

PROPOSAL NO. 3

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

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

HANDLER REPORTS

§ 1005.30 Reports of receipts and utilization.

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

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

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred; [existing subparagraphs (5) - (9) are renumbered to (7) - (11)]

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

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

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a)(7), (a)(8), and (a)(9) of this section.

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

§ 1005.32 Other reports.

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

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

MARKETWIDE SERVICE PAYMENTS

Add part § 1005.84 as follows:

§ 1005.84 Distributing plant delivery credits.

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

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

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

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

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant, a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit

fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

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

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

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

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

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

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

products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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