequently, the marketing conditions of the southeastern region warrant unique provisions to ensure Class I demand is met.

The record reveals that milk from both within and nearby the marketing areas is considered part of the region's consistent, regular supply. Accordingly, this decision recommends transportation assistance for milk that serves the region's Class I demand year-round basis on the Appalachian, Florida and Southeast FMMOs. Therefore, this decision proposes to adopt Proposals 3 and 5, with slight modification, and Proposal 4.

There are four main components of the proposed DPDC provisions, which will be addressed below: eligibility, payment rates, assessment levels, and allowance for market administrator discretion. Taken together, these provisions should assist in efficient, more orderly deliveries of year-round Class I milk supplies of the marketing areas.

Proposals 3, 4 and 5, as proposed by DCMA, would allow DPDC payments on milk deliveries from counties where DCMA members procure year-round milk supplies. For the Appalachian FMMO, this would be counties comprising the marketing areas of the Appalachian and Southeast FMMOs, plus specified counties in Virginia and West Virginia. For the Florida FMMO, DPDC eligible milk shipments could come from the counties comprising the Florida FMMO and specified counties in Georgia. In the Southeast FMMO, DPDC eligible milk shipments could come from the counties comprising the Southeast and Appalachian marketing areas.

As raised by Prairie Farms in testimony and post-hearing brief, there are additional nearby counties from which the cooperative procures year-round Class I milk supplies for the Southeast FMMO that would not be eligible for DPDC payments under the DCMA proposals. While Prairie Farms offered APCs as an alternative, they indicated the DPDC provisions would be acceptable if they were modified to include deliveries from adjacent states.

The record of this proceeding supports extending eligibility to some additional counties to provide equitable transportation cost assistance for milk shipments that are part of the year-round supply. However, the need for equitable treatment must be balanced with preventing milk further from the marketing area from becoming eligible for DPDC payments as it would undermine the transportation assistance the provisions are attempting to provide for local, more efficient milk deliveries.

While this decision recommends elimination of the TCBF 85-mile exemption and moving to a percentage deduction, the record indicates 85 miles has been accepted by the industry as representing the local haul that is the producer's responsibility. Based on evidence in the record, this decision finds it reasonable that milk deliveries serving the Class I needs of the Appalachian and Southeast FMMOs from counties within 85 miles of the respective marketing area boundaries be eligible for DPDC payments. The additional counties eligible under this expanded mileage range should increase the producer milk receipts eligible to receive a DPDC payment to include a majority of the year-round milk supplies of the two marketing areas, address the concern raised by Prairie Farms, and promote more orderly, efficient marketing of those deliveries.

Under the DPDC provisions originally proposed by DCMA, an analysis indicates approximately 76, 99, and 44 percent of the producer milk receipts delivered to pool plants would be eligible to receive DPDCs in the Appalachian, Florida and Southeast FMMOs. The DPDC provisions recommended in this decision, including the additional counties for the Appalachian and Southeast FMMOs, would increase the eligible producer milk receipts to 86 and 56 percent, respectively.

Specifically, for the Appalachian FMMO, milk from counties within the Appalachian and Southeast marketing areas, plus specified counties generally within 85 miles of the marketing area boundary would be eligible to receive a DPDC. Therefore, this decision recommends a modified Proposal 3 to extend eligibility to milk shipments originating from the following counties and cities:

Illinois: Alexander, Bond, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Macon, Marion, Massac, Monroe, Montgomery, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White, and Williamson.

Indiana: Bartholomew, Boone, Brown, Clay, Clinton, Dearborn, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Lawrence, Madison, Marion, Monroe, Montgomery, Morgan, Ohio, Owen, Parke, Putnam, Randolph, Ripley, Rush, Shelby, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Warren, and Wayne.

Kentucky: Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

Maryland: Allegany, Frederick, Garrett, Montgomery, and Washington.

Ohio: Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Miami, Montgomery, Morgan, Perry, Pickaway, Pike, Preble, Ross, Scioto, Vinton, Warren, and Washington.

Pennsylvania: Bedford, Fayette, Franklin, Fulton, Greene, and Somerset.

Virginia counties: Albemarle, Amelia, Appomattox, Arlington, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Isle Of Wight, James City, King And Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Nelson, New Kent, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York.

Virginia cities: Alexandria City, Charlottesville City, Chesapeake City, Colonial Heights City, Emporia City, Fairfax City, Falls Church City, Franklin City, Fredericksburg City, Hampton City, Hopewell City, Manassas City, Manassas Park City, Newport News City, Norfolk City, Petersburg City, Poquoson City, Portsmouth City, Richmond City, Suffolk City, Virginia Beach City, Williamsburg City, and Winchester City.

West Virginia: Barbour, Berkeley, Boone, Braxton, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Mason, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood, and Wyoming

For the Southeast FMMO, milk from counties within the Southeast and Appalachian marketing areas, plus specified counties generally within 85 miles of the marketing area boundary would be eligible to receive a DPDC. Therefore, this decision recommends a modified Proposal 5 to extend eligibility to milk shipments originating from the following counties and cities:

Illinois: Alexander, Bond, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Monroe, Montgomery, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Washington, Wayne, White, Williamson, Calhoun, Greene, Jersey, Macoupin, Madison, and Wabash.

Kansas: Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey, Crawford, Douglas, Elk, Franklin, Greenwood, Jefferson, Johnson, Labette, Leavenworth, Linn, Lyon, Miami, Montgomery, Neosho, Osage, Shawnee, Wabaunsee, Wilson, Woodson, and Wyandotte.

Missouri: Audrain, Bates, Benton, Boone, Callaway, Camden, Cass, Clay, Cole, Cooper, Franklin, Gasconade, Henry, Hickory, Howard, Jackson, Jefferson, Johnson, Lafayette, Lincoln, Maries, Miller, Moniteau, Montgomery, Morgan, Osage, Pettis, Phelps, Pike, Platte, Pulaski, Ray, St Charles, St Clair, Ste Genevieve, St Louis, St. Louis City, Saline, and Warren.

Oklahoma: Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Craig, Creek, Delaware, Haskell, Hughes, Latimer, Le Flore, McCurtain, Mcintosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Sequoyah, Tulsa, Wagoner, and Washington.

Texas: Anderson, Angelina, Bowie, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Franklin, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Kaufman, Lamar, Liberty, Marion, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood.

The record does not reflect there are additional counties that supply year-round Class I milk to the Florida marketing area, other than the Georgia counties DCMA proposed be included. Therefore, this decision proposes to adopt Proposal 4 without modification.

This decision also recommends that handlers and cooperatives sourcing year-round milk supplies to meet Class I needs from additional counties in the states listed above could request eligibility for DPDC. If the market administrator finds those counties provide milk to the Class I market on a year-round basis, they would be eligible to receive a DPDC. Accounting for the eligibility expansion to the counties listed above and providing flexibility for additional counties within those states to be eligible, if requested and approved, should address the objections presented by Prairie Farms.

DCMA witnesses testified that it was not the intention of its proposals to allow the milk outside the marketing area that is eligible for the DPDC to also receive payment from the TCBF. This decision recommends limitations in the eligibility requirements for the TCBF so producer milk originating from the counties listed above that are outside of the Appalachian and Southeast FMMO are only eligible to receive either a DPDC or TCBF payment.

Proposals 3, 4 and 5 also contain a provision allowing milk shipments from pool supply plants to pool distributing plants to be eligible for DPDC payments. The record reflects that a pool supply plant on the Appalachian order assembles milk from smaller farms at the plant and then ships the assembled larger tanker load of milk to pool distributing plants regulated by the order. This supply plant provides milk shipments to meet the demands of the Appalachian order's pool distributing plants and should be eligible for a DPDC for the transportation cost incurred between the two plants. While testimony was only offered regarding a pool supply plant on the Appalachian FMMO, the DCMA proposals contain the same provision for the Southeast and Florida FMMOs. As this decision seeks to provide transportation assistance to handlers providing the marketwide service of meeting Class I demand in all three FMMOs, it is appropriate to allow these deliveries from pool supply plants to pool distributing plants to be eligible for DPDC payments.

Not unlike the recommended TCBF provisions, this decision recommends DPDCs provide reimbursement on 85 percent of the delivery mileage. The proposed regulations would allow the market administrator to adjust the mileage range to between 75 and 95 percent if requested by stakeholders and warranted by market conditions. Such an adjustment could be warranted, for example, if the combination of Class I differential adjustments and DPDC payments were found to be reimbursing in excess of transportation costs. Granting the market administrator authority to adjust the mileage rate would provide a safeguard against payments in excess of costs.

This decision proposes to adopt DPDC payment rates identical to the TCBF, which have been detailed above. The record indicates the similarity in transportation cost factors between supplemental and year-round supplies. Therefore, this decision finds it appropriate to recommend identical payment provisions.

The record contains information regarding the funding needed to make DPDC payments on eligible year-round milk supplies. Establishing maximum assessment rates and allowing the market administrator flexibility to lower those rates is an efficient way to administer the provisions, as has been demonstrated in the administration of the current Appalachian TCBF. As such, this decision proposes to adopt DPDC maximum assessments of $0.60, $0.85, and $0.50 per cwt, in the Appalachian, Florida, and Southeast FMMOs, respectively. Proponents provided data on the record for initial assessment levels. Should the DPDC be adopted, the market administrator will evaluate market data to determine an adequate initial assessment rate which would be announced on or before the 23rd of the month preceding implementation.

Finally, this decision proposes to include DPDC provisions to authorize the market administrator to monitor milk movements and DPDC claims to disqualify shipments from eligibility if, after an investigation, it was determined the shipments indicate persistent and pervasive uneconomic milk movements. Uneconomic milk movements run counter to the program's objectives to provide for more orderly marketing and encourage efficient milk movements. Such movements should be discouraged and should not receive the benefit of transportation cost assistance offered through DPDCs. Therefore, this decision recommends the proposed oversight provisions.

In summary, the chronic milk supply problem in the Appalachian, Florida, and Southeast orders is well documented and this decision recommends adoption of a series of amendments and new provisions to provide transportation assistance to handlers who provide the marketwide service of meeting the markets' Class I demand. Through these recommendations, most milk delivered to a pool distributing plant (both supplemental and year-round supplies) would be eligible for one type of transportation payment. This decision does not support adoption of Proposal 9 and 10 that would remove the location and delivery eligibility requirements of the current TCBF provisions, thus making milk eligible to receive both credits. Accordingly, Proposals 9 and 10 are not recommended for adoption.

This decision does not recommend adoption of Proposal 11 which would prohibit diversions on milk receiving any form of transportation assistance from the Appalachian, Florida, and Southeast FMMOs. The Appalachian and Southeast FMMOs already contain this prohibition on milk receiving TCBF payments. This rulemaking is considering whether to extend the prohibition to milk receiving DPDCs.

The record indicates that while a vast majority of the milk regulated by the three Southeastern FMMOs is delivered to pool plants, there are instances, even given the region's chronic milk shortage, when milk is not needed by pool distributing plants and is instead delivered to nonpool plants. Witnesses for cooperatives who would be eligible to receive DPDC payments testified that the ability to pool diversions provides for the orderly disposition of year-round milk supplies regulated by the Orders.

The record reveals that pool distributing plants' demand fluctuates on a weekly, monthly, and annual basis for many reasons, such as weekends, holidays, or the closing of schools for the summer. Previous FMMO rulemakings that have amended or established diversion limits discuss the appropriateness of allowing for the milk of producers who are consistent and reliable suppliers serving the Class I needs of the market to be pooled and priced even when that milk is not immediately needed for Class I use. FMMOs allow milk diverted to nonpool plants to be pooled and priced by the Order, to ensure its orderly and efficient disposition.

By design, the recommended DPDC provisions establish criteria for identifying consistent, year-round milk supplies eligible to receive a payment. This decision has discussed at length the need for transportation assistance in the region to ensure an adequate supply of Class I milk. Diversion limits are one feature that provides for the orderly disposition of this consistent supply of Class I milk. Prohibiting the diversion of milk receiving a DPDC would not provide for more orderly marketing and would interfere with the orderly disposition of the region's consistent Class I milk supplies. Accordingly, this decision does not recommend adoption of Proposal 11.

This decision does not find that adoption of Proposals 1, 2, 3, 4 and 5 would have a negative competitive impact on pool distributing plant handlers in the three Southeastern Orders. If adopted, the proposed maximum assessment rates for the TCBF and DPDC combined would be $0.90, $1.10, and $0.85 per cwt, in the Appalachian, Florida and Southeast FMMOs, respectively. Evidence shows packaged milk coming into the region from common supply points would incur costs—a combination of applicable Class I differentials and transportation costs—in excess of the combined TCBF and DPDC assessments on Class I milk. Thus, adoption of the maximum assessment rates would not impact competitive relationships among handlers who supply the region with fluid milk products.

To compare how the proposed assessments could impact the wholesale price of milk used in Class I products, the proposed change in assessment levels was analyzed. The difference in current assessment levels and the maximum assessment levels proposed in this decision is $0.83, $1.10, and $0.55 per cwt, in the Appalachian, Florida and Southeast FMMOs, respectively. The differences per cwt converted to gallons are $0.071, $0.095, and $0.047 per cwt, in the Appalachian, Florida and Southeast FMMOs, respectively. The extent to which the increased Class I assessments would pass through to retail milk prices is unknown. Compared to average regional retail prices for conventional whole milk in 2022, retail prices would increase by 1 to 3 percent if the total increase were fully passed through.

Some witness testimony and post-hearing briefs argued that because of declining fluid milk sales, FMMOs should not be amended in a way that would raise consumer prices. While impact on consumers is important to consider, it must be balanced with the reality that supplying the southeastern U.S. with milk to meet consumer Class I demand is costly. This record details how transportation costs have increased and handlers and cooperatives supplying the Class I market have been unable to recoup those costs in the marketplace. FMMOs are not providing for orderly marketing if supplies of the Class I market—in this case cooperatives who supply more than 80 percent of the region's milk—are asked to continue to serve the Class I market without any practical way to cover costs of moving milk to service the Class I market. Such a chronic situation, as documented by this hearing record, does not serve producers or consumers, if in the long run cooperative producers no longer service the Class I market and consumers are ultimately faced with increased costs due to the necessity of out-of-area milk being hauled longer distances to supply fluid milk in the grocery store.

Emergency Procedures

DCMA requested this rulemaking be conducted on an emergency basis, warranting omission of a recommended decision. Numerous witnesses testified regarding why the unique marketing conditions of the southeastern region, necessitating supplemental milk supplies from further distances in order to fill the gap between the region's increasing Class I demand and declining in-area milk production, are cause for emergency rulemaking measures. As discussed previously this decision, the record indicates transportation costs for Class I milk deliveries in the southeastern region of the U.S. have risen significantly and are being borne primarily by the cooperatives that supply the market.

The overarching issue in this proceeding is determining what combination of current and possibly new transportation assistance provisions would best address the chronic milk deficit problem in the region. In doing so, this decision recommends modifications to the current TCBF provisions of the Appalachian and Southeast FMMOs to reflect the current transportation cost conditions for supplemental Class I milk deliveries into the marketing areas. This decision also finds it appropriate to establish new DPDCs in the Appalachian, Florida, and Southeast FMMOs to provide transportation cost assistance for milk deliveries within and nearby the marketing areas. In making this recommendation, the decision recommends modifications to what was originally proposed by DCMA. The decision also denies adoption of four alternative proposals submitted by industry stakeholders. As such, it is appropriate to issue a recommended decision and allow public comments on the recommended amendments before a producer vote on the proposed amended orders.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings, and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings, conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the claims to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

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

The following findings are hereby made with respect to the aforenamed marketing agreements and orders:

a. The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

b. The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable with respect to the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreements and the orders are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

c. The proposed marketing agreements and the orders will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing have been held.

d. All milk and milk products handled by handlers, as defined in the marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Recommended Marketing Agreements and Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following orders regulating the handling of milk in Appalachian, Florida, and Southeast marketing areas are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

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

Milk marketing orders.

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. Amend § 1005.32 by revising paragraph (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) through (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 paragraph (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)(7), 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)(8), 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. * * *

* * * * *

(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 percentage points, up to twenty-five percent (25%) or decrease it by as much as ten percentage points, to a minimum of five percent (5%). Before making such a finding, the market administrator shall notify all handlers in the market that a revision is being considered and invite written data, comments, 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) in 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 before the undesignated center heading ''Administrative Assessment and Marketing Service Deduction'' to read as follows:

§ 1005.84 Distributing plant delivery credits.

(a) *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 § 1005.44 by a per hundredweight assessment rate of $0.55 and thereafter not greater than $0.60 or such lesser amount 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) *Assessment rate announcement.* 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 as defined in § 1005.7(c) or (d), 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) *Eligible milk.* Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received directly from dairy farms at a pool distributing plant as producer milk subject to the following conditions:

(i) The farm on which the milk was produced is located within the specified marketing areas of the order in this part or the marketing area of Federal Order 1007 (7 CFR part 1007).

(ii) The farm on which the milk was produced is located in the following counties:

(A) *Illinois:* Alexander, Bond, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Macon, Marion, Massac, Monroe, Montgomery, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, St Clair, Saline, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White, and Williamson.

(B) *Indiana:* Bartholomew, Boone, Brown, Clay, Clinton, Dearborn, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Lawrence, Madison, Marion, Monroe, Montgomery, Morgan, Ohio, Owen, Parke, Putnam, Randolph, Ripley, Rush, Shelby, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Warren, and Wayne.

(C) *Kentucky:* Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

(D) *Maryland:* Allegany, Frederick, Garrett, Montgomery, and Washington.

(E) *Ohio:* Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Miami, Montgomery, Morgan, Perry, Pickaway, Pike, Preble, Ross, Scioto, Vinton, Warren, Washington.

(F) *Pennsylvania:* Bedford, Fayette, Franklin, Fulton, Greene, and Somerset.

(G) *Virginia counties:* Albemarle, Amelia, Appomattox, Arlington, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Isle Of Wight, James City, King And Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Nelson, New Kent, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, York.

(H) *Virginia cities:* Alexandria City, Charlottesville City, Chesapeake City, Colonial Heights City, Emporia City, Fairfax City, Falls Church City, Franklin City, Fredericksburg City, Hampton City, Hopewell City, Manassas City, Manassas Park City, Newport News City, Norfolk City, Petersburg City, Poquoson City, Portsmouth City, Richmond City, Suffolk City, Virginia Beach City, Williamsburg City, and Winchester City.

(I) *West Virginia:* Barbour, Berkeley, Boone, Braxton, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Mason, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood, and Wyoming.

(iii) The Market Administrator may include additional counties from the states listed in paragraph (e)(1)(ii) of this section upon the request of a pool handler and provision of satisfactory proof that the county is a source of regular supply of milk to order distributing plants.

(iv) Producer milk eligible for a payment under this section cannot be eligible for payment from the transportation credit balancing fund as specified in § 1005.82(c)(2).

(v) 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.

(f) *Credit computation.* 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 paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(1)(ii) 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 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 subpart (i) of this sub-paragraph by the mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this sub-paragraph 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) *Mileage percentage rate adjustment.* 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)(i) and (f)(2)(i) of this section to the actual miles used for computing distributing plant delivery 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) *Oversight of milk movements.* 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 demand 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 of 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.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

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

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

■ 9. Amend § 1006.30 by:

■ a. Redesignating paragraphs (a)(5) and (6) as (a)(7) and (8);

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

■ c. Adding paragraph (c)(3).

The additions read as follows:

§ 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.

* * * * *

■ 10. 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 and 1006.31 and paragraph (a) of this section, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

■ 11. Add § 1006.84 before the undesignated center heading ''Administrative Assessment and Marketing Service Deduction'' to read as follows:

§ 1006.84 Distributing plant delivery credits.

(a) *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 § 1005.84(b) of this chapter. 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 or such lesser amount 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) *Assessment rate announcement.* 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 as defined in § 1006.7(c) or (d), 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) *Eligible milk.* 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.

(f) *Credit computation.* 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 paragraph (h) of this section;

(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 paragraph (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) 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) *Mileage percentage rate adjustment.* 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)(i) and (f)(2)(i) to of this section the actual miles used for computing 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) *Oversight of milk movements.* 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.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

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

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

■ 13. 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) through (9) of this section.

* * * * *

■ 14. Amend § 1007.32 by revising paragraph (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) and any adjustments to transportation credit requests as reported pursuant to § 1007.30(a)(7) through (9) of this section.

* * * * *

■ 15. 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. * * *

* * * * *

■ 16. Amend § 1007.82 by:
■ a. Revising the first sentence of paragraph (a)(1), the first sentence of paragraph (b), and paragraph (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) 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)(7), 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)(8), 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. * * *

* * * * *

(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 (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, (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 percentage points (10%) up to twenty-five percent (25%) or decrease it by as much as ten percentage points (10%), to a minimum of five percent (5%). Before making such a finding, the market administrator shall notify all handlers in the market that a revision is being considered and invite written data, comments, 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.

■ 17. 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;

* * * * *

■ 18. Add § 1007.84 before the undesignated center heading ''Administrative Assessment and

Marketing Service Deduction'' to read as follows:

§ 1007.84 Distributing plant delivery credits.

(a) *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 § 1007.44 by a per hundredweight assessment rate of $0.45 and thereafter not greater than $0.50 or such lesser amount 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) *Assessment rate announcement.* 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 as defined in § 1007.7(c) or (d), 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) *Eligible milk.* Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received directly from dairy farms at a pool distributing plant as producer milk subject to the following conditions:

(i) The farm on which the milk was produced is located within the specified marketing areas of the order in this part or the marketing area of Federal Order 1005 (7 CFR part 1005).

(ii) The farm on which the milk was produced is located in the following counties in the State of:

(A) *Illinois:* Alexander, Bond, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Monroe, Montgomery, Perry, Pope, Pulaski, Randolph, Richland, St Clair, Saline, Union, Washington, Wayne, White, Williamson, Calhoun, Greene, Jersey, Macoupin, Madison, and Wabash.

(B) *Kansas:* Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey, Crawford, Douglas, Elk, Franklin, Greenwood, Jefferson, Johnson, Labette, Leavenworth, Linn, Lyon, Miami, Montgomery, Neosho, Osage, Shawnee, Wabaunsee, Wilson, Woodson, and Wyandotte

(C) *Missouri:* Audrain, Bates, Benton, Boone, Callaway, Camden, Cass, Clay, Cole, Cooper, Franklin, Gasconade, Henry, Hickory, Howard, Jackson, Jefferson, Johnson, Lafayette, Lincoln, Maries, Miller, Moniteau, Montgomery, Morgan, Osage, Pettis, Phelps, Pike, Platte, Pulaski, Ray, St Charles, St Clair, Ste Genevieve, St Louis, St. Louis City, Saline, and Warren

(D) *Oklahoma*: Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Craig, Creek, Delaware, Haskell, Hughes, Latimer, Le Flore, McCurtain, Mcintosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Sequoyah, Tulsa, Wagoner, and Washington

(E) *Texas:* Anderson, Angelina, Bowie, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Franklin, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Kaufman, Lamar, Liberty, Marion, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood.

(iii) The Market Administrator may include additional counties from the states listed in paragraph (e)(1)(ii) of this section upon the request of a pool handler and provision of satisfactory proof that the county is a source of regular supply of milk to order distributing plants.

(iv) Producer milk eligible for a payment under this section cannot be eligible for payment from the transportation credit balancing fund as specified in § 1007.82(c)(2).

(v) 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.

(f) *Credit computation.* 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 paragraph (h) of this section;

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

(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 paragraph (h) of this section;

(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) *Mileage percentage rate adjustment.* 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 to the actual miles used for computing distributing plant delivery 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) *Oversight of milk movements.* 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 demand 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.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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