

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1005 and 1007

[Docket No. AO-388-A17 and AO-366-A46; DA-05-06]

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

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

**ACTION:** Proposed rule; notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held to consider proposals for the Appalachian and Southeast Federal milk orders to amend the current inter-market transportation credit provisions and to establish new intra-market transportation credit provisions. Evidence will be taken at the hearing to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)).

**DATES:** The hearing will convene at 8:30 a.m., on Tuesday, January 10, 2006.

**ADDRESSES:** The hearing will be held at the Hyatt Regency Louisville, 320 West Jefferson Street, Louisville, Kentucky 40202, (502) 581-1234 or (800) 233-1234.

**FOR FURTHER INFORMATION CONTACT:** Antoinette M. Carter, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement, 1400 Independence Avenue, SW., STOP 0231, Room 2971, Washington, DC 20250-0231, (202) 690-3465, e-mail address: [Antoinette.Carter@usda.gov](mailto:Antoinette.Carter@usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact Harold Friedly, Market Administrator, at (502) 499-0040; email [friedly@malouisville.com](mailto:friedly@malouisville.com) before the hearing begins.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Hyatt Regency Louisville, 320 West Jefferson Street, Louisville, Kentucky 40202, (502) 581-1234, beginning at 8:30 a.m., on Tuesday, January 10, 2006, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian and Southeast milk marketing areas.

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

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

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. 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 provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act 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 the Department'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.

This public hearing is being conducted to collect evidence for the record regarding increasing the maximum assessment rate of the transportation credit balancing funds of the Appalachian and Southeast orders. Evidence will be collected regarding the proposed establishment of an intra-market transportation credit balancing fund for movements of milk within the two marketing areas as well as the proposed establishment of a mileage rate factor adjusted for fuel costs for both inter-market and intra-market movements of milk. In addition, evidence will be collected on proposals seeking to amend the producer milk and transportation credit provisions which would limit the amounts paid on movements of milk within and outside the Appalachian and Southeast marketing areas.

Evidence will be taken at the hearing to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments. Also, since proponents of the proposed amendments have requested that the hearing be held on an expedited basis, under the rules of practice and

procedure (7 CFR 900.4(a)), it is determined that less than 15 days notice is reasonable in the circumstances.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

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

Milk marketing orders.

**PARTS 1005 AND 1007—[AMENDED]**

The authority citation for 7 CFR parts 1005 and 1007 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Department.

**Proposed by Dairy Farmers of America, Inc.**

*Proposal No. 1*

This proposal seeks to increase the Appalachian and Southeast orders' maximum assessment rate of the transportation credit balancing funds.

1. Revise § 1005.81 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), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by \$0.15 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–January period, after adjusting the transportation credits disbursed during the prior June–January period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June–January period. In the event that during any month of the June–January 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.

2. Revise § 1007.81 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), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by \$0.20 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–January period, after adjusting the transportation credits disbursed during the prior June–January period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June–January period. In the event that during any month of the June–January 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.

*Proposal No. 2*

This proposal seeks to establish transportation credit balancing funds on intra-market movements of milk within the Appalachian and Southeast marketing areas.

1. In § 1005.30, the introductory text is republished, paragraph (a)(6) is revised, and paragraph (c)(4) is added to read as follows:

**§ 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 detail and on prescribed forms, as follows:

(a) \* \* \*

(6) Receipts of producer milk described in § 1005.82(c)(2) or § 1005.83(b)(3), including the identity of the individual producers whose milk is eligible for a transportation credit pursuant to the respective paragraphs and the date that such milk was received;

\* \* \* \* \*

(c) \* \* \*

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.83, all of the information required in paragraph (a)(6) of this section.

\* \* \* \* \*

2. In § 1007.30, the introductory text is republished, paragraph (a)(6) is revised, and paragraph (c)(4) is added to read as follows:

**§ 1007.30 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) \* \* \*

(6) Receipts of producer milk described in § 1007.82(c)(2) or § 1007.83(b)(3), including the identity of the individual producers whose milk is eligible for a transportation credit pursuant to the respective paragraphs and the date that such milk was received;

\* \* \* \* \*

(c) \* \* \*

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.83, all of the information required in paragraph (a)(6) of this section.

\* \* \* \* \*

3. Amend § 1005.61 by redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7), and adding a new paragraph (b)(5) to read as follows:

**§ 1005.61 Computation of uniform prices.**

\* \* \* \* \*

(b) \* \* \*

(5) Deduct the amount by which the amount due from the intra-market transportation credit fund pursuant to § 1005.83 exceeds the available balance in the intra-market transportation credit fund pursuant to § 1005.80(b);

\* \* \* \* \*

4. Amend § 1007.61 by redesignating paragraph (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7), and adding a new paragraph (b)(5) to read as follows:

**§ 1007.61 Computation of uniform prices.**

\* \* \* \* \*

(b) \* \* \*

(5) Deduct the amount by which the amount due from the intra-market transportation credit fund pursuant to § 1007.83 exceeds the available balance

in the intra-market transportation credit fund pursuant to § 1007.80(b);

\* \* \* \* \*

5. Amend § 1005.80 by revising the section heading and designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

**§ 1005.80 Transportation Credit Balancing Fund and Intra-market Transportation Credit Fund.**

(a) \* \* \*

(b) *Intra-market Transportation Credit Fund.* The market administrator shall maintain a separate fund known as the Intra-market Transportation Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1005.81(d) and from the producer-settlement fund pursuant to § 1005.61(b)(5) and out of which shall be made the payments due handlers pursuant to § 1005.83. Payments due a handler shall be offset against payments due from the handler.

6. Amend § 1007.80 by revising the section heading, designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

**§ 1007.80 Transportation Credit Balancing Fund and Intra-market Transportation Credit Fund.**

(a) \* \* \*

(b) *Intra-market Transportation Credit Fund.* The market administrator shall maintain a separate fund known as the Intra-market Transportation Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1007.81(d) and from the producer settlement fund pursuant to § 1007.61(b)(5) and out of which shall be made the payments due handlers pursuant to § 1007.83. Payments due a handler shall be offset against payments due from the handler.

7. Amend § 1005.81 as proposed in Proposal 1 by adding new paragraphs (c), (d), and (e) to read as follows:

**§ 1005.81 Payments to the transportation credit balancing fund and the intra-market transportation credit fund.**

\* \* \* \* \*

(c) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the fuel cost adjustment factor as determined in § 1005.84(c) and the mileage rate factor as determined in § 1005.84(f) for the following month.

(d) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator an intra-market transportation credit fund assessment determined by multiplying the pounds

of Class I producer milk assigned pursuant to § 1005.44 by \$0.10 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total intra-market transportation credit fund credits disbursed during the most recent two-month period. Except during the first two months that this provision is effective, the market administrator shall estimate the amount of the intra-market transportation credits that would have existed in the two months immediately preceding this provision becoming effective.

(e) 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 (d) of this section for the following month.

8. Amend § 1007.81 as proposed in Proposal 1 by revising the section heading and adding new paragraphs (c), (d), and (e) to read as follows:

**§ 1007.81 Payments to the transportation credit balancing fund and the intra-market transportation credit fund.**

\* \* \* \* \*

(c) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the fuel cost adjustment factor as determined in § 1007.84(c) and the mileage rate factor as determined in § 1007.84(f) for the following month.

(d) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator an intra-market transportation credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by \$0.15 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total intra-market transportation credit fund credits disbursed during the most recent two month period. Except during the first two months that this provision is effective, the market administrator shall estimate the amount of the intra-market transportation credits that would have existed in the two months immediately preceding this provision becoming effective.

(e) 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 (d) of this section for the following month.

9. Add a new § 1005.83 to read as follows:

**§ 1005.83 Payments from the intra-market transportation credit fund.**

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

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each month, the market administrator shall pay to each handler that received milk directly from producers' farms as specified in paragraph (b) of this section, a preliminary amount determined pursuant to paragraph (c) of this section to the extent that funds are available in the intra-market transportation credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall first reduce the producer-settlement fund by the lesser of the number of dollars necessary to pay the credits or an equal number of dollars that resulted from the funds collected by the assessment as described in § 1005.81(d). If an insufficient balance remains, then the market administrator shall distribute the balance available in the intra-market transportation 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 (a)(2) of this section;

(2) Intra-market transportation credits paid pursuant to paragraph (a)(1) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the intra-market transportation credit fund will remain subject to the proration established pursuant to paragraph (a)(1) of this section; and

(3) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the intra-market 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) Intra-market transportation credits shall apply to receipts of producer milk received at pool distributing plants directly from the farms of producers located within the marketing area or

producers located within the marketing area of Order 1007 (7 CFR part 1007), and shall be determined as follows:

(1) Determine for each producer located within the marketing area or located within the marketing area of Federal Order 1007 (7 CFR part 1007) the pool distributing plant regulated pursuant to this Order or the pool distributing plant regulated pursuant to Federal Order 1007 (7 CFR part 1007) which is nearest to the producer's farm. For purposes of this section, if the two or more plants are determined to be equidistant in determining the plant to which the producer is nearest, the plant with the highest Class I price shall be the used as the plant to which the producer is nearest.

(2) Determine the total pounds of producer milk physically received from the farms of producers located within the marketing area of Order 1007 (7 CFR part 1007) at each pool distributing plant;

(3) Subtract from the pounds of milk described in paragraph (b)(2) of this section the pounds of bulk unpasteurized milk transferred or diverted from the pool plant receiving the milk if milk was transferred from the pool distributing plant operator on the same calendar day that the milk for which an intra-market transportation credit may be applicable was received. For this purpose, the transferred or diverted milk shall be subtracted from the most distant load of intra-market transportation credit eligible milk received, and then in sequence with the next most distant load until all of the transfers or diversions have been offset. For this purpose, transferred or diverted milk to be offset against milk for which the pool plant or the handler described in § 1005.9(c), respectively, is the responsible party for receipt of intra-market transportation credit; and,

(4) Multiply the remaining pounds determined in paragraph (b)(3) of this section by the producer milk Class I utilization percentage of all producer milk received by all pool distributing plants during the month. The resulting pounds are the pounds upon which intra-market transportation credits, as determined in paragraph (c) of this section, may be applicable.

(c) Intra-market transportation credits for pool distributing plant deliveries shall be computed as follows:

(1) Determine the distance from the farm of each producer located within the marketing area or located within the marketing area of Order 1007 (7 CFR part 1007) to each pool distributing plant regulated pursuant to this Order to which the producer's milk was actually delivered.

(2) Subtract the distance from each producer's farm to the producer's nearest distributing plant as determined in paragraph (b)(2) of this section, from the distance or distances as the case may be determined in paragraph (c)(1) of this section.

(3) Multiply the remaining miles for deliveries to each pool distributing plant as computed in paragraph (c)(2) of this section by the mileage rate for the month computed pursuant to § 1005.84.

(4) Subtract the Class I differential specified in § 1000.52 applicable at the producer's nearest distributing plant as determined in paragraph (b)(1) of this section from the Class I differential specified in § 1000.52 applicable at each distributing plant at which the producer's milk was actually received as determined in paragraph (c)(1) of this section.

(5) If the value in paragraph (c)(4) of this section is greater than or equal to zero, subtract the result computed in paragraph (c)(4) of this section from the result in paragraph (c)(3) of this section. Multiply the resulting amount by the number of hundredweights determined in paragraph (b)(4) of this section. The resulting amount shall be the intra-market transportation credits for each such plant of delivery.

(6) If the value in paragraph (c)(4) of this section is negative, multiply the amount in paragraph (c)(3) of this section by the number of hundredweights determined in paragraph (b)(4) of this section. The resulting amount shall be the intra-market transportation credits for each such plant of delivery.

(d) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to re-determination at all times. In the event a handler requests a re-determination of the mileage pertaining to any plant or producer, the market administrator shall notify the handler of such re-determination within 30 days after the receipt of such request. Any financial obligation resulting from a change in mileage shall not be retroactive for any periods prior to the re-determination by the market administrator.

10. Add a new § 1007.83 to read as follows:

**§ 1007.83 Payments from the intra-market transportation credit fund.**

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

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each month, the market administrator shall pay to each handler that received milk directly from producers' farms as specified in paragraph (b) of this section, a preliminary amount determined pursuant to paragraph (c) of this section to the extent that funds are available in the intra-market transportation credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall first reduce the producer-settlement fund by the lesser of the number of dollars necessary to pay the credits or an equal number of dollars that resulted from the funds collected by the assessment as described in § 1007.81(d). If an insufficient balance remains, then the market administrator shall distribute the balance available in the intra-market transportation 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 (a)(2) of this section;

(2) Intra-market transportation credits paid pursuant to paragraph (a)(1) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the intra-market transportation credit fund will remain subject to the proration established pursuant to paragraph (a)(1) of this section; and

(3) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the intra-market 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) Intra-market transportation credits shall apply to receipts of producer milk received at pool distributing plants directly from the farms of producers located within the marketing area or producers located within the marketing area of Order 1005 (7 CFR part 1005), and shall be determined as follows:

(1) Determine for each producer located within the marketing area or located within the marketing area of Federal Order 1005 (7 CFR part 1005) the pool distributing plant regulated pursuant to this Order or the pool distributing plant regulated pursuant to

Federal Order 1005 (7 CFR part 1005) which is nearest to the producer's farm. For purposes of this section, if the two or more plants are determined to be equidistant in determining the plant to which the producer is nearest, the plant with the highest Class I price shall be the used as the plant to which the producer is nearest.

(2) Determine the total pounds of producer milk physically received from the farms of producers located within the marketing area of Order 1005 at each pool distributing plant;

(3) Subtract from the pounds of milk described in paragraph (b)(2) of this section the pounds of bulk unpasteurized milk transferred or diverted from the pool plant receiving the milk if milk was transferred from the pool distributing plant operator on the same calendar day that the milk for which an intra-market transportation credit may be applicable was received. For this purpose, the transferred or diverted milk shall be subtracted from the most distant load of intra-market transportation credit eligible milk received, and then in sequence with the next most distant load until all of the transfers or diversions have been offset. For this purpose, transferred or diverted milk to be offset against milk for which the pool plant or the handler described in § 1007.9(c), respectively, is the responsible party for receipt of intra-market transportation credit; and

(4) Multiply the remaining pounds determined in paragraph (b)(3) of this section by the producer milk Class I utilization percentage of all producer milk received by all pool distributing plants during the month. The resulting pounds are the pounds upon which intra-market transportation credits, as determined in paragraph (c) of this section, may be applicable.

(c) Intra-market transportation credits for pool distributing plant deliveries shall be computed as follows:

(1) Determine the distance from the farm of each producer located within the marketing area or located within the marketing area of Order 1005 (7 CFR part 1005) to each pool distributing plant regulated pursuant to this Order to which the producer's milk was actually delivered.

(2) Subtract the distance from each producer's farm to the producer's nearest distributing plant as determined in paragraph (b)(2) of this section from the distance or distances as the case may be determined in paragraph (c)(1) of this section.

(3) Multiply the remaining miles for deliveries to each pool distributing plant as computed in paragraph (c)(2) of

this section by the mileage rate for the month computed pursuant to § 1007.84.

(4) Subtract the Class I differential specified in § 1000.52 applicable at the producer's nearest distributing plant as determined in paragraph (b)(1) of this section from the Class I differential specified in § 1000.52 applicable at each distributing plant at which the producer's milk was actually received as determined in paragraph (c)(1) of this section.

(5) If the value in paragraph (c)(4) of this section is greater than or equal to zero, subtract the result computed in paragraph (c)(4) of this section from the result in paragraph (c)(3) of this section. Multiply the resulting amount by the number of hundredweights determined in paragraph (b)(4) of this section. The resulting amount shall be the intra-market transportation credits for each such plant of delivery.

(6) If the value in paragraph (c)(4) of this section is negative, multiply the amount in paragraph (c)(3) of this section by the number of hundredweights determined in paragraph (b)(4) of this section. The resulting amount shall be the intra-market transportation credits for each such plant of delivery.

(d) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to re-determination at all times. In the event a handler requests a re-determination of the mileage pertaining to any plant or producer, the market administrator shall notify the handler of such re-determination within 30 days after the receipt of such request. Any financial obligation resulting from a change in mileage shall not be retroactive for any periods prior to the re-determination by the market administrator.

*Proposal No. 3*

This proposal seeks to calculate the mileage rate factor using a fuel cost adjustor for the current transportation credit balancing funds and the proposed intra-market transportation credit funds.

1. Amend § 1005.82 by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) Multiply the number of miles so determined by the mileage rate factor for

the month computed pursuant to § 1005.84(a)(6);

\* \* \* \* \*

(3) \* \* \*

(iv) Multiply the remaining miles so computed by the mileage rate factor for the month computed pursuant to § 1005.84(a)(6);

\* \* \* \* \*

2. Amend § 1007.82 by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) Multiply the number of miles so determined by the mileage rate factor for the month computed pursuant to § 1007.84(a)(6);

\* \* \* \* \*

(3) \* \* \*

(iv) Multiply the remaining miles so computed by the mileage rate factor for the month computed pursuant to § 1007.84(a)(6);

\* \* \* \* \*

3. Add a new § 1005.84 to read as follows:

**§ 1005.84 Mileage Rates for the Transportation Credit Balancing Fund and Intra-Market Transportation Credit Fund.**

The market administrator shall compute mileage rates each month as follows:

(a) Compute the simple average for the most recent four 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.

(b) From the result in paragraph (a) in this section subtract \$1.42 per gallon;

(c) Divide the result in paragraph (b) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(d) Add the result in paragraph (c) of this section to \$1.91;

(e) Divide the result in paragraph (d) of this section by 4.80;

(f) Round the result in paragraph (e) of this section down to three decimal places to compute the mileage rate factor.

4. Add a new § 1007.84 to read as follows:

**§ 1007.84 Mileage Rates for the Transportation Credit Balancing Fund and Intra-Market Transportation Credit Fund.**

The market administrator shall compute mileage rates each month as follows:

(a) Compute the simple average for the most recent four 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.

(b) From the result in paragraph (a) in this section subtract \$1.42 per gallon;

(c) Divide the result in paragraph (b) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(d) Add the result in paragraph (c) of this section to \$1.91;

(e) Divide the result in paragraph (d) of this section by 4.80;

(f) Round the result in paragraph (e) of this section down to three decimal places to compute the mileage rate factor.

**Proposed by Dean Foods Company**

*Proposal No. 4*

This proposal seeks to reduce a handler's ability to utilize transportation credits to help broaden the number of producers that touch base.

1. Amend § 1005.82 by:

- (a) Revising paragraph (d)(2)(v);
- (b) Adding a new paragraph (d)(2)(vi);
- (c) Revising paragraph (d)(3)(vii); and
- (d) Adding a new paragraph (d)(3)(viii).

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

\* \* \* \* \*

- (d) \* \* \*
- (2) \* \* \*

(v) Divide Z% (currently believed to be close to 30%, may provide evidence for a higher or lower number) by the percent of producer milk delivered to plants other than plants qualified pursuant to § 1005.7(a) and (b) and § 1007.7(a) and (b) of this chapter; if the result is 100% or greater, then the percentage applicable in paragraph (d)(2)(vi) of this section shall be 100%.

(vi) Compute the result of multiplying the remainder computed in paragraph (d)(2)(iv) of this section by the percentage computed in paragraph (d)(2)(v) of this section and by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) \* \* \*

(vii) Divide Z% (currently believed to be close to 30%, may provide evidence for a higher or lower number) by the percent of producer milk delivered to plants other than plants qualified pursuant to § 1005.7(a) and (b) and § 1007.7(a) and (b) of this chapter; if the result is 100% or greater, then the percentage applicable in paragraph (d)(3)(viii) of this section shall be 100%.

(viii) Compute the result of multiplying the remainder computed in

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

2. Amend § 1007.82 by:

- (a) Revising paragraph (d)(2)(v);
- (b) Adding a new paragraph (d)(2)(vi);
- (c) Revising paragraph (d)(3)(vii); and
- (d) Adding a new paragraph (d)(3)(viii).

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

\* \* \* \* \*

- (d) \* \* \*
- (2) \* \* \*

(v) Divide Z% (currently believed to be close to 30%, may provide evidence for a higher or lower number) by the percent of producer milk delivered to plants other than plants qualified pursuant to § 1005.7(a) and (b) of this chapter; if the result is 100% or greater, then the percentage applicable in paragraph (d)(2)(vi) of this section shall be 100%.

(vi) Compute the result of multiplying the remainder computed in paragraph (d)(2)(iv) of this section by the percentage computed in paragraph (d)(2)(v) of this section and by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) \* \* \*

(vii) Divide Z% (currently believed to be close to 30%, may provide evidence for a higher or lower number) by the percent of producer milk delivered to plants other than plants qualified pursuant to § 1005.7(a) and (b) of this chapter and § 1007.7(a) and (b); if the result is 100% or greater, then the percentage applicable in paragraph (d)(3)(viii) of this section shall be 100%.

(viii) Compute the result of multiplying the remainder computed in paragraph (d)(3)(vi) of this section by the percentage computed in paragraph (d)(3)(vii) and by the hundredweight of milk described in paragraph (d)(3) of this section.

*Proposal No. 5*

This proposal seeks to reduce the amount paid to a producer for milk diverted to an out-of-area plant.

1. Revise § 1005.13(d)(6) to read as follows:

**§ 1005.13 Producer milk.**

\* \* \* \* \*

(d) \* \* \*

(6) Milk diverted to plants located in the marketing area described in 7 CFR parts 1005 and 1007, shall be priced at the location of the plant to which diverted; milk diverted to plants located outside the marketing area described in

either §§ 1005.2 or 1007.2, shall be priced at the location of the closest pool distributing plant located in the marketing area less an adjustment calculated by multiplying Y (currently believe this to be close to 4.0, but may provide evidence for a higher or lower number) cents per cwt. for each 10 miles or fraction thereof (by the shortest hard surface highway as computed by the market administrator) between the plant to which the milk was diverted and the closest pool distributing plant located in the marketing area; and

\* \* \* \* \*

2. Revise § 1005.75 to read as follows:

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

For purposes of making payments for producer milk and nonpool milk: Except milk diverted to plants located outside the marketing area described in either §§ 1005.2 or 1007.2 of this chapter, 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; for milk diverted to plants located outside the marketing area described in either §§ 1005.2 or 1007.2 of this chapter, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1005.51 from the result of the formula found in § 1005.13(d)(6) for such milk. The difference, plus or minus as the case may be, shall be used to adjust the payments require pursuant to §§ 1005.73 and 1000.76.

1. Revise § 1007.13(d)(6) to read as follows:

**§ 1007.13 Producer milk.**

\* \* \* \* \*

(d) \* \* \*

(6) Milk diverted to plants located in the marketing area described in 7 CFR parts 1005 and 1007, shall be priced at the location of the plant to which diverted; milk diverted to plants located outside the marketing area described in either §§ 1005.2 or 1007.2, shall be priced at the location of the closest pool distributing plant located in the marketing area less an adjustment calculated by multiplying Y (currently believe this to be close to 4.0, but may provide evidence for a higher or lower number) cents per cwt. for each 10 miles or fraction thereof (by the shortest hard surface highway as computed by the market administrator) between the plant to which the milk was diverted and the closest pool distributing plant located in the marketing area; and

\* \* \* \* \*

2. Revise § 1007.75 to read as follows:

**§ 1007.75 Plant location adjustments for producer milk and nonpool milk.**

For purposes of making payments for producer milk and nonpool milk: Except for milk diverted to plants located outside the marketing area described in §§ 1005.2 and 1007.2, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1007.51 from the Class I price at the plant's location; for milk diverted to plants located outside the marketing area described in either §§ 1005.2 of this chapter or 1007.2, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1007.51 from the result of the formula found in § 1007.13(d)(6) for such milk. The difference, plus or minus as the case may be, shall be used to adjust the payments require pursuant to §§ 1007.73 and 1000.76.

**Proposed by Dairy Programs, Agricultural Marketing Service***Proposal No. 6*

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the market administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1031, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

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

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

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

Dated: December 22, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-24543 Filed 12-23-05; 10:33 am]

**BILLING CODE 3410-02-P**

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 34**

[Docket No. PRM-34-06]

**Organization of Agreement States; Receipt of Petition for Rulemaking**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated November 3, 2005, which was filed with the Commission by Barbara Hamrick, Chair, Organization of Agreement States (OAS). The petition was docketed by the NRC on November 16, 2005, and has been assigned Docket No. PRM-34-06. The petitioner requests that the NRC amend its regulations to require that an individual receive at least 40 hours of radiation safety training before using sources of radiation for industrial radiography, by clarifying the requirements for at least two individuals to be present at a temporary job site, and by clarifying how many individuals are required to meet surveillance requirements. The petitioner also requests that NUREG-1556, Volume 2, be revised to reflect the performance-based changes in the proposed amendments.

**DATES:** Submit comments by March 13, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include *PRM-34-06* in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information

in your submission that you do not want to be publicly disclosed.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to:* [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415-1966).

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: 301-415-7163 or Toll Free: 800-368-5642.

**SUPPLEMENTARY INFORMATION:****Petitioner's Interest**

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