

such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(1) All milk received from producers at a plant not operated by a cooperative association.

(2) All milk received at a plant operated by a cooperative association from producers for whom the marketing services set forth below in this paragraph are not being performed by the cooperative association as determined by the market administrator. Such deduction shall be paid by the handler to the market administrator on or before the 16th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling and testing of milk received from producers, and in providing for market information to producers. Such services are to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer;

(1) Who is a member of, or who has given written authorization for the rendering of marketing services and the taking of deductions therefore to, a cooperative association;

(2) Whose milk is received at a plant not operated by such association; and

(3) For whom the market administrator determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct, in lieu of the deduction specified under paragraph (a) of this section, from the payments made pursuant to §1124.73(a)(2) the amount per hundredweight on milk authorized by such producer and shall pay, on or before the 18th day after the end of the month, such deduction to the association entitled to receive it under this paragraph.

PART 1125 [RESERVED]

PART 1126—MILK IN THE TEXAS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1126.1 General provisions.

DEFINITIONS

1126.2 Texas marketing area.
1126.3 Route disposition.
1126.4 Plant.
1126.5–1126.6 [Reserved]
1126.7 Pool plant.
1126.8 Nonpool plant.
1126.9 Handler.
1126.10 Producer-handler.
1126.11 [Reserved]
1126.12 Producer.
1126.13 Producer milk.
1126.14 Other source milk.
1126.15 Fluid milk product.
1126.16 Fluid cream product.
1126.17 Filled milk.
1126.18 Cooperative association.
1126.19 Current marketing period.
1126.20 [Reserved]
1126.21 Commercial food processing establishment.

HANDLER REPORTS

1126.30 Reports of receipts and utilization.
1126.31 Payroll reports.
1126.32 Other reports.

CLASSIFICATION OF MILK

1126.40 Classes of utilization.
1126.41 Shrinkage.
1126.42 Classification of transfers and diversions.
1126.43 General classification rules.
1126.44 Classification of producer milk.
1126.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1126.50 Class prices.
1126.51 Basic formula price.
1126.52 Plant location adjustments for handlers.
1126.53 Announcement of class prices.
1126.54 Equivalent price.
1126.55 Credits to handlers for transporting surplus milk.

UNIFORM PRICE

1126.60 Handler's value of milk for computing uniform price.
1126.61 Computation of uniform price (including weighted average price).
1126.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1126.70 Producer-settlement fund.
1126.71 Payments to the producer-settlement fund.
1126.72 [Reserved]
1126.73 Payments to producers and to cooperative associations.

Agricultural Marketing Service, USDA

§ 1126.3

- 1126.74 Butterfat differential.
- 1126.75 Plant location adjustments for producers and on nonpool milk.
- 1126.76 Payments by handler operating a partially regulated distributing plant.
- 1126.77 Adjustment of accounts.
- 1126.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

- 1126.85 Assessment for order administration.
- 1126.86 Deduction for marketing services.

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

SOURCE: 40 FR 23438, May 30, 1975, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1126.1 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

§ 1126.2 Texas marketing area.

The *Texas marketing area*, hereinafter called the "marketing area," means all territory within the boundaries of the following Texas counties, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

ZONE 1

Camp, Collin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Grayson, Hill (Blum and Itasca divisions only), Hood, Hopkins, Hunt, Johnson, Kaufman, Lamar, Morris, Parker, Rains, Red River, Rockwall, Somervell, Tarrant, Titus, Upshur, Van Zandt, Wise, Wood.

ZONE 1-A

Archer, Baylor, Clay, Hardeman, Montague, Wichita and Wilbarger.

ZONE 2

Gregg, Harrison, Marion, Panola, Rusk, Smith.

ZONE 3

Anderson, Bell, Bosque, Cherokee, Comanche, Coryell, Erath, Falls, Freestone, Hamilton, Henderson, Hill (except Blum and Itasca divisions), Lampasas, Limestone, McLennan, Mills, Navarro.

ZONE 4

Angelina, Houston, Jasper, Leon, Nacogdoches, Newton, Polk, Sabine, San Augustine, Shelby, Trinity, Tyler.

ZONE 5

Brazos, Robertson, Burleson, Grimes, Madison, Milam, Walker.

ZONE 6

Andrews, Borden, Brown, Callahan, Coke, Coleman, Dawson, Eastland, Ector, Fisher, Foard, Glasscock, Haskell, Howard, Jack, Jones, Kent, King, Knox, Martin, Midland, Mitchell, Nolan, Palo Pinto, Runnels, Scurry, Shackelford, Stephens, Sterling, Stonewall, Taylor, Throckmorton, Tom Green, Young.

ZONE 7

Bastrop, Burnet, Lee, Travis, Williamson.

ZONE 8

Austin, Brazoria, Chambers, Colorado, Fayette, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, San Jacinto, Waller, Washington.

ZONE 9

Bexar, Caldwell, Comal, De Witt, Gonzales, Guadalupe, Hays, Jackson, Lavaca, Matagorda, Wharton, Wilson.

ZONE 10

Aransas, Bee, Calhoun, Goliad, Karnes, Live Oak, Refugio, Victoria.

ZONE 11

Brooks, Duval, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio.

ZONE 12

Cameron, Hidalgo, Willacy.

[40 FR 23438, May 30, 1975, as amended at 47 FR 54422, Dec. 3, 1982]

§ 1126.3 Route disposition.

Route disposition means any delivery (including any delivery by a vendor or disposition at a plant store) of a fluid milk product classified as Class I milk, other than a delivery to a plant.

§ 1126.4 Plant.

Plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities without stationary storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§§ 1126.5–1126.6 [Reserved]**§ 1126.7 Pool plant.**

Except as provided in paragraph (f) of this section, *pool plant* means:

(a) Any plant that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month there is:

(1) Route disposition, except filled milk, in the marketing area equal to 10 percent or more of the receipts of Grade A fluid milk products at such plant, including producer milk diverted from the plant; and

(2) Total route disposition, except filled milk, equal to 50 percent or more of the receipts of Grade A fluid milk products at such plant, including producer milk diverted from the plant. If two plants operated by the same handler each meet the performance requirement of paragraph (a)(1) of this section and such handler requests that the two plants be considered together for the purpose of meeting the total route disposition requirement, each such plant shall be deemed to have met the total disposition requirement of this paragraph if the combined route disposition, except filled milk, of such plants is 50 percent or more of the combined receipts of Grade A fluid milk products at such plants, including producer milk diverted from the plants.

(b) Any plant, other than a plant described in paragraph (a) of this section, that is approved by a duly constituted regulatory agency for the disposition of Grade A milk in the marketing area and from which during the month 50

percent or more of the receipts at such plant of Grade A milk from dairy farmers (including producer milk diverted from the plant but excluding milk received as diverted milk) and handlers described in § 1126.9(c) is transferred in the form of a bulk fluid milk product, except filled milk, to pool plants described in paragraph (a) of this section, except that such percentage shall be 15 percent for the months of:

(1) August, if the plant was a pool plant under this paragraph or paragraph (d) of this section during the immediately preceding month of July; and

(2) December, if the plant was a pool plant under this paragraph during the immediately preceding month of November.

(c) Any plant, other than a plant described in paragraph (a) or (b) of this section or that qualifies as a pool plant under another Federal order, from which during the month 50 percent or more of the receipts at such plant of Grade A milk from dairy farmers (including milk diverted from the plant but excluding milk received as diverted milk) and handlers described in § 1126.9(c) is transferred in the form of a bulk fluid milk product, except filled milk, to pool plants described in paragraph (a) of this section and distributing plants fully regulated under other Federal orders, if the total quality so transferred to pool plants exceeds in the case of each other order the total quantity so transferred to other order distributing plants, except that:

(1) For the following months, such percentage shall be 15 percent and shall apply only to transfers to pool plants described in paragraph (a) of this section:

(i) August, if the plant was a pool plant under this paragraph or paragraph (d) of this section during the immediately preceding month of July; and

(ii) December, if the plant was a pool plant under this paragraph during the immediately preceding month of November; and

(2) Such plant shall not be a pool plant under this paragraph in any of the months of February through July unless it was a pool plant under this

paragraph in three or more of the immediately preceding months of September through January.

(d) Any plant during the months of February through July, other than a plant described in paragraph (a) of this section, that was a pool plant under paragraph (b) or (c) of this section during each of the immediately preceding months of September through January and is approved by a duly constituted regulatory agency for the disposition of Grade A milk in the marketing area, subject to the following conditions:

(1) For the months of February through July 1975, the required qualification under paragraph (b) of this section in prior months shall be deemed to have been met if the plant was a pool supply plant under the Austin-Waco, West Texas, Corpus Christi, North Texas, San Antonio, or South Texas orders (or any combination thereof) during the months of September, October, and November 1974; and

(2) If the plant operator files with the market administrator prior to any of the months of February through July a written request for nonpool status, a plant shall not be a pool plant under this paragraph during any of such remaining months through July.

(e) Any plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c) and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested, subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b), (c) or (d) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency for the disposition of Grade A milk in the marketing area.

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

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area;

(4) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which there is a greater quantity of route disposition, except filled milk, in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(5) A plant qualified pursuant to paragraph (b) or (c) of this section which has automatic pooling status under another Federal order.

EFFECTIVE DATE NOTE: At 62 FR 41812, Aug. 4, 1997, in §1126.7, paragraph (d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section", were suspended; and in paragraph (e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested" were suspended, effective Aug. 1, 1997, through July 31, 1999.

§ 1126.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling 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 nonpool plant that is not an other order plant, a governmental agency plant, or a producer-handler plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is not an other order plant, a governmental agency plant, or a producer-handler plant.

(e) *Governmental agency plant* means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1126.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of a producer that is diverted for the account of the cooperative association from a pool plant of another handler in accordance with § 1126.13;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be

the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) Any person who is a producer-handler; and

(f) Any person in his capacity as the operator of an other order plant described in § 1126.7(f).

§ 1126.10 Producer-handler.

Producer-handler means any person:

(a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;

(b) Who receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Whose receipts of fluid milk products (including such products which he obtains at a location other than his processing plant for distribution on his routes) during the month from pool plants do not exceed the lesser of 5 percent of his Class I disposition during the month or 10,000 pounds;

(d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from his own farm production or pool plants; and

(e) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

[40 FR 23438, May 30, 1975, as amended at 44 FR 5868, Jan. 30, 1979]

§ 1126.11 [Reserved]**§ 1126.12 Producer.**

(a) Except as provided in paragraph (b) of this section, *producer* means any

person who produces milk approved by a duly constituted regulatory agency for disposition in the marketing area as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1126.9(c); or

(3) Diverted from a pool plant in accordance with § 1126.13.

(b) "Producer" shall not include:

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

(2) A governmental agency that operates a plant exempt pursuant to § 1126.8(e);

(3) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1126.44(a)(8)(iii) and the corresponding step of § 1126.44(b);

(4) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; or

(5) Any person with respect to milk produced by him during the months of February through July that is caused to be delivered to a pool plant by a cooperative association or a pool plant operator if during any of the immediately preceding months of September through November more than one-third of the milk from the same farm was caused by such cooperative association or pool plant operator to be delivered to plants as other than producer milk (except milk that is not producer milk as a result of a temporary loss of grade A approval or the application of § 1126.13(e) (4) and (5)), unless such pool plant was a nonpool plant during any of such immediately preceding months.

[40 FR 23438, May 30, 1975, as amended at 43 FR 44825, Sept. 29, 1978]

EFFECTIVE DATE NOTE: At 59 FR 26737, May 24, 1994, § 1126.12 paragraph (b)(5) was suspended effective May 24, 1994.

§ 1126.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1126.9(c);

(c) Picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month. Such milk shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. This paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1126.9(c), is the handler for such milk;

(d) Diverted from a pool plant described in § 1126.7(a) for the account of the handler operating such plant to another pool plant, except that milk diverted to a plant operated by a cooperative association may not be milk of the cooperative association's members. Milk so diverted shall be priced at the plant to which diverted; or

(e) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the handler operating such pool plant or a handler described in § 1126.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion during any month unless milk of such dairy farmer was physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant. If a dairy farmer loses his producer status under this order (except as a result of a temporary loss of Grade A approval), his milk shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant;

(2) The total quantity of milk so diverted during the month by a cooperative association shall not exceed one-third of the producer milk that the cooperative association causes to be delivered during the month to pool plants described in §1126.7(a), (b), (c), and (d) and that is physically received thereat;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(2) of this section. The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (e) (2) and (3) of this section shall not be producer milk. If the diverting handler fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler during the month to a nonpool plant shall be producer milk;

(5) The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to become a nonpool plant shall not be producer milk; and

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

[40 FR 23438, May 30, 1975, as amended at 43 FR 44825, Sept. 29, 1978; 44 FR 5868, Jan. 30, 1979; 44 FR 50323, Aug. 28, 1979]

EFFECTIVE DATE NOTE: At 62 FR 41812, Aug. 4, 1997, in §1126.13, paragraph (e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant", were suspended; entire paragraph (e)(2) was suspended; and in paragraph (e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;" was suspended, effective Aug. 1, 1997, through July 31, 1999.

§ 1126.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk products specified in §1126.40(b)(1) from any source other than producers, handlers described in §1126.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1126.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1126.40(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 §1126.40(b)(1)) for which the handler fails to establish a disposition.

§ 1126.15 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 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 27888, May 11, 1993]

§ 1126.16 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 27888, May 11, 1993]

§ 1126.17 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).

§ 1126.18 Cooperative association.

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

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

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

§ 1126.19 Current marketing period.

For the purpose of terminating this order under § 608c(16)(B) of the Act, the term *current marketing period* shall mean the first month following the date on which the Secretary publicly announces his finding that the termination of the order is favored by such majority of producers under the order as is prescribed by the Act.

§ 1126.20 [Reserved]

§ 1126.21 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 §§ 1126.13, 1126.41 and 1126.52.

[58 FR 27888, May 11, 1993]

HANDLER REPORTS

§ 1126.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1126.9(c);

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

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1126.40(b)(1); and

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

(b) Each handler operating a partially regulated distributing plant

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

(c) Each handler described in § 1126.9(b) and (c) shall report:

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

(2) The utilization or disposition of such receipts.

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

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler who elects pursuant to § 1126.73(d) to pay producers shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

(1) The name and address of each producer;

(2) The amounts paid each producer; and

(3) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1126.76(b) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month:

(1) The name and address of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk;

(4) The amount and nature of any deductions, as authorized in writing by

the dairy farmer, from the payment for such milk; and

(5) The rate of payment per hundred-weight and the net amount paid each dairy farmer.

§ 1126.32 Other reports.

(a) On or before the 24th day of each month, each handler described in § 1126.9(a), (b), and (c), except a cooperative association with respect to producer milk for which it elects to collect payments, shall report to the market administrator the following information with respect to its receipts of milk during the first 18 days of the month:

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1126.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) On or before the 6th day after the end of each month, each handler described in § 1126.9(a), (b), and (c) shall report to the market administrator the following information with respect to its receipts of milk during such month:

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer and its average butterfat content;

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions, as authorized in writing by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat received from a handler described in § 1126.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(c) On or before the second day prior to the reporting dates specified in paragraphs (a) and (b) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred to pool plants of other handlers within the time periods described in paragraphs (a) and (b) of this section shall report to each such pool plant operator the name and location of the transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

(d) In addition to the reports required pursuant to paragraphs (a) through (c) of this section and §§ 1126.30 and 1126.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1126.40 Classes of utilization.

Except as provided in § 1126.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1126.30 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 paragraphs (b) and (c) of this section;

(2) In packaged fluid milk products in inventory 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 § 1126.15 and the fluid cream product definition pursuant to § 1126.16; and

(7) In shrinkage assigned pursuant to § 1126.41(a) to the receipts specified in § 1126.41(a)(2) and in shrinkage specified in § 1126.41 (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.

[58 FR 27888, May 11, 1993, as amended at 58 FR 63291, Dec. 1, 1993]

§ 1126.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1126.30, the mar-

ket 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 paragraph; 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);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1126.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, 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 under this paragraph 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 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 bulk fluid milk products received 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 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 § 1126.9(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.

§ 1126.42 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 both handlers 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 § 1126.44(a)(12) and the corresponding step of § 1126.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or but-

terfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1126.44(a)(7) or the corresponding step of § 1126.44(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 divertor-handler received during the month other source milk to be allocated pursuant to § 1126.44(a)(11) or (12) or the corresponding steps of § 1126.44(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 divertee-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 § 1126.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant 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 a governmental agency plant 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 his report of receipts and utilization filed pursuant to § 1126.30 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 Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A 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, and then to Class II 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 subparagraph, 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 pri-

orities at the second plant that are set forth in this paragraph.

(e) *Transfers by a handler described in § 1126.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1126.9(c) to another handler's pool plant shall be classified pursuant to § 1126.44 pro rata with producer milk received at the transferee-handler's plant.

[40 FR 23438, May 30, 1975, as amended at 58 FR 27889, May 11, 1993]

§ 1126.43 General classification rules.

In determining the classification of producer milk, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1120.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1126.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1126.40, 1126.41, and 1126.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1126.9 (b) or (c) shall be such handler's classification of producer milk;

(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 product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1126.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

(d) 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 § 1126.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1126.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

(e) 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 milk at the plant.

[40 FR 23438, May 30, 1975, as amended at 58 FR 27889, May 11, 1993; 58 FR 63291, Dec. 1, 1993]

§ 1126.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1126.9(a) for each of his pool plants separately the classification of producer milk and milk received from a handler described in § 1126.9(c), by allocating the handler's receipts of skim milk and butterfat to his utilization 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 § 1126.41(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;

(ii) 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;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, except that to be subtracted pursuant to paragraph (a)(7)(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 pounds of skim milk in Class II the pounds of skim milk in products specified in § 1126.40(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;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1126.40(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 or comparable provisions of another Federal milk order in the immediately preceding month;

(6) 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 § 1126.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1126.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II.

(7) 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)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1126.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (a)(5) and (a)(6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) 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

(vii) Receipts of fluid milk products from a person described in § 1126.12(b)(5);

(8) 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 (7)(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), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(i) (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 sum of 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, milk from a handler described in § 1126.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(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 that remain 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)(7)(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;

(9) 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 § 1126.40(b)(1) in

inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(ii), (a)(5) and (a)(7)(i) of this section;

(10) 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;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata 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 an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2)(i), (7)(v), and (8) (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 this subparagraph 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 this paragraph 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;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class 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 paragraphs (a) (7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (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 § 1126.45(a); 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)(12)(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 all 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)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(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)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(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;

(13) 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 according to the classification of such products pursuant to §1126.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler de-

scribed in §1126.9(c), 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 and milk received from a handler described in §1126.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

[40 FR 23438, May 30, 1975, as amended at 58 FR 27889, May 11, 1993]

§1126.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to §1126.44(a)(12) and the corresponding step of §1126.44(b), 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.

(b) 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 allocated pursuant to §1126.43(d) and §1126.44 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.

(c) 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 allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

[40 FR 23438, May 30, 1975, as amended at 58 FR 27890, May 11, 1993]

CLASS PRICES

§ 1126.50 Class prices.

Subject to the provisions of § 1126.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$3.16.

(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.* The Class III price shall be the basic formula price for the month.

(d) *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 times 35 and rounded to the nearest cent.

[40 FR 23438, May 30, 1975, as amended at 46 FR 43402, Aug. 28, 1981; 56 FR 52447, Oct. 21, 1991; 58 FR 63291, Dec. 1, 1993; 60 FR 6612, Feb. 2, 1995]

§ 1126.51 Basic formula price.

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 but-

terfat basis using the butterfat differential for the preceding month computed pursuant to § 1126.74 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 nonfat 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 18976, Apr. 14, 1995]

§ 1126.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies,

the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (8) of this section for the location of such plant;

(1) For a plant located within one of the zones set forth in § 1126.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1A	Minus 25 cents.
Zone 2	No adjustment.
Zone 3	Plus 15 cents.
Zone 4	Plus 18 cents.
Zone 5	Plus 20 cents.
Zone 6	Minus 21 cents.
Zone 7	Plus 30 cents.
Zone 8	Plus 54 cents.
Zone 9	Plus 42 cents.
Zone 10	Plus 53 cents.
Zone 11	Plus 66 cents.
Zone 12	Plus 75 cents.

(2) For a plant located in the New Mexico-West Texas marketing area, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the New Mexico-West Texas order (7 CFR part 1138) and the Class I price specified in § 1126.50(a).

(3) For a plant located in Bowie or Cass County, Texas, the adjustment shall be minus 8 cents.

(4) For a plant located in the State of Texas that is outside the designated pricing areas described in paragraphs (a) (1) through (3) of this section, the adjustment shall be the adjustment applicable at the nearer of Corpus Christi, San Angelo, or San Antonio, Texas, except that for a plant located in the Texas counties of Brewster, Crane, Crockett, Culberson, Hudspeth, Irion, Jeff Davis, Loving, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Ward, and Winkler, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in San Angelo, Texas (based on the shortest hard-surfaced highway distance as determined by the Market Administrator.)

(5) For a plant located in the Southwest Plains marketing area or in Pulaski County, Missouri, the minus adjustment shall be the difference between the applicable Class I price effective under the Southwest Plains order

(7 CFR part 1106) and the Class I price specified in §1126.50(a).

(6) For a plant located in the State of Arkansas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Central Arkansas order (7 CFR part 1108) and the Class I price specified in §1126.50(a).

(7) For a plant located in the State of Louisiana, the plus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Greater Louisiana order (7 CFR part 1096) and Class I price specified in §1126.50(a).

(8) For a plant located outside the designated pricing areas described in paragraphs (a) (1) through (7) of this section, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in Dallas, Texas, (based on the shortest hard-surfaced highway distance as determined by the Market Administrator.)

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to §1126.44(a)(12) plus the pounds of skim milk in receipts of concentrated fluid milk products from other pool plants that are assigned to Class I use, an amount equal to:

(i) 95 percent of the pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in §1126.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-

plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in Class I prices applicable at the transferor-plant and transferee-plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to §1126.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable adjustment rate determined pursuant to paragraph (b)(3) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment rate as determined pursuant to paragraph (b)(3) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b) (1) through (4) of this section.

(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

[40 FR 23438, May 30, 1975, as amended at 47 FR 54422, Dec. 3, 1982; 56 FR 52447, Oct. 21, 1991; 58 FR 27890, May 11, 1993]

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III-A prices for the preceding month.

[60 FR 6612, Feb. 2, 1995]

§ 1126.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, 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.

§ 1126.55 Credits to handlers for transporting surplus milk.

For each of the months of March through June and December 16-31, a transportation credit shall be computed for each handler on the amount of producer milk that is classified as Class II or Class III pursuant to § 1126.42 (b)(3) or (d)(2) that such handler transfers or diverts to nonpool plants located outside the State of Texas. Credits established pursuant to paragraphs (a) and (b) of this section shall be computed at the rate of 2.4 cents per hundredweight for each 10 miles, or fraction thereof, for the shortest hard-surfaced highway distance, as determined by the market administrator. The amount of milk eligible for a transportation credit and the amount of such credit shall be established in accordance with paragraphs (a), (b), and (c) of this section subject to the limitations specified in paragraph (d) of this section.

(a) A transfer credit shall apply to bulk fluid milk products transferred by a handler from a pool plant located in Zone 1 of the marketing area for the distance between the transferor pool plant and the transferee nonpool plant.

(b) A credit for diverted milk shall apply to milk produced in Zone 1, 1-A, or 3 of the marketing area or the Oklahoma counties of Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston,

Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, or Tillman that is diverted to a nonpool plant for the distance in excess of 100 miles between the nonpool plant and the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the route, or the courthouse of the county where the major portion of the milk on the load was produced.

(c) A credit for diverted milk produced in the area specified in paragraph (b) of this section shall also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustment) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received.

(d) No credit shall apply to the total quantity of milk moved to a given nonpool plant by a handler during each of the credit periods if any portion of the milk is assigned to Class I. Also, the amount of milk to which a credit would be applicable during each of the credit periods pursuant to paragraphs (a), (b), and (c) of this section shall be offset by the amount of milk that a handler or any affiliate of the handler causes to be received at plants located in the marketing area from outside the State of Texas during each of the credit periods, with such offset to be applied in sequence beginning with the nonpool plant at which the greatest credit would apply.

[53 FR 39445, Oct. 7, 1988]

UNIFORM PRICE

§ 1126.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1126.9(b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1126.9(c) that were classified in each class pursuant to

§§ 1126.43(a) and 1126.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1126.44(a)(14) and the corresponding step of § 1126.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1126.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1126.44(a)(9) and the corresponding step of § 1126.44(b);

(d) Add the amount obtained from multiplying 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 assigned to Class I pursuant to § 1126.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(7) (i) through (iv) and (vii), and the corresponding step of § 1126.44(b), excluding receipts of bulk fluid cream products from an other order plant and bulk concentrated fluid milk products from pool plants, other order plants and unregulated supply plants;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(7) (v) and (vi) and the corresponding step of § 1126.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1126.43(d) and § 1126.44(a)(7) (i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to

§ 1126.44(a)(11) and the corresponding steps of § 1126.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract for a handler described in § 1126.9(c) the amount obtained from multiplying the Class III price for the preceding month, as adjusted by the butterfat differential specified in § 1126.74, by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to another handler's pool plant during the month;

(h) Deduct any credit applicable pursuant to § 1126.55;

(i) 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 § 1126.43(d);

(j) 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 § 1126.76(a)(5) or (c); and

(k) 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.

[40 FR 23438, May 30, 1975, as amended at 53 FR 39445, Oct. 7, 1988; 58 FR 27890, May 11, 1993]

§ 1126.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the "uniform price" (and "weighted average price") per hundredweight for milk of 3.5 percent butterfat content at pool plants at which no location adjustment applies as follows:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers who filed the reports prescribed in § 1126.30 for the month and who made the payments pursuant to § 1126.71 for the preceding month;

(b) Add not less than one-fourth of the unobligated balance in the producer-settlement fund;

(c) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1126.75;

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(f); and

(e) Subtract not more than 5 cents per hundredweight. The result shall be the "weighted average price."

(f) The weighted average price shall be the "uniform price" for milk received from producers.

[44 FR 18939, Mar. 30, 1979, as amended at 44 FR 53721, Sept. 17, 1979; 50 FR 12766, Apr. 1, 1985]

§ 1126.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 13th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1126.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit the payments made by handlers pursuant to §§ 1126.71, 1126.76, and 1126.77 and from which he shall make all payments pursuant to §§ 1126.73 (a) through (f) and 1126.77, except that payments to a cooperative association pursuant to § 1126.73(c) shall be offset by any payments due from such cooperative association pursuant to § 1126.1 that have not been received by the market administrator.

§ 1126.71 Payments to the producer-settlement fund.

(a) Subject to paragraphs (c) and (d) of this section, each handler shall pay to the market administrator on or before the 26th day of each month an amount determined by multiplying the handlers receipts during the first 18 days of such month of producer milk (excluding, in the case of a handler described in § 1126.9(c), producer milk delivered to a pool plant) and milk from a handler described in § 1126.9(c) by the Class III price for the preceding month, less:

(1) Payments made by the handler on or before such date to producers for milk received during the 18-day period; and

(2) Proper deductions authorized in writing by producers from whom the handler received milk, except that the amount deducted for each producer shall not exceed the value (at the Class III price) of the milk received from the producer during the 18-day period.

(b) Subject to paragraphs (c) and (d) of this section, each handler shall pay to the market administrator on or before the 16th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1126.60(a), as adjusted by the butterfat differential specified in § 1126.74, and pursuant to § 1126.60(b) through (g), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month;

§ 1126.72

7 CFR Ch. X (1-1-99 Edition)

(2) Payments, other than those specified in § 1126.73(d), that were made by the handler on or before such date to producers for milk received during such month;

(3) Proper deductions for the month that were authorized in writing by producers from whom the handler received milk, except that the amount deducted for each producer shall not exceed the value of the milk received from the producer during the month; and

(4) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value was computed pursuant to § 1126.60(f).

(c) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) and (b) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator; and

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or on any Monday that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(d) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1126.73(c).

(e) On or before the 25th day after the end of the month, each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each

order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (e)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

[40 FR 23438, May 30, 1975, as amended at 44 FR 18939, Mar. 30, 1979]

§ 1126.72 [Reserved]

§ 1126.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (c) through (f) of this section, the market administrator shall pay each producer on or before the 28th day of each month for milk for which payment pursuant to § 1126.71(a) has been received by the market administrator. Such payment shall be at a rate per hundredweight equal to the Class III price for the preceding month less the amounts specified in § 1126.71(a)(1) and (2).

(b) Subject to paragraphs (c) through (f) of this section, the market administrator shall pay each producer on or before the 18th day after the end of each month for milk for which payment pursuant to § 1126.71(b) has been received by the market administrator or offset pursuant to § 1126.71(d). Such payment shall be at the uniform price computed pursuant to § 1126.61 for the month, subject to the following adjustments:

(1) Any applicable adjustments pursuant to §§ 1126.74 and 1126.75;

(2) Less the payments described in § 1126.71(b)(2) and paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1126.86;

(4) Less the authorized deductions specified in § 1126.71(b)(3); and

(5) Any adjustments for errors in calculating payments to an individual producer for past months.

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay

to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section.

(d) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section. The handler then shall pay the individual producers the amounts due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months. In making payments to producers pursuant to this paragraph, the handler shall furnish each producer the following information:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

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

(e) The following conditions shall apply with respect to the payments

prescribed in paragraphs (a) through (d) of this section:

(1) If the date by which such payments are to be made falls on a Saturday or Sunday or on any Monday that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of §1126.71(c)(2) or paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator or by the market administrator to handlers, the corresponding partial or final payments prescribed in paragraphs (a) through (d) of this section may be delayed by the same number of days.

(f) If the market administrator does not receive the full payment required of a handler pursuant to §1126.71, he shall reduce uniformly per hundred-weight the payments due producers for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

(g) Subject to §1126.71(c)(1) and (2), each handler who receives bulk fluid milk products from a pool plant operated by a cooperative association shall pay the following amounts for such milk to the market administrator, who in turn shall transmit such money to the cooperative association:

(1) On or before the 26th day of each month, an amount determined by multiplying such receipts during the first 18 days of the month by the Class III price for the preceding month. If the handler so elects, such price may be adjusted by the butterfat differential specified in §1126.74 for the preceding month; and

(2) On or before the 16th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to §1126.42(a) by the applicable class price, as adjusted by the butterfat differential specified in §1126.74, less any payment made by the handler pursuant to

paragraph (g)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the higher of the Class I prices applicable at the transferee-plant and the transferor-plant.

[40 FR 23438, May 30, 1975, as amended at 44 FR 5868, Jan. 30, 1979]

§ 1126.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 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 § 1126.51 (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 18976, Apr. 14, 1995]

§ 1126.75 Plant location adjustments for producers and on nonpool milk.

(a) In making the payments required pursuant to § 1126.73, the uniform price computed pursuant to § 1126.61 for the month shall be adjusted by the amounts set forth in § 1126.52 according to the location of the plant where the milk being priced was received.

(b) For purposes of computing the value of other source milk pursuant to § 1126.71, the weighted average price shall be adjusted by the amount set forth in § 1126.52 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

[40 FR 23438, May 30, 1975, as amended at 44 FR 18939, Mar. 30, 1979]

§ 1126.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1126.30(b) and 1126.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool 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;

(3) Subtract the pounds of reconstituted milk that are made from nonfluid milk products and which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant less \$1.00 (but not to be less than the Class III price) and 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 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.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to §1126.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the

fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to §1126.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to §1126.60 for such handler shall include, in lieu of the value of other source milk specified in §1126.60(f) less the value of such other source milk specified in §1126.71(b)(4), a value of milk determined pursuant to §1126.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of §1126.7(b) and the corresponding provisions of §1126.7(d), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§1126.30(b) and 1126.31(b) similar reports for each such nonpool supply plant;

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

(c) The value of milk determined pursuant to § 1126.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1126.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1126.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

(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 § 1126.43(d). 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 23438, May 30, 1975, as amended at 44 FR 18939, Mar. 30, 1979; 58 FR 27890, May 11, 1993]

§ 1126.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due the market administrator from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next day for making payment set forth in the provision under which such error occurred. Any monies found to be due a handler from the market administrator shall be paid promptly to such handler, except that the market administrator shall offset any monies due a handler against monies due from such handler.

§ 1126.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1126.71, 1126.73(g), 1126.76, 1126.77, or 1126.85 shall be increased three-fourths of 1 percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section; and

(b) For the purpose of this section, 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.

ADMINISTRATIVE ASSESSMENT AND
MARKETING SERVICE DEDUCTION

§ 1126.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1126.9(c) that were delivered to pool plants of other handlers or held in inventory at the end of the month;

(b) Receipts from a handler described in § 1126.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1126.43(d) and other source milk allocated to Class I pursuant to § 1126.44 (a)(7) and (a)(11) and the corresponding steps of § 1126.44(b), except such other source milk that is excluded from the computations pursuant to § 1126.60 (d) and (f); and

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat specified in § 1126.76(a)(2).

[40 FR 23438, May 30, 1975, as amended at 58 FR 27891, May 11, 1993]

§ 1126.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator, in making payments to producers pursuant to § 1126.73, shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk of such producer (except a handler's own farm production) for whom the marketing services set forth in this paragraph are not being performed by a cooperative association as determined by the Secretary. The monies shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to pro-

vide producers with market information. The services shall be performed by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, the market administrator shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 18th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each such producer.

PART 1131—MILK IN CENTRAL ARIZONA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.

1131.1 General provisions.

DEFINITIONS

1131.2 Central Arizona marketing area.

1131.3 Route disposition.

1131.4–1131.6 [Reserved]

1131.7 Pool plant.

1131.8 Nonpool plant.

1131.9 Handler.

1131.10 Producer-handler.

1131.11 [Reserved]

1131.12 Producer.

1131.13 Producer milk.

1131.14 Other source milk.

1131.15 Fluid milk product.

1131.16 Fluid cream product.

1131.17 Filled milk.

1131.18 Cooperative association.

1131.19 Commercial food processing establishment.

1131.20 [Reserved]

HANDLER REPORTS

1131.30 Reports of receipts and utilization.

1131.31 Payroll reports.

1131.32 Other reports.

CLASSIFICATION OF MILK

1131.40 Classes of utilization.

1131.41 Shrinkage.