

PARTS 1002-1004 [RESERVED]**PART 1005—MILK IN THE
APPALACHIAN MARKETING AREA****Subpart—Order Regulating Handling****GENERAL PROVISIONS****Sec.**

1005.1 General provisions.

DEFINITIONS

1005.2 Appalachian marketing area.
 1005.3 Route disposition.
 1005.4 Plant.
 1005.5 Distributing plant.
 1005.6 Supply plant.
 1005.7 Pool plant.
 1005.8 Nonpool plant.
 1005.9 Handler.
 1005.10 Producer-handler.
 1005.11 [Reserved]
 1005.12 Producer.
 1005.13 Producer milk.
 1005.14 Other source milk.
 1005.15 Fluid milk product.
 1005.16 Fluid cream product.
 1005.17 [Reserved]
 1005.18 Cooperative association.
 1005.19 Commercial food processing establishment.

HANDLER REPORTS

1005.30 Reports of receipts and utilization.
 1005.31 Payroll reports.
 1005.32 Other reports.

CLASSIFICATION OF MILK

1005.40 Classes of utilization.
 1005.41 [Reserved]
 1005.42 Classification of transfers and diversions.
 1005.43 General classification rules.
 1005.44 Classification of producer milk.
 1005.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1005.50 Class prices, component prices, and advanced pricing factors.
 1005.51 Class I differential, adjustments to Class I prices, and Class I price.
 1005.52 Adjusted Class I differentials.
 1005.53 Announcement of class prices, component prices, and advanced pricing factors.
 1005.54 Equivalent price.

UNIFORM PRICES

1005.60 Handler's value of milk.
 1005.61 Computation of uniform prices.
 1005.62 Announcement of uniform prices.

PAYMENTS FOR MILK

1005.70 Producer-settlement fund.
 1005.71 Payments to the producer-settlement fund.
 1005.72 Payments from the producer-settlement fund.
 1005.73 Payments to producers and to cooperative associations.
 1005.74 [Reserved]
 1005.75 Plant location adjustments for producer milk and nonpool milk.
 1005.76 Payments by a handler operating a partially regulated distributing plant.
 1005.77 Adjustment of accounts.
 1005.78 Charges on overdue accounts.

MARKETWIDE SERVICE PAYMENTS

1005.80 Transportation credit balancing fund.
 1005.81 Payments to the transportation credit balancing fund.
 1005.82 Payments from the transportation credit balancing fund.
 1005.83 Mileage rate for the transportation credit balancing fund.
 1005.84 Distributing plant delivery credits.

**ADMINISTRATIVE ASSESSMENT AND MARKETING
SERVICE DEDUCTION**

1005.85 Assessment for order administration.
 1005.86 Deduction for marketing services.

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**Subpart—Order Regulating
Handling****GENERAL PROVISIONS****§ 1005.1 General provisions.**

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1005. In this part 1005, all references to sections in part 1000 refer to part 1000 of this chapter.

DEFINITIONS**§ 1005.2 Appalachian marketing area.**

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is

Agricultural Marketing Service, USDA

§ 1005.7

within any of the listed states or political subdivisions:

GEORGIA COUNTIES

Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

INDIANA COUNTIES

Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Greene, Harrison, Knox, Martin, Orange, Perry, Pike, Posey, Scott, Spencer, Sullivan, Vanderburgh, Warrick, and Washington.

KENTUCKY COUNTIES

Adair, Anderson, Bath, Bell, Bourbon, Boyle, Breathitt, Breckinridge, Bullitt, Butler, Carroll, Carter, Casey, Clark, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Gallatin, Garrard, Grayson, Green, Hancock, Hardin, Harlan, Hart, Henderson, Henry, Hopkins, Jackson, Jefferson, Jessamine, Knott, Knox, Larue, Laurel, Lee, Leslie, Letcher, Lincoln, Madison, Marion, McCreary, McLean, Meade, Menifee, Mercer, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Perry, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Spencer, Taylor, Trimble, Union, Washington, Wayne, Webster, Whitley, Wolfe, and Woodford.

NORTH CAROLINA AND SOUTH CAROLINA

All of the States of North Carolina and South Carolina.

TENNESSEE COUNTIES

Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

VIRGINIA COUNTIES AND CITIES

Alleghany, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Rockingham, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe; and the cities of Bedford, Bristol, Buena Vista, Clifton Forge, Covington, Danville, Galax, Harrisonburg, Lexington, Lynchburg, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, and Waynesboro.

WEST VIRGINIA COUNTIES

McDowell and Mercer.

[64 FR 47960, Sept. 1, 1999, as amended at 70 FR 59223, Oct. 12, 2005]

§ 1005.3 Route disposition.

See § 1000.3.

§ 1005.4 Plant.

See § 1000.4.

§ 1005.5 Distributing plant.

See § 1000.5.

§ 1005.6 Supply plant.

See § 1000.6.

§ 1005.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, a unit of plants as specified in paragraph (e) of this section, or a plant specified in paragraph (g) of this section but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § ___.7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during

the month from dairy farmers and handlers described in §1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area or in the State of Virginia that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator

shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) Any distributing plant other than a plant qualified as a pool plant pursuant to paragraph §1005.7(a) or paragraph (b) of this section or § __.7(b) of any other Federal milk order or §1005.7(e) or §1000.8(a) or §1000.8(e); located within the marketing area as described on May 1, 2006, in §1005.2, from which there is route disposition and/or transfers of packaged fluid milk products in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusion:

(1) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(2) A producer-handler described in §1005.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

Agricultural Marketing Service, USDA

§ 1005.12

(2) An exempt plant as defined in §1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under the order in this part, or such plant has automatic pooling status under such other order; and

(6) That portion of a pool plant designated as a “nonpool plant” that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

[64 FR 47960, Sept. 1, 1999, as amended at 71 FR 25497, May 1, 2006; 71 FR 28249, May 16, 2006]

§ 1005.8 Nonpool plant.

See § 1000.8.

§ 1005.9 Handler.

See § 1000.9.

§ 1005.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants during

the month does not exceed 3 million pounds;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations are the producer-handler’s own enterprise and are operated at the producer-handler’s own risk.

(e) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in §1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to §1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in §1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in §1131.7 of this chapter or §1000.76(a).

[64 FR 47960, Sept. 1, 1999, as amended at 71 FR 25498, May 1, 2006; 75 FR 21160, Apr. 23, 2010]

§ 1005.11 [Reserved]

§ 1005.12 Producer.

(a) Except as provided in paragraph

(b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

§ 1005.13

7 CFR Ch. X (1–1–25 Edition)

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1005.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1005.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1005.13 Producer milk.

Except as provided for in paragraph (e) of this section, *Producer milk* means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of July through December, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of January through June, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) of this chapter and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

Agricultural Marketing Service, USDA

§ 1005.30

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

[64 FR 47960, Sept. 1, 1999, as amended at 70 FR 59223, Oct. 12, 2005; 71 FR 62378; Oct. 25, 2006; 73 FR 14156, Mar. 17, 2008; 73 FR 26315, May 9, 2008; 79 FR 25005, May 2, 2014; 79 FR 26591, May 9, 2014]

§ 1005.14 Other source milk.

See § 1000.14.

§ 1005.15 Fluid milk product.

See § 1000.15.

§ 1005.16 Fluid cream product.

See § 1000.16.

§ 1005.17 [Reserved]

§ 1005.18 Cooperative association.

See § 1000.18.

§ 1005.19 Commercial food processing establishment.

See § 1000.19.

HANDLER REPORTS

§ 1005.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(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;

(7) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1007, for which a transportation credit is requested pursuant to § 1005.82;

(8) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(9) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(10) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(11) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

§ 1005.31

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in §1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(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.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

[64 FR 47960, Sept. 1, 1999, as amended at 89 FR 6403, Feb. 1, 2024]

§ 1005.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to §1005.7 and each handler described in §1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in §1005.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for re-

7 CFR Ch. X (1–1–25 Edition)

ports required by paragraph (a) of this section.

§ 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).

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

[64 FR 47960, Sept. 1, 1999, as amended at 89 FR 6403, Feb. 1, 2024]

CLASSIFICATION OF MILK

§ 1005.40 Classes of utilization.

See §1000.40.

§ 1005.41 [Reserved]

§ 1005.42 Classification of transfers and diversions.

See §1000.42.

§ 1005.43 General classification rules.

See §1000.43.

§ 1005.44 Classification of producer milk.

See §1000.44.

§ 1005.45 Market administrator's reports and announcements concerning classification.

See §1000.45.

CLASS PRICES

§ 1005.50 Class prices, component prices, and advanced pricing factors.

See §1000.50.

§ 1005.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Mecklenburg County, North Carolina, which

Agricultural Marketing Service, USDA

§ 1005.51

is reported in §1000.52. The Class I price shall be the price computed pursuant to §1005.50(a) for Mecklenburg County, North Carolina.

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to §1000.50(a), (b) and (c) using the following adjustments:

State	County/parish	FIPS	Class I price adjustment
GA	CATOOSA	13047	0.60
GA	CHATTOOGA	13055	0.60
GA	DADE	13083	0.60
GA	FANNIN	13111	0.60
GA	MURRAY	13213	0.60
GA	WALKER	13295	0.60
GA	WHITFIELD	13313	0.60
IN	CLARK	18019	0.10
IN	CRAWFORD	18025	0.10
IN	DAVIESS	18027	0.10
IN	DUBOIS	18037	0.10
IN	FLOYD	18043	0.10
IN	GIBSON	18051	0.10
IN	GREENE	18055	0.10
IN	HARRISON	18061	0.10
IN	KNOX	18083	0.10
IN	MARTIN	18101	0.10
IN	ORANGE	18117	0.10
IN	PERRY	18123	0.10
IN	PIKE	18125	0.10
IN	POSEY	18129	0.10
IN	SCOTT	18143	0.10
IN	SPENCER	18147	0.10
IN	SULLIVAN	18153	0.10
IN	VANDERBURGH	18163	0.10
IN	WARRICK	18173	0.10
IN	WASHINGTON	18175	0.10
KY	ADAIR	21001	0.20
KY	ANDERSON	21005	0.40
KY	BATH	21011	0.40
KY	BELL	21013	0.50
KY	BOURBON	21017	0.40
KY	BOYLE	21021	0.40
KY	BREATHITT	21025	0.70
KY	BRECKINRIDGE	21027	0.10
KY	BULLITT	21029	0.10
KY	BUTLER	21031	0.20
KY	CARROLL	21041	0.10
KY	CARTER	21043	0.40
KY	CASEY	21045	0.20
KY	CLARK	21049	0.40
KY	CLAY	21051	0.50
KY	CLINTON	21053	0.50
KY	CUMBERLAND	21057	0.50
KY	DAVIESS	21059	0.10
KY	EDMONSON	21061	0.20
KY	ELLIOTT	21063	0.40
KY	ESTILL	21065	0.40
KY	FAYETTE	21067	0.40
KY	FLEMING	21069	0.40
KY	FRANKLIN	21073	0.10
KY	GALLATIN	21077	0.10
KY	GARRARD	21079	0.40
KY	GRAYSON	21085	0.20
KY	GREEN	21087	0.20
KY	HANCOCK	21091	0.10
KY	HARDIN	21093	0.10
KY	HARLAN	21095	0.50
KY	HART	21099	0.20
KY	HENDERSON	21101	0.10
KY	HENRY	21103	0.10
KY	HOPKINS	21107	0.20
KY	JACKSON	21109	0.70
KY	JEFFERSON	21111	0.10
KY	JESSAMINE	21113	0.40
KY	KNOTT	21119	0.50
KY	KNOX	21121	0.50
KY	LARUE	21123	0.40
KY	LAUREL	21125	0.50
KY	LEE	21129	0.40
KY	LESLIE	21131	0.50
KY	LETCHER	21133	0.50
KY	LINCOLN	21137	0.40
KY	MCCREARY	21147	0.50
KY	MCLEAN	21149	0.40
KY	MADISON	21151	0.40
KY	MARION	21155	0.40
KY	MEADE	21163	0.10
KY	MENIFEE	21165	0.40
KY	MERCER	21167	0.40
KY	MONTGOMERY	21173	0.40
KY	MORGAN	21175	0.40
KY	MUHENBURG	21177	0.20
KY	NELSON	21179	0.10
KY	NICHOLAS	21181	0.40
KY	OHIO	21183	0.20
KY	OLDHAM	21185	0.10
KY	OWEN	21187	0.10
KY	OWSLEY	21189	0.70
KY	PERRY	21193	0.50
KY	POWELL	21197	0.40
KY	PULASKI	21199	0.50
KY	ROCKCASTLE	21203	0.70
KY	ROWAN	21205	0.40
KY	RUSSELL	21207	0.50
KY	SCOTT	21209	0.10
KY	SHELBY	21211	0.10
KY	SPENCER	21215	0.10
KY	TAYLOR	21217	0.20
KY	TRIMBLE	21223	0.10
KY	UNION	21225	0.10
KY	WASHINGTON	21229	0.40
KY	WAYNE	21231	0.50
KY	WEBSTER	21233	0.20
KY	WHITLEY	21235	0.50
KY	WOLFE	21237	0.40
KY	WOODFORD	21239	0.40
NC	ALAMANCE	37001	0.30
NC	ALEXANDER	37003	0.45
NC	ALLEGHANY	37005	0.45
NC	ANSON	37007	0.50
NC	ASHE	37009	0.45
NC	AVERY	37011	0.45
NC	BEAUFORT	37013	0.40
NC	BERTIE	37015	0.20
NC	BLADEN	37017	0.70
NC	BRUNSWICK	37019	0.70
NC	BUNCOMBE	37021	0.45
NC	BURKE	37023	0.45
NC	CABARRUS	37025	0.30
NC	CALDWELL	37027	0.45
NC	CAMDEN	37029	0.20
NC	CARTERET	37031	0.40
NC	CASWELL	37033	0.30
NC	CATAWBA	37035	0.30
NC	CHATHAM	37037	0.30
NC	CHEROKEE	37039	0.45
NC	CHOWAN	37041	0.20
NC	CLAY	37043	0.45
NC	CLEVELAND	37045	0.30
NC	COLUMBUS	37047	0.70
NC	Craven	37049	0.40
NC	CUMBERLAND	37051	0.30

§ 1005.51

7 CFR Ch. X (1-1-25 Edition)

State	County/parish	FIPS	Class I price ad- justment	State	County/parish	FIPS	Class I price ad- justment
NC	CURRITUCK	37053	0.20	NC	YADKIN	37197	0.30
NC	DARE	37055	0.40	NC	YANCEY	37199	0.45
NC	DAVIDSON	37057	0.30	SC	ABBEVILLE	45001	0.50
NC	DAVIE	37059	0.30	SC	AIKEN	45003	0.70
NC	DUPLIN	37061	0.30	SC	ALLEDALE	45005	1.00
NC	DURHAM	37063	0.30	SC	ANDERSON	45007	0.50
NC	EDGEcombe	37065	0.20	SC	BAMBERG	45009	0.70
NC	FORSYTH	37067	0.30	SC	BARNWELL	45011	0.70
NC	FRANKLIN	37069	0.30	SC	BEAUFORT	45013	1.00
NC	GASTON	37071	0.30	SC	BERKELEY	45015	1.00
NC	GATES	37073	0.20	SC	CALHOUN	45017	0.70
NC	GRAHAM	37075	0.45	SC	CHARLESTON	45019	1.00
NC	GRANVILLE	37077	0.30	SC	CHEROKEE	45021	0.50
NC	GREENE	37079	0.40	SC	CHESTER	45023	0.50
NC	GUILFORD	37081	0.30	SC	CHESTERFIELD	45025	0.30
NC	HALIFAX	37083	0.30	SC	CLARENDON	45027	0.70
NC	HARNETT	37085	0.10	SC	COLLETON	45029	1.00
NC	HAYWOOD	37087	0.45	SC	DARLINGTON	45031	0.70
NC	HENDERSON	37089	0.45	SC	DILLON	45033	0.70
NC	HERTFORD	37091	0.20	SC	DORCHESTER	45035	1.00
NC	HOKE	37093	0.30	SC	EDGEFIELD	45037	0.30
NC	HYDE	37095	0.40	SC	FAIRFIELD	45039	0.30
NC	IREDELL	37097	0.30	SC	FLORENCE	45041	0.70
NC	JACKSON	37099	0.45	SC	GEORGETOWN	45043	0.70
NC	JOHNSTON	37101	0.20	SC	GREENVILLE	45045	0.50
NC	JONES	37103	0.40	SC	GREENWOOD	45047	0.50
NC	LEE	37105	0.30	SC	HAMPTON	45049	1.00
NC	LENOIR	37107	0.40	SC	HORRY	45051	0.70
NC	LINCOLN	37109	0.30	SC	JASPER	45053	1.00
NC	MCDOWELL	37111	0.45	SC	KERSHAW	45055	0.30
NC	MACON	37113	0.45	SC	LANCASTER	45057	0.50
NC	MADISON	37115	0.45	SC	LAURENS	45059	0.50
NC	MARTIN	37117	0.40	SC	LEE	45061	0.70
NC	MECKLENBURG	37119	0.30	SC	LEXINGTON	45063	0.70
NC	MITCHELL	37121	0.45	SC	MCCORMICK	45065	0.50
NC	MONTGOMERY	37123	0.30	SC	MARION	45067	0.70
NC	MOORE	37125	0.30	SC	MARLBORO	45069	0.70
NC	NASH	37127	0.30	SC	NEWBERRY	45071	0.30
NC	NEW HANOVER	37129	0.70	SC	OCONEE	45073	0.50
NC	NORTHAMPTON	37131	0.30	SC	ORANGEBURG	45075	0.70
NC	ONslow	37133	0.30	SC	PICKENS	45077	0.50
NC	ORANGE	37135	0.30	SC	RICHLAND	45079	0.70
NC	PAMLICO	37137	0.40	SC	SALUDA	45081	0.30
NC	PASQUOTANK	37139	0.20	SC	SPARTANBURG	45083	0.50
NC	PENDER	37141	0.70	SC	SUMTER	45085	0.70
NC	PERQUIMANS	37143	0.20	SC	UNION	45087	0.50
NC	PERSON	37145	0.30	SC	WILLIAMSBURG	45089	0.70
NC	PITT	37147	0.40	SC	YORK	45091	0.50
NC	POLK	37149	0.30	TN	ANDERSON	47001	0.40
NC	RANDOLPH	37151	0.30	TN	BLOUNT	47009	0.40
NC	RICHMOND	37153	0.50	TN	BRADLEY	47011	0.60
NC	ROBESON	37155	0.70	TN	CAMPBELL	47013	0.40
NC	ROCKINGHAM	37157	0.45	TN	CARTER	47019	0.40
NC	ROWAN	37159	0.30	TN	CLAIBORNE	47025	0.40
NC	RUTHERFORD	37161	0.30	TN	COCKE	47029	0.40
NC	SAMPSON	37163	0.30	TN	CUMBERLAND	47035	0.40
NC	SCOTLAND	37165	0.30	TN	GRAINGER	47057	0.40
NC	STANLY	37167	0.30	TN	GREENE	47059	0.40
NC	STOKES	37169	0.45	TN	HAMBLEN	47063	0.40
NC	SURRY	37171	0.45	TN	HAMILTON	47065	0.60
NC	SWAIN	37173	0.45	TN	HANCOCK	47067	0.40
NC	TRANSYLVANIA	37175	0.45	TN	HAWKINS	47073	0.40
NC	TYRRELL	37177	0.40	TN	JEFFERSON	47089	0.40
NC	UNION	37179	0.50	TN	JOHNSON	47091	0.40
NC	VANCE	37181	0.30	TN	KNOX	47093	0.40
NC	WAKE	37183	0.30	TN	LOUDON	47105	0.40
NC	WARREN	37185	0.30	TN	MCMINN	47107	0.60
NC	WASHINGTON	37187	0.40	TN	MARION	47115	0.60
NC	WATAUGA	37189	0.45	TN	MEIGS	47121	0.60
NC	WAYNE	37191	0.40	TN	MONROE	47123	0.60
NC	WILKES	37193	0.45	TN	MORGAN	47129	0.40
NC	WILSON	37195	0.20	TN	POLK	47139	0.60

Agricultural Marketing Service, USDA

\$ 1005.60

State	County/parish	FIPS	Class I price adjustment
TN	RHEA	47143	0.40
TN	ROANE	47145	0.40
TN	SCOTT	47151	0.10
TN	SEQUATCHIE	47153	0.40
TN	SEVIER	47155	0.40
TN	SULLIVAN	47163	0.40
TN	UNICOI	47171	0.40
TN	UNION	47173	0.40
TN	WASHINGTON	47179	0.40
VA	ALLEGHANY	51005	0.10
VA	AMHERST	51009	0.40
VA	AUGUSTA	51015	0.10
VA	BATH	51017	0.10
VA	BEDFORD	51019	0.40
VA	BLAND	51021	0.40
VA	BOTETOURT	51023	0.10
VA	BUCHANAN	51027	0.10
VA	CAMPBELL	51031	0.40
VA	CARROLL	51035	0.40
VA	CRAIG	51045	0.10
VA	DICKENSON	51051	0.40
VA	FLOYD	51063	0.40
VA	FRANKLIN	51067	0.40
VA	GILES	51071	0.10
VA	GRAYSON	51077	0.40
VA	HENRY	51089	0.40
VA	HIGHLAND	51091	0.10
VA	LEE	51105	0.40
VA	MONTGOMERY	51121	0.40
VA	PATRICK	51141	0.40
VA	PITTSYLVANIA	51143	0.40

State	County/parish	FIPS	Class I price adjustment
VA	PULASKI	51155	0.40
VA	ROANOKE	51161	0.40
VA	ROCKBRIDGE	51163	0.10
VA	ROCKINGHAM	51165	0.10
VA	RUSSELL	51167	0.40
VA	SCOTT	51169	0.40
VA	SMYTH	51173	0.40
VA	TAZEWELL	51185	0.40
VA	WASHINGTON	51191	0.40
VA	WISE	51195	0.40
VA	WYTHE	51197	0.40
VA	BEDFORD CITY	51515	0.40
VA	BRISTOL CITY	51520	0.40
VA	BUENA VISTA CITY	51530	0.10
VA	CLIFTON FORGE CITY	51560	0.10
VA	COVINGTON CITY	51580	0.10
VA	DANVILLE CITY	51590	0.40
VA	GALAX CITY	51640	0.40
VA	HARRISONBURG CITY	51660	0.10
VA	LEXINGTON CITY	51678	0.10
VA	LYNCHBURG CITY	51680	0.40
VA	MARTINSVILLE CITY	51690	0.40
VA	NORTON CITY	51720	0.40
VA	RADFORD CITY	51750	0.40
VA	ROANOKE CITY	51770	0.40
VA	SALEM CITY	51775	0.40
VA	STAUNTON CITY	51790	0.10
VA	WAYNESBORO CITY	51820	0.10
WV	MCDOWELL	54047	0.10
WV	MERCER	54055	0.10

[73 FR 14156, Mar. 17, 2008]

§ 1005.52 Adjusted Class I differentials.

See § 1000.52.

§ 1005.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1005.54 Equivalent price.

See § 1000.54.

UNIFORM PRICES

§ 1005.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in §1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Re-

ceipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under §1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to §1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in §1000.50(b) plus \$0.04 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in §1000.50(c) plus \$0.0004 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines

that the payments yet unpaid computed pursuant to paragraphs (g)(1) through (5) and paragraph (g)(7) of this section will be less than the amount computed pursuant to paragraph (g)(6) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be announced along with the prices announced in §1000.53(b);

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to §1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to §1000.44(a)(7) and the corresponding step of §1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to §1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1000.44(a)(3)(i) through (vi) and the corresponding step of §1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to §1000.43(d) and §1000.44(a)(3)(i) and the corresponding step of §1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1000.44(a)(8) and the corresponding step of §1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated

supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to §1000.43(d).

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory to the market administrator to determine eligibility for reimbursement of transportation costs, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant which were delivered as a result of hurricanes Charley, Frances, Ivan, and Jeanne;

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant that was then transferred to a pool distributing plant which were delivered as a result of hurricanes Charley, Frances, Ivan, and Jeanne;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant which were delivered as a result of hurricanes Charley, Frances, Ivan, and Jeanne;

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from another order plant which were delivered as a result of hurricanes Charley, Frances, Ivan, and Jeanne; and

(5) The cost of transportation on loads of bulk milk transferred or diverted to a plant regulated under another Federal order or to other nonpool plants which were delivered as a result of hurricanes Charley, Frances, Ivan, and Jeanne.

(6) The total amount of payment to all handlers under this section shall be limited for each month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to §1000.44(c) times \$0.04 per hundredweight.

(7) If the cost of transportation computed pursuant to paragraphs (g)(1) through (5) of this section exceeds the amount computed pursuant to paragraph (g)(6) of this section, the market administrator shall prorate such payments to each handler based on the handler's proportion of transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section. Transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section until paid, or until the time period for such payments is concluded.

(8) The reimbursement of transportation costs pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section, or the miles of transportation on loads of bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section multiplied by \$2.25 per loaded mile, whichever is less.

(9) For each handler, the reimbursement of transportation costs pursuant to paragraph (g) of this section for bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section shall be reduced by the amount of payments received for such milk movements from the transportation credit balancing fund pursuant to §1005.82.

[64 FR 47960, Sept. 1, 1999, as amended at 65 FR 82835, Dec. 28, 2000; 69 FR 71699, Dec. 10, 2004]

§ 1005.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uni-

form price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to §1005.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to §1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in §1005.60(e) for other source milk allocated to Class I pursuant to §1000.43(d) and the steps of §1000.44(b) that correspond to §1000.44(a)(3)(i) and §1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to §1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to §1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

§ 1005.62

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

[64 FR 47960, Sept. 1, 1999, as amended at 65 FR 82835, Dec. 28, 2000]

§ 1005.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1005.61.

PAYMENTS FOR MILK

§ 1005.70 Producer-settlement fund.

See § 1000.70.

§ 1005.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1005.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1005.75, applicable at the location of the plant from which received of other source milk for

7 CFR Ch. X (1–1–25 Edition)

which a value is computed pursuant to § 1005.60(e).

§ 1005.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1005.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1005.71(b) exceeds the amount computed pursuant to § 1005.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1005.73 Payments to producers and to cooperative associations.

(a) Each handler that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1005.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1005.75; and

Agricultural Marketing Service, USDA

§ 1005.73

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to §1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each handler shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundred-weight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to §1005.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to §1000.44 by the class prices for the month at the re-

ceiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to §1005.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in §1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted

§ 1005.74

regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

[64 FR 47960, Sept. 1, 1999, as amended at 65 FR 32010, May 22, 2000]

§ 1005.74 [Reserved]

§ 1005.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in §1005.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§1005.73 and 1000.76.

§ 1005.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1005.77 Adjustment of accounts.

See § 1000.77.

§ 1005.78 Charges on overdue accounts.

See § 1000.78.

MARKETWIDE SERVICE PAYMENTS

§ 1005.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to

7 CFR Ch. X (1–1–25 Edition)

§1005.81 and out of which shall be made the payments due handlers pursuant to §1005.82. Payments due a handler shall be offset against payments due from the handler.

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

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

[79 FR 25005, May 2, 2014; 79 FR 26591, May 9, 2014; 89 FR 6403, Feb. 1, 2024]

§ 1005.82 Payments from the transportation credit balancing fund.

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

(1) On or before the 13th day (except as provided in §1000.90 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. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

(2) The market administrator shall accept adjusted requests for transportation 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 transportation credit payments for the preceding month pursuant to paragraph (a) 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 transportation credit balancing fund will be made on or before the next payment date for the following month.

(3) Transportation credits paid pursuant to paragraphs (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to §1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(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 transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (*i.e.*, the transportation credit period) to the month of February or June if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the Market Administrator shall notify the Deputy Administrator of the Dairy Programs and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received at a pool distributing plant from a plant regulated under another Federal order, except Federal Order 1007; and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The dairy farmer was not a "producer" under this order for more than 45 days during the immediately preceding months of March through May, or not more than 50 percent of the production of the dairy farmer during those 3 months, in aggregate, was received as producer milk under this order during those 3 months; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of the order in this part or the marketing area of Federal Order 1007 (7 CFR part 1007).

(iii) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(i) of this section if the market administrator finds that such revision

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

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset.

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1005.83(a)(6);

(iii) Subtract the applicable Class I price specified in § 1000.50(a) for the county in which the shipping plant is located from the Class I price applicable for the county in which the receiving plant is located;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

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

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

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

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

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

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

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

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

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

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

(viii) The market administrator may revise the factor described in 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

Agricultural Marketing Service, USDA

§ 1005.84

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.

[64 FR 47960, Sept. 1, 1999, as amended at 70 FR 59223, Oct. 12, 2005; 71 FR 62379, Oct. 25, 2006; 73 FR 14161, Mar. 17, 2008; 79 FR 25005, May 2, 2014; 79 FR 26591, May 9, 2014; 89 FR 6403, Feb. 1, 2024]

§ 1005.83 Mileage rate for the transportation credit balancing fund.

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

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

(2) From the result in paragraph (a)(1) 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;

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

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

[79 FR 25005, May 2, 2014; 79 FR 26591, May 9, 2014; 89 FR 6404, Feb. 1, 2024]

§ 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 \$0.60 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 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.

Agricultural Marketing Service, USDA

§ 1005.84

(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's county seat 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;

§ 1005.84

7 CFR Ch. X (1–1–25 Edition)

(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) 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 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) 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 oc-

currences 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.

[89 FR 6404, Feb. 1, 2024]

Agricultural Marketing Service, USDA

Pt. 1006

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1005.85 Assessment for order administration.

On or before the payment receipt date specified under § 1005.71, each handler shall pay to the market administrator its *pro rata* share of the expense of administration to the order at a rate specified by the market administrator that is no more than \$.08 per hundred-weight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) of this chapter that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c) of this chapter;

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) of this chapter and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) of this chapter and the corresponding steps of § 1000.44(b) of this chapter, except other source milk that is excluded from the computations pursuant to § 1005.60(d) and (e); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii) of this chapter.

[79 FR 25002, May 2, 2014; 79 FR 26591, May 9, 2014]

§ 1005.86 Deduction for marketing services.

See § 1000.86.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

Subpart A—Order Regulating Handling

GENERAL PROVISIONS

Sec.

1006.1 General provisions.

DEFINITIONS

1006.2 Florida marketing area.

1006.3 Route disposition.

1006.4 Plant.

1006.5 Distributing plant.

1006.6 Supply plant.

1006.7 Pool plant.

1006.8 Nonpool plant.

1006.9 Handler.

1006.10 Producer-handler.

1006.11 [Reserved]

1006.12 Producer.

1006.13 Producer milk.

1006.14 Other source milk.

1006.15 Fluid milk product.

1006.16 Fluid cream product.

1006.17 [Reserved]

1006.18 Cooperative association.

1006.19 Commercial food processing establishment.

HANDLER REPORTS

1006.30 Reports of receipts and utilization.

1006.31 Payroll reports.

1006.32 Other reports.

CLASSIFICATION OF MILK

1006.40 Classes of utilization.

1006.41 [Reserved]

1006.42 Classification of transfers and diversions.

1006.43 General classification rules.

1006.44 Classification of producer milk.

1006.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1006.50 Class prices, component prices, and advanced pricing factors.

1006.51 Class I differential, adjustments to Class I prices, and Class I price.

1006.52 Adjusted Class I differentials.

1006.53 Announcement of class prices, component prices, and advanced pricing factors.

1006.54 Equivalent price.

UNIFORM PRICES

1006.60 Handler's value of milk.

1006.61 Computation of uniform prices.

1006.62 Announcement of uniform prices.

PAYMENTS FOR MILK

1006.70 Producer-settlement fund.

1006.71 Payments to the producer-settlement fund.

1006.72 Payments from the producer-settlement fund.

1006.73 Payments to producers and to cooperative associations.

1006.74 [Reserved]

1006.75 Plant location adjustments for producer milk and nonpool milk.

1006.76 Payments by a handler operating a partially regulated distributing plant.

1006.77 Adjustment of accounts.

1006.78 Charges on overdue accounts.