

(g) If not later than the date when such payment is required to be made, legal proceedings have been instituted by the handler for the purpose of administrative or judicial review of the market administrator's findings upon verification as provided above such payment shall be made to the producer settlement fund and shall be held in reserve until such time as the above-mentioned proceedings have been completed or until the handler submits proof to the market administrator that the required payment has been made to the producer or association of producers in which latter event the payment shall be refunded to the handler.

[33 FR 8201, June 1, 1968, as amended at 42 FR 11823, Mar. 1, 1977; 42 FR 52380, Sept. 30, 1977; 46 FR 41756, Aug. 18, 1981; 55 FR 3200, Jan. 31, 1990]

§1002.81 Butterfat differential.

The butterfat differential for the adjustment of prices as specified in this part shall be plus or minus for each one-tenth of one percent of butterfat above or below 3.5 percent by an amount computed as follows: Round to the nearest one-tenth cent, 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to §1002.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

[60 FR 18955, Apr. 14, 1995]

§1002.82 Transportation differentials.

The transportation differential shall be plus or minus the appropriate differential shown in column B of the schedule in §1002.52(c) for the zone of the plant to which the milk is delivered or in the case of farms included in units the zone of the township in which the milk is received.

[56 FR 5329, Feb. 11, 1991]

EXPENSE OF ADMINISTRATION

§1002.85 Payment by handlers.

To share on a pro rata basis the expense of administration of this part, each handler shall, on or before the date specified for making payment to the producer-settlement fund pursuant to §1002.72, pay to the market administrator a sum not exceeding five cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to §1002.60(d)(2), the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of the State of New York, or the Director of the Division of Dairy Industry of the New Jersey Department of Agriculture, with respect to the marketing area. Whenever verification by the market administrator discloses an error in the payment made by any handler, such error shall be adjusted not later than the date next following such disclosure on which payments are due pursuant to this section.

[42 FR 11823, Mar. 1, 1977, as amended at 53 FR 48516, Dec. 1, 1988; 53 FR 49966, Dec. 12, 1988. Redesignated and amended at 56 FR 5329, Feb. 11, 1991]

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

- 1004.85 Assessment for order administration.
- 1004.86 Deductions for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 40 FR 18753, Apr. 30, 1975, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1004.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1004.2 Middle Atlantic marketing area.

Middle Atlantic marketing area (hereinafter called the "marketing area") means all territory within the boundaries of the following places, including piers, docks and wharves and territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

- (a) The District of Columbia.
- (b) The State of Delaware.
- (c) In the State of Maryland:
 - (1) The counties of:

Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Harford, Howard, Kent, Montgomery, Prince Georges, Queen Annes, Somerset, St. Marys, Talbot, Washington, Wicomico, Worcester.

- (2) The city of Baltimore.
- (d) In the State of New Jersey:
 - (1) The counties of:

Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Salem.

- (2) In Ocean County:
 - (i) The townships of:

Eagleswood, Lacey, Long Beach, Little Egg Harbor, Ocean, Stafford, Union.

- (ii) The boroughs of:

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Barnegat Light, Beach Haven, Harvey Cedars, Ship Bottom, Tuckerton.

(e) In the State of Pennsylvania, the counties of:

Adams, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Montgomery, Perry, Philadelphia, York.

(f) In the State of Virginia:

(1) The counties of:

Arlington, Fairfax, Loudoun, Prince William.

(2) The cities of:

Alexandria, Falls Church, Fairfax.

§ 1004.3 Route disposition.

Route disposition means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery through a distribution depot, by a vendor, from a plant store or through a vending machine) except any delivery to a plant.

§ 1004.4 Plant.

Except as specifically provided in § 1004.7(d)(2), *plant* means the land and buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing or packaging of milk or milk products (including filled milk). However, a separate facility used only for the purpose of transferring bulk milk from one tank truck to another tank truck or only as a distribution depot for fluid milk products in transit for route distribution shall not be included under this definition.

[50 FR 16453, Apr. 26, 1985]

§§ 1004.5—1004.6 [Reserved]

§ 1004.7 Pool plant.

Except as provided in paragraph (f) of this section, *pool plant* means a plant (except a producer-handler plant or the plant of a handler pursuant to § 1004.9(e)) specified in paragraphs (a) through (e) of this section.

(a) A plant from which during the month a volume not less than 40 percent in the months of September through February, and 30 percent in the months of March through August,

of its receipts described in paragraph (a)(1) or (2) of this section is disposed of as Class I milk (except filled milk) and a volume not less than 15 percent of such receipts is disposed of as route disposition (other than as filled milk) in the marketing area.

(1) Milk received at such plant directly from dairy farmers (excluding milk diverted as producer milk pursuant to § 1004.12, by either the plant operator or by a cooperative association, and also excluding the milk of dairy farmers for other markets) and from a cooperative in its capacity as a handler pursuant to § 1004.9(c); or

(2) In the case of a plant with no receipts described in paragraph (a)(1) of this section, receipts of fluid milk products (other than filled milk) from other plants.

(3) A plant which meets the "pool plant" requirements of this paragraph during any month shall retain its pool status during the immediately succeeding two months as long as the plant continues to meet the 15-percent in-area Class I disposition requirement, unless written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month during which it does not otherwise qualify pursuant to this paragraph.

(4) A plant's status as an other order plant pursuant to paragraph (f) of this section will become effective beginning the third consecutive month in which a plant is subject to the classification and pricing provisions of another order.

(b) Any plant not meeting the conditions of paragraph (a) of this section from which during the month a quantity of fluid milk products (other than filled milk) not less than the applicable percentage (as specified in paragraph (b)(1) of this section) of such plant's receipts of milk from dairy farmers (including milk diverted as producer milk pursuant to § 1004.12 by either the plant operator or by a cooperative association) and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) is moved to a plant(s) meeting the percentage disposition requirements specified in paragraph (a)

of this section with respect to its total receipts of fluid milk products (other than filled milk) from dairy farmers, cooperative associations as handlers pursuant to §1004.9(c) and from other plants. However, a plant shall not qualify pursuant to this paragraph in any month in which a greater proportion of its qualifying shipments are made to a plant(s) regulated under another Federal order than to plants regulated under this order.

(1) The applicable percentage for the purpose of this paragraph shall be:

- (i) 50 percent for any month of September through February; and
- (ii) 40 percent for any month of March through August.

(c) [Reserved]

(d) A plant operated in accordance with paragraph (d)(1), (2) or (3) of this section, subject to the requirement of paragraph (d)(4) of this section.

(1) A reserve processing plant operated by a cooperative association at which milk from dairy farmers is received if the total of fluid milk products (except filled milk) transferred from such cooperative association plant(s) to, and the milk of member producers physically received at, pool plants pursuant to §1004.7(a) is not less than 25 percent of the total milk of member producers during the month.

(2) A reserve processing plant operated by a federation of cooperative associations if, during the month, 30 percent or more of the producer milk of member producers of such cooperative is caused to be delivered to and physically received at pool plants qualified pursuant to paragraph (a) of this section either from the farms of such producers or by transfer in the form of fluid milk products (except filled milk) from the plant(s) of such cooperatives. If a pipeline is maintained between a reserve processing plant and a nonpool plant operated by another person and located on the same premises, the reserve processing plant shall be a pool plant for the month if the operator of such plant proves to the satisfaction of the market administrator that such plant should be eligible for pool status on the basis of the plant's monthly receipts and disposition of milk and that the pipeline was used only to move by-

products (not milk) between such plants during the month.

(3) A reserve processing plant owned and operated by a cooperative association that also owns and operates a pool plant pursuant to §1004.7(a) so long as the volume of the cooperative's member milk pooled at the reserve processing plant does not exceed the volume of sales of Class I milk (except filled milk) from the cooperative's pool distributing plant, plus the milk of member producers received directly at pool plants pursuant to §1004.7(a) of other handlers during the month.

(4) A cooperative or federation of cooperatives operating a pool reserve processing plant qualified pursuant to this paragraph shall notify the market administrator each month, at the time of filing reports pursuant to §1004.30 and in the detail prescribed by the market administrator, with respect to any receipts from member dairy farmers of the cooperative(s) delivering to such plant not meeting the health requirements for disposition as fluid milk in the marketing area.

(e) A plant that qualified as a pool plant pursuant to paragraph (b) or (d) of this section during each of the immediately preceding months of September through February shall be qualified for automatic pool plant status for each of the following months of March through August, unless the plant operator files a written request with the market administrator prior to the beginning of any such month asking that such plant not be a pool plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and shall continue until the plant again qualifies as a pool plant pursuant to paragraph (b) or (d) of this section, subject to the following conditions:

(1) The automatic pool plant status for any plant identified in paragraph (e) of this section shall be cancelled if another plant is qualified as a pool plant on the basis of deliveries to the same plants through which such automatic pooling status was acquired by the plant. Cancellation of the plant's automatic pool plant status shall be effective on the first day of the month in which the other plant is qualified as a pool plant and shall continue until the

plant again qualifies as a pool plant pursuant to paragraph (b) or (d) of this section; and

(2) The automatic pool plant status of a reserve processing plant operated by a federation of cooperative associations qualified pursuant to paragraph (d)(2) of this section shall be forfeited for any month during the March through August period in which the market administrator determines on the basis of the investigation conducted pursuant to paragraph (d)(2) of this section that such plant shall not be a pool plant for the month.

(f) A plant specified in paragraph (f)(1) or (2) of this section shall, except as provided in §§1004.32(e) and 1004.71(c), be exempt from the provisions of this part:

(1) Any plant qualified pursuant to paragraph (a) of this section which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant as route disposition in the Middle Atlantic marketing area than is so disposed of in a marketing area regulated pursuant to such other order; or

(2) Any plant subject to the classification and pricing provisions of another order issued pursuant to the Act, notwithstanding its status under this order pursuant to paragraph (a) or (b) of this section.

(g) The applicable shipping percentage of paragraphs (a) and (b) or (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later

than the 15th day of the month prior to the month for which the requested revision is desired effective.

[40 FR 18753, Apr. 30, 1975, as amended at 44 FR 21621, Apr. 11, 1979; 47 FR 5194, Feb. 4, 1982; 47 FR 51732, Nov. 17, 1982; 48 FR 39034, Aug. 29, 1983; 49 FR 33432, Aug. 23, 1984; 50 FR 16453, Apr. 26, 1985; 60 FR 55310, Oct. 31, 1995]

§ 1004.8 Nonpool plant.

Nonpool plant means a plant other than a pool plant. The following categories of nonpool plants are further defined:

(a) *Other order plant* means a plant that is fully subject to the pricing and payment provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a plant which is not a pool plant, a producer-handler plant, an other order plant, or the plant of a handler pursuant to §1004.9(e), from which fluid milk products in consumer-type packages or dispenser units are disposed of as route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a plant which is not a pool plant, a producer-handler plant, an other order plant, or the plant of a handler pursuant to §1004.9(e), from which fluid milk products are shipped during the month to a plant qualified under §1004.7.

§ 1004.9 Handler.

Handler means any person described in paragraphs (a) through (f) of this section. Any person in his capacity as the operator of a pool plant or a cooperative association in its capacity as a handler pursuant to paragraph (b) or (c) of this section shall be a "pool handler".

(a) Any person in his capacity as the operator of:

- (1) A pool plant;
- (2) A partially regulated distributing plant;
- (3) An unregulated supply plant; or
- (4) An other order plant.

(b) Any cooperative association or federation of cooperative associations with respect to the milk of any producer which it causes to be diverted in

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accordance with the provisions of § 1004.12 for the account of such cooperative association or federation.

(c) Any cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant of another person in a tank truck owned and operated by or under contract to such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator in writing prior to the first day of the month that the plant operator will be responsible for payment for the milk and is purchasing the milk on the basis of farm weights determined by farm bulk tank calibrations and butterfat tests based on samples taken at the farm. Milk for which the cooperative association is qualified pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which such milk is delivered.

(d) A producer-handler.

(e) A governmental agency in its capacity as the operator of a plant with route disposition in the marketing area.

(f) Any other person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant.

[40 FR 18753, Apr. 30, 1975, as amended at 49 FR 33432, Aug. 23, 1984]

§ 1004.10 Producer-handler.

Producer-handler means any person who operates a dairy farm and a plant with route disposition in the marketing area, and who meets the conditions of paragraphs (a), (b), and (c) of this section:

(a) The sole source of supply of fluid milk products is his own farm production and transfers of such products from pool plants;

(b) The quantity of fluid milk products received from pool plants during the month does not exceed 10,000 pounds;

(c) Such person furnishes proof satisfactory to the market administrator that the maintenance and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants),

and the operation of the plant are each the personal enterprise of and at the personal risk of such person; and

(d) Sections 1004.40 through 1004.45, 1004.50 through 1004.54, 1004.60 through 1004.62, 1004.70 through 1004.79, 1004.85 and 1004.86, and 1004.90 through 1004.95 shall not apply to a producer-handler.

[40 FR 18753, Apr. 30, 1975, as amended at 56 FR 5329, Feb. 11, 1991]

§ 1004.11 Dairy farmer.

Dairy farmer means any person who produces milk which is delivered in bulk to a plant. A dairy farmer shall be a “dairy farmer for other markets” with respect to milk reported pursuant to § 1004.7(d)(4).

[56 FR 5329, Feb. 11, 1991]

§ 1004.12 Producer.

Subject to the conditions of paragraph (e) and the exceptions of paragraph (f) of this section, *producer* means any person described in paragraphs (a) through (d) of this section.

(a) A dairy farmer with respect to milk which is received at a pool plant pursuant to § 1004.7 (a), (b), or (e) directly from the farm.

(b) A dairy farmer with respect to milk which is received at a pool plant pursuant to § 1004.7(d): *Provided*, That such milk is received directly from the farm of one who is a member of the cooperative operating the plant or is received directly from the farm of one who is a member of a cooperative association that is a member of the federation operating the plant, or is received as milk diverted from a pool plant pursuant to § 1004.7(a), (b) or (e).

(c) A dairy farmer with respect to milk received by a cooperative association in its capacity as a handler pursuant to § 1004.9(c).

(d) A dairy farmer with respect to milk which is diverted to a nonpool plant (other than a producer-handler plant) in accordance with the conditions of paragraphs (d)(1) and (d)(2) of this section.

(1) During any month of March through August.

(2) Not more than 18 days’ production during any month of September through February unless all of the diversions of member and nonmember

milk, as the case may be, are pursuant to paragraph (d)(2)(i) or (ii) of this section, respectively, and they fall within the limits prescribed thereunder. If a handler diverting milk pursuant to this paragraph (d)(2) diverts milk of any dairy farmer in excess of the limits prescribed such dairy farmer shall be a producer only with respect to that milk physically received at a pool plant.

(i) All of the diversions of milk of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk so diverted does not exceed 55 percent of the volume of milk of all members of such cooperative association or federation delivered to or diverted from pool plants during the month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 45 percent of the total of such nonmember milk for which the pool plant operator is the handler during the month.

(e) Milk which is diverted in accordance with the provisions of this section shall be deemed to have been received by the handler for whose account it is diverted at a pool plant at the location of the plant from which it is diverted, except that, for the purpose of applying location adjustments pursuant to §§ 1004.52 and 1004.75 and the direct-delivery differential pursuant to § 1004.79, milk which is diverted shall be considered to be received at the location of the plant to which the milk is diverted.

(f) This definition shall not include a:

(1) Producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Dairy farmer for other markets;

(3) Government agency which is a handler pursuant to § 1004.9(e);

(4) Dairy farmer with respect to milk reported as milk diverted to an other order plant if any portion of such dairy farmer's milk so moved is assigned to

Class I under the provisions of such other order; or

(5) Dairy farmer with respect to milk physically received at a pool plant as diverted milk from another order plant if all of the milk so received from such dairy farmer is assigned to Class II or Class III and the milk is treated as producer milk under the provisions of such other order.

(g) The applicable percentages in paragraphs (d)(2)(i) and (d)(2)(ii) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the diversion limit percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of the diversion limit percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

[40 FR 18753, Apr. 30, 1975, as amended at 44 FR 21621, Apr. 11, 1979; 47 FR 51732, Nov. 17, 1982; 49 FR 33432, Aug. 23, 1984; 56 FR 5329, Feb. 11, 1991; 60 FR 55310, Oct. 31, 1995]

§ 1004.13 Producer milk.

Producer milk means any skim milk or butterfat contained in milk:

(a) Received at a pool plant pursuant to § 1004.7(a), (b), or (e) directly from the farm.

(b) Received at a pool plant pursuant to § 1004.7(d): *Provided*, That such milk is received directly from the farm of one who is a member of the cooperative operating the plant or is received directly from the farm of one who is a member of a cooperative association that is a member of the federation operating plant, or is received as milk diverted from a pool plant pursuant to § 1004.7(a), (b), or (e).

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(c) Received from producers by a cooperative association in its capacity as a handler pursuant to § 1004.9(c); or

(d) Diverted to a nonpool plant in accordance with the provisions of § 1004.12.

[40 FR 18753, Apr. 30, 1975, as amended at 44 FR 21621, Apr. 11, 1979; 56 FR 5329, Feb. 11, 1991]

§ 1004.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts in the form of fluid milk products and bulk products specified in § 1004.40(b)(1) from any source other than producers, handlers described in § 1004.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1004.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1004.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1004.40(b)(1)) for which the handler fails to establish a disposition.

[56 FR 5329, Feb. 11, 1991]

§ 1004.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk

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or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[58 FR 27780, May 11, 1993]

§ 1004.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

[58 FR 27780, May 11, 1993]

§ 1004.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1004.18 Exempt milk.

Exempt milk means bulk fluid milk products received at a pool plant or a partially regulated distributing plant from the plant of a handler pursuant to § 1004.9(e) for processing and packaging and for which an equivalent quantity of packaged fluid milk products is returned to such handler during the month.

§ 1004.19 Federation.

Federation means an organization that is formed by two or more cooperative associations as defined in § 1004.20 and which is incorporated under the laws of the state.

[44 FR 21621, Apr. 11, 1979]

§ 1004.20 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members; and

(c) Has its entire activities under the control of its members.

§ 1004.21 [Reserved]**§ 1004.22 Commercial food processing establishment.**

Commercial food processing establishment means any facility other than a milk or filled milk plant, to which bulk fluid milk products and bulk fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including but not limited to, provisions in §§ 1004.12, 1004.13, and 1004.41.

[58 FR 27780, May 11, 1993]

HANDLER REPORTS

§ 1004.30 Reports of receipts and utilization.

(a) On or before the eighth day after the end of each month each handler with respect to each of the handler's pool plants shall report for the month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) The quantities of skim milk and butterfat contained in:

(i) Receipts of producer milk (including such handler's own production) and milk received from a cooperative association for which it is a handler pursuant to § 1004.9(c), and the pounds of non-

fat milk solids contained in such receipts;

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

(iii) Receipts of other source milk;

(2) The quantities of skim milk and butterfat in inventories at the beginning and end of the month of fluid milk products and products specified in § 1004.40(b)(1); and

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the marketing area;

(b) Each handler who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of milk from dairy farmers shall be reported in lieu of producer milk and that the market administrator may waive the reporting of nonfat milk solids; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(c) Each producer-handler and each handler pursuant to § 1004.9(e) shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe; and

(d) On or before the eighth day after the end of each month, each cooperative association and/or a federation of cooperative associations shall report with respect to milk for which it is a handler pursuant to § 1004.9 (b) or (c) as follows:

(1) Receipts of skim milk, butterfat and nonfat milk solids from producers;

(2) Utilization of skim milk, butterfat and nonfat milk solids diverted to nonpool plants; and

(3) The quantities of skim milk, butterfat and nonfat milk solids delivered to each pool plant of another handler.

[56 FR 61348, Dec. 3, 1991]

§ 1004.31 [Reserved]**§ 1004.32 Other reports.**

(a) Each pool handler shall report to the market administrator in detail and

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on forms prescribed by the market administrator as follows:

(1) On or before the 25th day after the end of the month for each pool plant, his producer payroll for such month which shall show for each producer:

- (i) His name and address;
- (ii) The total pounds of milk received from such producer;
- (iii) The average butterfat content and average nonfat milk solids content of such milk; and
- (iv) The net amount of the handler's payment, together with the price paid and the amount and nature of any deduction;

(2) Such other information with respect to receipts and utilization of butterfat, skim milk and nonfat milk solids as the market administrator shall prescribe.

(b) Promptly after a producer moves from one farm to another, or starts or resumes deliveries to a pool handler, the handler shall file with the market administrator a report stating the producer's name and post office address, the health department permit number, if applicable, the date on which the changes took place, and the farm and plant location involved.

(c) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to §1004.76(b) shall report the same information as required in paragraph (a) of this section with respect to dairy farmers from whom he receives milk

(d) On or before the 20th day after the end of the month, each handler pursuant to §1004.9(f) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, all transactions wherein milk was bought or dealt in, giving the following information:

(1) The name and address of any cooperative association or producer for whom the handler by either purchase or direction caused milk of producers to be moved to a plant;

(2) The total pounds of milk involved in the transaction, and the average butterfat and nonfat milk solids content of such milk; and

(3) Such other information with respect to such transaction as the market administrator may prescribe.

(e) Each handler operating a plant described in §1004.7(f) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of other reports specified in this section or in §1004.30) and allow verification of such reports by the market administrator.

[40 FR 18753, Apr. 30, 1975, as amended at 56 FR 61349, Dec. 3, 1991]

CLASSIFICATION OF MILK

§ 1004.40 **Classes of utilization.**

Subject to the conditions set forth in §§1004.41 through 1004.44, all skim milk and butterfat required to be reported by a handler pursuant to §§1004.30 and 1004.32 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraph (b) and (c) of this section;

(2) In packaged inventory of fluid milk products at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;

(3) In bulk fluid milk products and bulk fluid cream products disposed of or diverted to a commercial food processor if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta

cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream and sour half-and-half, sour cream mixtures containing nonmilk items, yogurt and any other semi-solid product resembling a Class II product;

(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;

(v) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and

(vii) Any product not otherwise specified in this section.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheeses of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat and butteroil;

(iii) Any milk product in dry form, except nonfat dry milk;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

(2) In inventory at the end of the month of unconcentrated fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i) through (iv) of this section, that are disposed of by a handler for animal feed;

(4) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i) through (iv) of this section, that are dumped by a handler. The market administrator may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a handler to maintain adequate records of such use. If advance notification of such dumping is not possible, or if the market administrator so requires, the handler must notify the market administrator on the next business day following such use;

(5) In fluid milk products and products specified in paragraph (b)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to §1004.15 and the fluid cream product definition pursuant to §1004.16; and

(7) In shrinkage assigned pursuant to §1004.41(a) to the receipts specified in §1004.41(a)(2) and in shrinkage specified in §1004.41(b) and (c).

(d) *Class III-A milk.* Class III-A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

[56 FR 5330, Feb. 11, 1991, as amended at 57 FR 175, Jan. 3, 1992; 58 FR 27780, May 11, 1993]

§ 1004.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1004.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section, which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in §1004.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §1004.9(c) and in milk diverted to such plant from another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk tank lots of fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts

from dairy farmers for other markets pursuant to §1004.11 and receipts of bulk fluid milk products from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk tank lots of fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to §1004.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

[56 FR 5331, Feb. 11, 1991]

§ 1004.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to §1004.44(a)(13) and the corresponding step of §1004.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divortor-plant received during the month other source milk to be allocated pursuant to § 1004.44(a)(8) or the corresponding step of § 1004.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divortor-handler received during the month other source milk to be allocated pursuant to § 1004.44 (a) (12) or (13) or the corresponding steps of § 1004.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or the divortee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1004.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants operated by governmental agencies.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant operated by a governmental agency shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant operated by a governmental agency shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or diverter-handler claims such classification in its report of receipts and utilization filed pursuant to §1004.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of milk for such nonpool plant; and

(B) To such nonpool plant's receipts of milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class II utilization, and then to Class III utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class II utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the

same assignment priorities at the second plant that are set forth in paragraph (d)(2) of this section.

[56 FR 5331, Feb. 11, 1991, as amended at 58 FR 27781, May 11, 1993]

§ 1004.43 General classification rules.

(a) Each month, the market administrator shall correct for mathematical and other obvious errors, the reports of receipts and utilization submitted pursuant to §1004.30 (a), (b), and (d) by each handler and compute the total pounds of skim milk and butterfat, respectively, in each class at each of the plants of such handler, and the total pounds of skim milk and butterfat in each class which was received from producers by a cooperative association handler pursuant to §1004.9 (b) and (c) and was not received at a pool plant.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such products plus all the water originally associated with such solids.

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1004.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

(d) Class III-A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III-A shall be determined by prorating receipts from pool sources to Class III-A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

(e) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under

§1004.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1004.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

[56 FR 5333, Feb. 11, 1991, as amended at 57 FR 175, Jan. 3, 1992; 58 FR 27781, May 11, 1993]

§ 1004.44 Classification of producer milk.

After making the computations pursuant to §1004.43, the market administrator each month shall determine the classification of milk received from producers by each cooperative association handler pursuant to §1004.9 (b) and (c) which was not received at a pool plant, and the classification of milk received from producers and from cooperative association handlers pursuant to §1004.9(c) at each pool plant for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in §1004.41(b);

(2) Subtract from the total pounds of skim milk in Class I, the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk 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; and

(ii) Receipts of exempt milk;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(8)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining, or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph

shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in §1004.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in §1004.40(b)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(6) or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in §1004.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1004.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II.

(8) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product) and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in §1004.40(b)(1) that was not subtracted pursuant to paragraphs (a)(5), (a)(6) and (a)(7) of this section;

(ii) Receipts of fluid milk products from dairy farmers for other markets

pursuant to §1004.11 and from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts (other than exempt milk) of fluid milk products from a handler pursuant to §1004.9(e);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(9) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (8)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (8)(v) and (9)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(9)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the

pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, from a cooperative association in its capacity as a handler pursuant to § 1004.9(c), and in receipts of bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(8)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants remaining at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(8)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(10) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1004.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(4), (6) and (8)(i) of this section;

(11) Add to the remaining pounds of skim milk in Class III, the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(12) Subject to the provisions of paragraphs (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, prorata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants and from other order plants if not classified or priced pursuant to the order regulating such plants, that were not subtracted pursuant to paragraphs (a)(2)(i), (8)(v) and (9) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(12) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(12) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like

amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in remaining receipts of bulk fluid milk products from other order plants (except receipts from other order plants not classified and priced pursuant to the order regulating such plants), that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(8)(vi) and (9)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(13)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class, as announced for the month pursuant to § 1004.45(b); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(13)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) according to the classification assigned pursuant to § 1004.42(a); and

(15) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk,

subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(15) of this section and the corresponding step of paragraph (b) of this section.

[56 FR 5333, Feb. 11, 1991, as amended at 58 FR 27781, May 11, 1993]

§1004.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) On or before the 15th day after the end of each month, report to each cooperative association which so requests, the class utilization of milk purchased from such association or delivered to the pool plant(s) of each handler by producers who are members of such cooperative association. For the purpose of this report, the milk so purchased or received shall be allocated to each class in the same ratio as all producer milk received by such handler during such month;

(b) Whenever required for purpose of allocating receipts from other order plants pursuant to §1004.44(a)(13) and the corresponding step of §1004.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(c) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allo-

cated pursuant to §1004.43(e) and §1004.44 on the basis of such report, (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(d) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant, the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler; and, as necessary, any changes in such classification arising from the verification of such report.

[40 FR 18753, Apr. 30, 1975, as amended at 56 FR 5335, Feb. 11, 1991; 58 FR 27782, May 11, 1993]

CLASS AND COMPONENT PRICES

§ 1004.50 Class and component prices.

Subject to the provisions of §1004.52 the class prices per hundredweight of milk for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$3.03.

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus \$0.30.

(c) *Class III price.* Subject to the adjustment set forth below for the applicable month, the Class III price shall be the basic formula price for the month.

Month	Amount
January	+\$0.05
February	+ .04
March	- .03
April	- .07
May	- .10
June	- .09
July	+ .05
August	+ .12
September	+ .08
October	+ .08
November	+ .08
December	+ .08

(d) *Butterfat price.* The butterfat price per pound shall be a figure computed as follows:

(1) Compute a butterfat differential per one percent butterfat, rounded to the nearest one-tenth cent, by multiplying the current month's butter

price by 1.38, and subtract from the result an amount determined by multiplying 0.028 by the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1004.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

(2) Multiply the butterfat differential obtained in paragraph (d)(1) of this section by 3.5, and subtract the resulting amount from the Class III price;

(3) Divide the value obtained from the calculations of paragraph (d)(2) of this section by 100; and

(4) Add to the resulting amount the butterfat differential computed in paragraph (d)(1) of this section. The sum thereof shall be the price per pound for producer butterfat for the month.

(e) *Nonfat milk solids price.* The price per pound for nonfat milk solids shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average percentage of nonfat milk solids in all producer milk for the month.

(f) *Skim milk price.* The skim milk price per hundredweight shall be the Class III price for the month adjusted to remove the value of 3.5 percent butterfat and rounded to the nearest cent. Such adjustment shall be computed by multiplying the butterfat differential pursuant to paragraph (d)(1) of this section by 3.5 and subtracting the result from the Class III price.

(g) *Class III-A price.* The Class III-A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in

paragraph (c) of this section for the applicable month.

[56 FR 5335, Feb. 11, 1991, as amended at 56 FR 61349, Dec. 3, 1991; 57 FR 49635, Nov. 3, 1992; 58 FR 63285, Dec. 1, 1993; 60 FR 6607, Feb. 2, 1995; 60 FR 18955, Apr. 14, 1995]

§ 1004.51 Basic formula prices.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1004.50(d)(1) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the non dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average

for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant

to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

[60 FR 18955, Apr. 14, 1995]

§ 1004.52 Location differentials to handlers.

(a) For that milk received from producers and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) at a plant located 55 miles or more by shortest highway distance from the city hall in Philadelphia, Pa., and also 75 miles or more by the shortest highway distance from the nearer of the zero milestone in Washington, DC, or the city hall in Baltimore, MD (all such distance to be determined by the market administrator), and which is assigned to Class I milk, subject to the limitations pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the Class I price shall be reduced at the rate of 1.5 cents per 10-mile distance or fraction thereof that such plant location is from the nearest of such basing points.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in an amount not in excess of that by which such Class I disposition exceeds 95 percent of the sum of receipts at such plant from producers, cooperative associations pursuant to § 1004.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, and from dairy farmers for other markets pursuant to § 1004.11. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply: *Provided*, That for the purposes of this paragraph, transfers from a pool plant to a second pool plant which are in turn transferred to a third pool plant shall be treated as though the transfer was direct from the originating plant to the plant of final receipt.

[40 FR 18753, Apr. 30, 1975, as amended at 56 FR 5336, Feb. 11, 1991]

§ 1004.53 Announcement of class prices and component prices.

The market administrator shall announce publicly on or before the fifth day of each month, the following:

- (a) The Class I price for the following month;
- (b) The Class II price for the following month;
- (c) The Class III and Class III-A prices for the preceding month; and
- (d) The prices for butterfat and skim milk computed pursuant to § 1004.50(d) and (f).

[56 FR 5336, Feb. 11, 1991, as amended at 56 FR 61349, Dec. 3, 1991; 57 FR 175, Jan. 3, 1992; 60 FR 6607, Feb. 2, 1995]

§ 1004.54 Equivalent prices or indexes.

If for any reason a price or pricing constituent required by this order for computing class prices or for other purposes is not available as prescribed in this order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

[56 FR 61349, Dec. 3, 1991]

DIFFERENTIAL POOL AND HANDLER
OBLIGATIONS

§ 1004.60 Handler's value of milk for computing uniform prices.

The market administrator shall compute each month for each handler defined in § 1004.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1004.9 (b) and (c), an obligation to the pool computed by adding the following values:

- (a) The pounds of milk received from a cooperative association as a handler pursuant to § 1004.9(c) and allocated to Class I pursuant to § 1004.44(a)(14) and the corresponding step of § 1004.44(b), and the pounds of producer milk in Class I as determined pursuant to § 1004.44, both multiplied by the difference between the Class I price (adjusted pursuant to § 1004.52) and the Class III price;
- (b) The pounds of milk received from a cooperative association as a handler pursuant to § 1004.9(c) and allocated to Class II pursuant to § 1004.44(a)(14) and the corresponding step of § 1004.44(b),

and the pounds of producer milk in Class II as determined pursuant to § 1004.44, both multiplied by the difference between the Class II price and Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1004.44(a)(15) and the value of the corresponding pounds of nonfat milk solids associated with the skim milk subtracted from Class II and Class III pursuant to § 1004.44(a)(15), by multiplying the skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(15) and the corresponding step of § 1004.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1004.44(a)(15) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1004.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1004.44(a)(15) and the corresponding step of § 1004.44(b) multiplied by the difference between the Class II price and the Class III price, plus the pounds of nonfat milk solids in skim milk subtracted from Class II pursuant to § 1004.44(a)(15) multiplied by the nonfat milk solids price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1004.44(b) multiplied by the butterfat price;

(3) The pounds of nonfat milk solids in skim milk overage subtracted from Class III pursuant to § 1004.44(a)(15) multiplied by the nonfat milk solids price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1004.44(b) multiplied by the butterfat price;

(d) For the first month that this paragraph is effective, the value of the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b), as follows:

(1) The value of the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1004.44(a)(10) and the corresponding step of §1004.44(b) applicable at the location of the pool plant at the difference between the current month's Class I price and the previous month's Class III price;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1004.44(a)(10) and the corresponding step of §1004.44(b) at the difference between the current month's Class II price and the Class III price for the previous month;

(e) For the second and subsequent months that this paragraph is effective, the value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to §1004.44(a)(10) and the corresponding step of §1004.44(b), and the value of the pounds of nonfat milk solids associated with the skim milk subtracted from Class II pursuant to §1004.44(a)(10), computed by multiplying the skim milk pounds so subtracted by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1004.44(a)(10) and the corresponding step of §1004.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1004.44(a)(10) and the corresponding step of §1004.44(b) at the current month's Class II-Class III price difference and the current month's nonfat milk solids and butterfat prices, less the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(f) The value of the product pounds, skim milk and butterfat assigned to Class I pursuant to §1004.43(e) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant

to §1004.44(a)(8) (i) through (iv), and the corresponding step of §1004.44(b), excluding receipts of bulk fluid cream products from another order plant and bulk concentrated fluid milk products from pool plants, other order plants and unregulated supply plants, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1004.44(a)(8) (v) and (vi) and the corresponding step of §1004.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(h) The value of the product pounds, skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to §1004.43(e) and §1004.44(a)(8)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1004.44(a)(12) and the corresponding steps of §1004.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference;

(i) The pounds of skim milk received from a cooperative association as a handler pursuant to §1004.9(c) and allocated to Class I pursuant to §1004.44(a)(14), and the pounds of producer milk in Class I as determined pursuant to §1004.44, both multiplied by the skim milk price for the month computed pursuant to §1004.50(f);

(j) The pounds of nonfat milk solids in skim milk in receipts allocated to Class II and Class III pursuant to §1004.44(a)(14) and in producer milk classified as Class II and Class III pursuant to §1004.44, computed by multiplying the skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month

for each report filed, separately, the result to be multiplied by the nonfat milk solids price for the month computed pursuant to §1004.50(e).

(k) For producer milk in Class III-A, add or subtract as appropriate an amount per hundredweight that the Class III-A price is more or less, respectively, than the Class III price.

(l) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III 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 §1004.43(e);

(m) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under §1004.76(b)(5) or (c); and

(n) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

[56 FR 61349, Dec. 3, 1991, as amended at 57 FR 175, Jan. 3, 1992; 58 FR 27782, May 11, 1993]

§1004.61 Computation of weighted average differential price and producer nonfat milk solids price.

For each month the market administrator shall compute a "weighted average differential price" and a "producer nonfat milk solids price", as follows:

(a) The "weighted average differential price" shall be the result of the following computations:

(1) Combine into one total:

(i) The value computed pursuant to §1004.60 (a) through (h) for all handlers who filed the reports prescribed by §1004.30 for the month and who made the payments pursuant to §1004.71 for the preceding month;

(ii) An amount equal to the total value of the location differentials computed pursuant to §1004.75;

(iii) An amount equal to not less than one-half of the unobligated balance in the producer-settlement fund.

(2) Divide the total value calculated under paragraph (a)(1) of this section by the sum of the following for all handlers:

(i) The total hundredweight of producer milk pursuant to §1004.13 represented by the value established pursuant to (1)(i) of this paragraph; and

(ii) The total hundredweight for which a value is computed pursuant to §1004.60(h).

(3) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted average differential price."

(b) [Reserved]

(c) The "Producer nonfat milk solids price" to be paid to all producers for the pounds of nonfat milk solids contained in their milk shall be computed by the market administrator each month as follows:

(1) Combine into one total the values computed pursuant to §1004.60 (i) and (j) for all handlers who made reports pursuant to §1004.30 and who made payments pursuant to §1004.71 for the preceding month;

(2) Divide the resulting amount by the total pounds of nonfat milk solids in producer milk; and

(3) Round by subtracting a positive amount not to exceed one cent. The result is the "Producer nonfat milk solids price."

[56 FR 61350, Dec. 3, 1991; as amended at 61 FR 69017, Dec. 31, 1996]

§1004.62 Computation of uniform price.

A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to §1004.61(a) to the Class III price.

[56 FR 61351, Dec. 3, 1991]

§ 1004.63 Announcement of weighted average differential price, nonfat milk solids price and producer nonfat milk solids price.

On or before the 13th day of each month, the market administrator shall publicly announce for the preceding month by posting in a conspicuous place in his office and by such other means as he deems appropriate, the weighted average differential price, the producer nonfat milk solids price computed pursuant to § 1004.61, and the price for nonfat milk solids computed pursuant to § 1004.50(e).

[56 FR 61351, Dec. 3, 1991; as amended at 61 FR 69017, Dec. 31, 1996]

PAYMENTS FOR MILK

§ 1004.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1004.71, 1004.76 and 1004.77 and out of which he shall make all payments from such fund pursuant to §§ 1004.72 and 1004.77: *Provided*, That the market administrator shall offset the payment due to a handler against payment due from such handler.

§ 1004.71 Payments to the producer-settlement fund.

On or before the 15th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a) of this section exceeds the amounts specified in paragraph (b) of this section:

(a) The net pool obligation computed pursuant to § 1004.60 for such handler;

(b) The sum of:

(1) The value of milk received by such handler from producers and from cooperative association handlers pursuant to § 1004.9(c) at the applicable price(s) pursuant to § 1004.61 adjusted by applicable location differentials, less in the case of a cooperative association on milk for which it is a handler pursuant to § 1004.9(c), the amount due from other handlers pursuant to § 1004.74(d); and

(2) The value at the weighted average differential price, computed pursuant to § 1004.61, adjusted by the applicable

location differential on nonpool milk pursuant to § 1004.75(b), with respect to other source milk for which a value was computed pursuant to § 1004.60(h).

[40 FR 18753, Apr. 30, 1975, as amended at 45 FR 23402, Apr. 7, 1980; 56 FR 61351, Dec. 3, 1991; 57 FR 175, Jan. 3, 1992]

§ 1004.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1004.71(b) exceeds the amount computed pursuant to § 1004.71(a), subject to the following conditions:

(a) If 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 such payments as soon as the necessary funds are available.

(b) If the 16th day after the end of the month is a Saturday, Sunday, or national holiday, the market administrator may delay payments pursuant to this section until the next day his office is open for public business.

[45 FR 23402, Apr. 7, 1980]

§ 1004.73 Value of producer milk.

The total value of milk received from producers during any month shall be the sum of the following calculations:

(a) The value of a producer's milk shall be the sum of the following:

(1) The weighted average differential price subject to the appropriate plant location adjustment times the total hundredweight of milk received from the producer;

(2) The total nonfat milk solids contained in the producer milk received from the producer multiplied by the producer nonfat milk solids price computed pursuant to § 1004.61; and

(3) The total butterfat contained in the producer milk received from the producer times the butterfat price computed pursuant to § 1004.50(d).

(b) [Reserved]

[56 FR 61351, Dec. 3, 1991; as amended at 61 FR 69017, Dec. 31, 1996]

§ 1004.74 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b) and (d) of this section, each pool handler shall make payment as specified in paragraphs (a)(1) and (2) of this section to each producer from whom milk is received.

(1) On or before the last day of each month at not less than the Class III price for the preceding month per hundredweight for his deliveries of producer milk during the first 15 days of the month; and

(2) On or before the 20th of the following month at not less than the total amount computed in accordance with the provisions set forth in § 1004.73 with respect to such milk, subject to the following adjustments:

(i) Proper deductions authorized in writing by such producer;

(ii) Partial payment made pursuant to paragraph (a)(1) of this section;

(iii) Less the location differential applicable pursuant to § 1004.75; and

(iv) If by such date such handler has not received full payment from the market administrator pursuant to § 1004.72 for such month he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the second day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) In the case of milk received by a handler from a cooperative association in its capacity as the operator of a pool plant such handler shall on or before

the second day prior to the date on which payments are due individual producers, pay to such cooperative association for milk so received during the month, an amount not less than the value of such milk computed at the applicable class and/or component prices for the location of the plant of the buying handler; and

(d) Each handler who receives milk from a cooperative association handler pursuant to § 1004.9(c), shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at the rate specified in paragraph (a)(1) of this section; and

(2) A final payment equal to the total value of such milk computed pursuant to § 1004.73, adjusted by the applicable differentials pursuant to § 1004.75, less the amount of partial payment on such milk.

(e) In making payments to producers pursuant to paragraph (a)(2) of this section, or to a cooperative association pursuant to paragraph (b) of this section, each pool handler shall furnish such producer or cooperative association with respect to each of its producer members from whom the handler received milk during the month, a written statement showing:

(1) The month and the identity of the handler and the producer;

(2) The total pounds, average butterfat test and average test of nonfat milk solids of milk delivered by the producer;

(3) The minimum rate at which payment to such producer is required under paragraph (a)(2) of this section;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The nature and amount of any deductions made in payment due such producer; and

(6) The net amount of the payment to the producer.

[40 FR 18753, Apr. 30, 1975, as amended at 45 FR 23403, Apr. 7, 1980; 56 FR 5337, Feb. 11, 1991. Redesignated and amended at 56 FR 61351, Dec. 3, 1991; 58 FR 27782, May 11, 1993]

§ 1004.75 Location differentials to producers and on nonpool milk.

(a) For milk received from producers and from cooperative association handlers pursuant to §1004.9(c) at a plant located 55 miles or more from the city hall in Philadelphia, PA., and also at least 75 miles from the nearer of the zero milestone in Washington, DC, or the city hall in Baltimore, MD. (all distances to be the shortest highway distance as determined by the market administrator), the weighted average differential price shall be reduced 1.5 cents for each 10 miles distance or fraction thereof that such plant is from the nearest of such basing points.

(b) For purposes of computations pursuant to §§1004.71 and 1004.74, the weighted average differential price computed pursuant to §1004.61(a) shall be reduced at the rate set forth in paragraph (a) of this section applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average differential price shall not be less than zero.

[56 FR 61351, Dec. 3, 1991; as amended at 61 FR 69017, Dec. 31, 1996]

§ 1004.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§1004.30(b) and 1004.32(c) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to §1004.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant, a cooperative association as a handler pursuant to §1004.9(b), or an other order plant shall be assigned to

the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in §1004.60(h) and a credit in the amount specified in §1004.71(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in paragraph (a)(1)(ii) of this section; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§1004.30(b) and 1004.32(c) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of §1004.7(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of: (i) The gross payments made by such handler for milk (approved by a duly constituted health authority for fluid disposition) received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants; cooperative associations in their capacity as handlers pursuant to §1004.9(b), and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted milk that are made from nonfluid milk products and which are then disposed of on routes in the marketing area from the partially regulated distributing plant;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price, subtract its value at the uniform price computed pursuant to §1004.62, and add for the quantity of labeled reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price less \$1.00 (but not to be less than the Class III price) and the value of such milk at the Class III price (except that the Class I price and the uniform price shall be adjusted for the location of the nonpool plant and shall not be less than the Class III price). For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by \$1.00. Alternatively, for such disposition, payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This pay-

ment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to Class I use under §1004.43(e). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

[40 FR 18753, Apr. 30, 1975, as amended at 45 FR 23403, Apr. 7, 1980; 56 FR 5336, Feb. 11, 1991; 56 FR 61352, Dec. 3, 1991; 58 FR 27782, May 11, 1993]

§ 1004.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due: (a) The market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1004.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §1004.71, 1004.73, 1004.76, 1004.77, 1004.79, 1004.85, or 1004.86 shall

be increased 1 percent beginning on the day after the due date, and on the same day of each succeeding month until such obligation is paid, subject to the following conditions:

(a) The amount payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section and all such amounts shall be paid to the administrative assessment fund maintained by the market administrator;

(b) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) Payments shall be deemed not to have been made until such payments have been received, except:

(1) Any payment received after the due date in an envelope that is post-marked not later than the second day prior to the due date shall be considered to have been received by the due date; and

(2) If the date by which payments must be received falls on a Saturday or Sunday or on a national holiday, payments shall be considered to have been received by the due date if received not later than the next day on which the market administrator's office is open for public business.

[45 FR 23403, Apr. 7, 1980]

§ 1004.79 Direct-delivery differential.

For producer milk received at a plant located within 55 miles of the city hall in Philadelphia, Pa., the handler in making payments to producers and cooperative association handlers pursuant to § 1004.9(c), in addition to any amounts required by other provisions of this part, shall pay 6 cents per hundredweight of milk so received.

ADMINISTRATIVE ASSESSMENT AND
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§ 1004.85 Assessment for order administration.

As his pro rata share of the expense of administration, each handler shall pay to the market administrator on or

before the 20th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to milk handled during the month as follows:

(a) Each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1004.9(c), and a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant) with respect to the handler's receipts of producer milk (including such handler's own-farm production, milk received from a cooperative association pursuant to § 1004.9(c), and milk transferred in bulk from a pool plant owned and operated by a cooperative association) and receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1004.43(e) and other source milk allocated to Class I pursuant to § 1004.44(a)(8) and (a)(12) and the corresponding step of § 1004.44(b), except such other source milk that is excluded from the computations pursuant to § 1004.60(f) and (h);

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of his receipts of Class I milk from pool plants, cooperative associations as handlers pursuant to § 1004.9(b), and other order plants assigned to such disposition.

[40 FR 18753, Apr. 30, 1975, as amended at 56 FR 5337, Feb. 11, 1991; 56 FR 61352, Dec. 3, 1991; 58 FR 27783, May 11, 1993]

§ 1004.86 Deductions for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, making payments directly to producers for milk (other than milk of his own production) pursuant to § 1004.74(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 20th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify or establish the weights, samples and tests of milk of producers who are

not receiving such service from a cooperative association; and

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producer pursuant to §1004.74(a) as are authorized by such producers on or before the 18th day after the end of each month and pay such deductions to the cooperative rendering such services.

[56 FR 61352, Dec. 3, 1991]

PART 1005—MILK IN THE CAROLINA MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: 7 U.S.C. 601-674.

SOURCE: 55 FR 31352, Aug. 2, 1990, unless otherwise noted.

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GENERAL PROVISIONS

§1005.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter are hereby referenced and made a part of this order.