Agriculture

7

PARTS 1000 TO 1199

Milk Orders

Revised as of January 1, 1999

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JANUARY 1, 1999

With Ancillaries

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# Table of Contents

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>v</td>
</tr>
</tbody>
</table>

**Title 7:**

Subtitle B—Regulations of the Department of Agriculture—Continued:

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture ............... 5

**Finding Aids:**

Table of CFR Titles and Chapters ......................................................... 901
Alphabetical List of Agencies Appearing in the CFR ........................... 919
List of CFR Sections Affected ............................................................... 929
Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 7 CFR 1000.1 refers to title 7, part 1000, section 1.
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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16..............................................................as of January 1
Title 17 through Title 27 .................................................................as of April 1
Title 28 through Title 41 ................................................................as of July 1
Title 42 through Title 50.............................................................as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table II). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

January 1, 1999.
**THIS TITLE**

Title 7—Agriculture is composed of fifteen volumes. The parts in these volumes are arranged in the following order: parts 1-26, 27-52, 53-209, 210-299, 300-399, 400-699, 700-899, 900-999, 1000-1199, 1200-1599, 1600-1899, 1900-1939, 1940-1949, 1950-1999, and part 2000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1999.

The Food and Nutrition Service current regulations in the volume containing parts 210-299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing parts 400-699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing parts 900-999. All marketing agreements and orders for milk appear in the volume containing parts 1000-1199. Part 900—General Regulations is carried as a note in the volume containing parts 1000-1199, as a convenience to the user.

Redesignation tables appear in the Finding Aids section of the volumes containing parts 210-299 and parts 1600-1899.

For this volume, Gwendolyn J. Henderson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.
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(This book contains parts 1000 to 1199)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE—CONTINUED:

CHAPTER X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

1000
Subtitle B—Regulations of the Department of Agriculture (Continued)
CHAPTER X—AGRICULTURAL MARKETING
SERVICE
(Marketing Agreements and Orders; Milk)
DEPARTMENT OF AGRICULTURE

<table>
<thead>
<tr>
<th>Part</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>900</td>
<td>General regulations [Note]</td>
<td>7</td>
</tr>
<tr>
<td>1000</td>
<td>General provisions of Federal milk marketing orders</td>
<td>36</td>
</tr>
<tr>
<td>1001</td>
<td>Milk in the New England marketing area</td>
<td>39</td>
</tr>
<tr>
<td>1002</td>
<td>Milk in New York-New Jersey marketing area</td>
<td>69</td>
</tr>
<tr>
<td>1004</td>
<td>Milk in the Middle Atlantic marketing area</td>
<td>109</td>
</tr>
<tr>
<td>1005</td>
<td>Milk in the Carolina marketing area</td>
<td>138</td>
</tr>
<tr>
<td>1006</td>
<td>Milk in Upper Florida marketing area</td>
<td>166</td>
</tr>
<tr>
<td>1007</td>
<td>Milk in the Southeast marketing area</td>
<td>189</td>
</tr>
<tr>
<td>1011</td>
<td>Milk in the Tennessee Valley marketing area</td>
<td>219</td>
</tr>
<tr>
<td>1012</td>
<td>Milk in Tampa Bay marketing area</td>
<td>220</td>
</tr>
<tr>
<td>1013</td>
<td>Milk in Southeastern Florida marketing area</td>
<td>242</td>
</tr>
<tr>
<td>1030</td>
<td>Milk in Chicago Regional marketing area</td>
<td>265</td>
</tr>
<tr>
<td>1032</td>
<td>Milk in Southern Illinois-Eastern Missouri marketing area</td>
<td>294</td>
</tr>
<tr>
<td>1033</td>
<td>Milk in the Ohio Valley marketing area</td>
<td>318</td>
</tr>
<tr>
<td>1036</td>
<td>Milk in the Eastern Ohio-Western Pennsylvania marketing area</td>
<td>347</td>
</tr>
<tr>
<td>1040</td>
<td>Milk in Southern Michigan marketing area</td>
<td>375</td>
</tr>
<tr>
<td>1044</td>
<td>Milk in Michigan Upper Peninsula marketing area</td>
<td>402</td>
</tr>
<tr>
<td>1046</td>
<td>Milk in Louisville-Lexington-Evansville marketing area</td>
<td>419</td>
</tr>
<tr>
<td>1049</td>
<td>Milk in the Indiana marketing area</td>
<td>447</td>
</tr>
<tr>
<td>1050</td>
<td>Milk in Central Illinois marketing area</td>
<td>478</td>
</tr>
<tr>
<td>1051-1063</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td>1064</td>
<td>Milk in the Greater Kansas City marketing area</td>
<td>501</td>
</tr>
<tr>
<td>1065</td>
<td>Milk in the Nebraska-Western Iowa marketing area</td>
<td>525</td>
</tr>
<tr>
<td>1068</td>
<td>Milk in the Upper Midwest marketing area</td>
<td>555</td>
</tr>
<tr>
<td>1076</td>
<td>Milk in Eastern South Dakota marketing area</td>
<td>584</td>
</tr>
<tr>
<td>1079</td>
<td>Milk in the Iowa marketing area</td>
<td>609</td>
</tr>
<tr>
<td>Part</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------</td>
<td></td>
</tr>
<tr>
<td>1093-1097</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td>1106</td>
<td>Milk in Southwest Plains marketing area ............ 637</td>
<td></td>
</tr>
<tr>
<td>1108-1120</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td>1124</td>
<td>Milk in the Pacific Northwest marketing area ...... 666</td>
<td></td>
</tr>
<tr>
<td>1125</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td>1126</td>
<td>Milk in the Texas marketing area ...................... 696</td>
<td></td>
</tr>
<tr>
<td>1131</td>
<td>Milk in Central Arizona marketing area .............. 725</td>
<td></td>
</tr>
<tr>
<td>1132</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td>1134</td>
<td>Milk in the Western Colorado marketing area ........ 749</td>
<td></td>
</tr>
<tr>
<td>1135</td>
<td>Milk in the Southwestern Idaho-Eastern Oregon marketing area ........................................ 772</td>
<td></td>
</tr>
<tr>
<td>1136</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td>1137</td>
<td>Milk in the Eastern Colorado marketing area .......... 796</td>
<td></td>
</tr>
<tr>
<td>1138</td>
<td>Milk in the New Mexico-West Texas marketing area .......................................................... 820</td>
<td></td>
</tr>
<tr>
<td>1139</td>
<td>Milk in the Great Basin marketing area ............... 846</td>
<td></td>
</tr>
<tr>
<td>1150</td>
<td>Dairy promotion program .................................. 873</td>
<td></td>
</tr>
<tr>
<td>1151–1159</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td>1160</td>
<td>Fluid milk promotion program .......................... 885</td>
<td></td>
</tr>
<tr>
<td>1161–1199</td>
<td>[Reserved]</td>
<td></td>
</tr>
</tbody>
</table>
NOTE

7 CFR part 900, the general regulations with respect to marketing agreements and orders, is herein set forth for convenience of users of this volume.

PART 900—GENERAL REGULATIONS

Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate Marketing Agreements and Marketing Orders

Sec.
900.1 Words in the singular form.
900.2 Definitions.
900.3 Proposals.
900.4 Institution of proceeding.
900.5 Docket number.
900.6 Judges.
900.7 Motions and requests.
900.8 Conduct of hearing.
900.9 Oral and written arguments.
900.10 Certification of transcript.
900.11 Copies of transcript.
900.12 Administrator’s recommended decision.
900.13 Submission to Secretary.
900.13a Decision by Secretary.
900.14 Execution of and issuance of marketing agreements and marketing orders.
900.69 Filing; service; extensions of time; effective date of filing; and computation of time.
900.70 Applications for interim relief.
900.71 Hearing before Secretary.

Subpart—Supplemental Rules of Practice for Marketing Orders, Marketing Agreements, and Requirements Issued Pursuant to 7 U.S.C. 608b(b) and 7 U.S.C. 608e Covering Fruits, Vegetables, and Nuts

900.80 Words in the singular form.
900.81 Definitions.
900.82 Stipulation procedures.

Subpart—Procedure Governing Meetings To Arbitrate and Mediate Disputes Relating to Sales of Milk or Its Products

900.100 Words in the singular form.
900.101 Definitions.
900.102 Filing of applications for mediation or arbitration.
900.103 Application for mediation.
900.104 Inquiry by the Administrator.
900.105 Notification.
900.106 Assignment of mediator.
900.107 Meetings.
900.108 Mediator’s report.
900.109 Mediation agreement.
900.110 Application for arbitration.
900.111 Inquiry by the Administrator.
900.112 Notification.
900.113 Submission.
900.114 Designation of arbitrator.
900.115 Hearing.
900.116 Award.
900.117 Approval of award.
900.118 Costs.

Subpart—Miscellaneous Regulations

900.200 Definitions.
900.201 Investigation and disposition of alleged violations.
900.210 Disclosures of information.
900.211 Penalties.

Subpart—Procedure for Conduct of Referenda to Determine Producer Approval of Milk Marketing Orders To Be Made Effective Pursuant to Agricultural Marketing Agreement Act of 1937, as Amended

900.300 General.
900.301 Definitions.
900.302 Associations eligible to vote.
900.303 Conduct of referendum.
900.304 Who may vote.
900.305 Duties of referendum agent.
900.306 Notice of the referendum.
§ 900.2 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires,

(a) The term Act means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) The term Department means the United States Department of Agriculture.

(c) The term Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The terms Administrative Law Judge or Judge means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to conduct the proceeding.

(e) The term Administrator means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) [Reserved]

(g) The term "F E D E R A L REGISTER" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), and acts supplemental thereto and amendatory thereof.

(h) The term hearing means that part of the proceeding which involves the submission of evidence.

(i) The term marketing agreement means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the Act.

(j) The term marketing order means any order or any amendment thereto which may be issued pursuant to section 8c of the Act, and after notice and hearing as required by said section.

(k) The term proceeding means a proceeding upon the basis of which a marketing agreement may be entered into or a marketing order may be issued.

(l) The term hearing clerk means the hearing clerk, United States Department of Agriculture, Washington, DC.

§ 900.3 Proposals.

(a) A marketing agreement or a marketing order may be proposed by the Secretary or by any other person. If any person other than the Secretary proposes a marketing agreement or marketing order, he shall file with the Administrator a written application, together with at least four copies of the proposal, requesting the Secretary to hold a
hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose a marketing agreement or marketing order, he shall sign and cause to be served a notice of hearing, as provided in paragraphs (b)(1)(i) through (iv) of this section; and failure to give notice in the manner provided by paragraph (b)(1)(i) of this section; and failure to give notice in the manner provided by paragraph (b)(1)(ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) Record of notice and supplemental publicity. There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in (b)(1)(i) and (b)(1)(ii) of this section. In regard to the provisions relating to mailing in (b)(1)(ii) of this section, a determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in (b)(1)(iii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 900.4 Institution of proceeding.

(a) Filing and contents of the notice of hearing. The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the proposed marketing agreement or marketing order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed marketing agreement or marketing order or a description of the subjects and issues involved and shall state the industry, area, and class of persons to be regulated, the time and place of such hearing, and the place where copies of such proposed marketing agreement or marketing order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the Federal Register, as provided in this subpart, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: Provided, That, in the case of hearings on amendments to marketing agreements or marketing orders, the time of the hearing may be less than 15 days but shall not be less than 3 days after the date of publication of the notice in the Federal Register.

(b) Giving notice of hearing and supplemental publicity. (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the Federal Register;

(ii) By mailing a true copy of the notice of hearing to each of the persons known to the Administrator, to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers in the area proposed to be subjected to regulation as reasonably will tend to bring the notice to the attention of the persons interested therein;

(iv) By forwarding copies of the notice of hearing addressed to the governors of such of the several States of the United States and to executive heads of such of the Territories and possessions of the United States as the Administrator, having due regard for the subject matter of the proposal and the public interest, shall determine, should be notified.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose a marketing agreement or marketing order, he shall sign and cause to be served a notice of hearing, as provided in this subpart.

§ 900.5 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.6 Judges.

(a) Assignment. No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) Powers of judges. Subject to review by the Secretary, as provided elsewhere in this subpart, the judge, in any proceeding, shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearing, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;
§ 900.7 Motions and requests.

(a) General. All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

Except as provided in §900.15(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to his certification of the transcript pursuant to §900.10 or by the Secretary if made thereafter.

(b) Certification to Secretary. The judge may in his discretion submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 900.8 Conduct of the hearing.

(a) Time and place. The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in §900.4 (relating to the giving of notice of the hearing). Provided, That, if the change in time or place of hearing is made less than 5 days prior to the date previously fixed for the hearing, the judge, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) Appearances—(1) Right to appear. At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.

(2) Debarment of counsel or representative. Wherever, while a proceeding is pending before him, the judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal. Provided, That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or other representative.

In case the judge has ordered that a person be precluded from further acting as counsel or representative in the proceeding, the judge, within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order, respecting the appearance of such person as counsel or representative in proceedings before the Secretary, as the Secretary finds to be appropriate.

(3) Failure to appear. If any interested person fails to appear at the hearing, he shall be deemed to have waived the right to be heard in the proceeding.

(c) Order of procedure. (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in §900.4(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.
(d) Evidence—(1) In general. The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) Objections. If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript.

Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) Proof and authentication of official records or documents. An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) Exhibits. All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise his discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing) the judge shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) Official notice. Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character. Provided, That interested persons shall be given adequate notice, at the hearing, of subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(a) Oral argument before judge. Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that he finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) Briefs, proposed findings and conclusions. The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein.
§ 900.10 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings and proposed conclusions, and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies, of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effected in copies other than the official record copy.

§ 900.11 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at the rate (if any) provided in the contract between the reporter and the Secretary.

§ 900.12 Administrator's recommended decision.

(a) Preparation. As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) Contents. The Administrator’s recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis thereof; (2) A ruling upon each proposed finding or conclusion submitted by interested persons; and (3) An appropriate proposed marketing agreement or marketing order effectuating his recommendations.

(c) Exceptions to recommended decision. Immediately following the filing of his recommended decision, the Administrator shall give notice thereof, and opportunity to file exceptions thereto by publication in the Federal Register. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator’s proposed marketing agreement or marketing order, or both, as the case may be, and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript and may suggest appropriate changes in the proposed marketing agreement or marketing order.

(d) Omission of recommended decision. The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.

§ 900.13 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: all motions and requests filed with the hearing clerk and rulings thereon; the certified transcripts; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator’s recommended decision, if any, and such exceptions as may have been filed.

§ 900.13a Decision by Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include (a) a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the
§900.14 Execution and issuance of marketing agreements and marketing orders.  
(a) Execution and issuance of marketing agreement. If the Secretary has approved a marketing agreement, as provided in §900.13a, the Administrator shall cause copies thereof to be distributed for execution by the handlers eligible to become parties thereto. If and when such number of the handlers as the Secretary shall deem sufficient shall have executed the agreement, the Secretary shall execute the agreement. After execution of a marketing agreement, such agreement shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER. The marketing order or any provision thereof shall not become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date therefor: Provided, That no marketing order shall become effective as to any person sought to be charged thereunder before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice of the issuance and terms of the marketing order.  
(b) Extensions of time. The time for the filing of any document or paper required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk shall be filed in quadruplicate. Any document or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge. The provisions of this subpart concerning filing with the hearing clerk of hearing notices, recommended and final decisions, marketing agreements and orders, and all documents described in §900.17 shall be met by filing a true copy thereof with the hearing clerk.  
(c) Effective date of filing. Any document or paper required or authorized by the foregoing provisions of this subpart to be filed may be extended by the judge (before the record is certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

Provided, That the issuance of such order shall have been approved or favored by producers as required by section 8c(8) of the act.

Provided, That the issuance of such order shall have been approved or favored by producers as required by section 8c(8) of the act.

(a) Filing, number of copies. Except as is provided otherwise in this subpart, all documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk shall be filed in quadruplicate. Any document or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge. The provisions of this subpart concerning filing with the hearing clerk of hearing notices, recommended and final decisions, marketing agreements and orders, and all documents described in §900.17 shall be met by filing a true copy thereof with the hearing clerk.

(b) Extensions of time. The time for the filing of any document or paper required or authorized by the foregoing provisions of this subpart to be filed may be extended by the judge (before the record is certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) Effective date of filing. Any document or paper required or authorized by the foregoing provisions of this subpart to be filed shall be deemed to be filed when it is post-marked or when it is received by the hearing clerk.
§ 900.16 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary’s decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: Provided, That procedural matters and status reports shall not be included within this limitation; and Provided further, That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on any proceeding.

§ 900.17 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any marketing agreement or marketing order and which the Secretary is required to issue or to approve.

§ 900.18 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding under this subpart. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding. Provided, That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Marketing Orders


§ 900.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.51 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term Act means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. and Sup. 601);

(b) The term Department means the United States Department of Agriculture;

(c) The term Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.
(d) The terms administrative law judge or judge means any Administrative Law Judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;
(e) The term administrator means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead;
(f) [Reserved]
(g) The term "FEDERAL REGISTER" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;
(h) The term marketing order means any order or any amendment thereto which may be issued pursuant to section 8c of the Act;
(i) The term handler means any person who, by the terms of a marketing order, is subject thereto, or to whom a marketing order is sought to be made applicable;
(j) The term proceeding means a proceeding before the Secretary arising under subsection (15)(A) of section 8c of the Act;
(k) The term hearing means that part of the proceeding which involves the submission of evidence;
(l) The term party includes the Department;
(m) The term hearing clerk means the hearing clerk, United States Department of Agriculture, Washington, DC;
(n) [Reserved]
(o) The term decision means the judge's initial decision in proceedings subject to 5 U.S.C. 556 and 557, and includes the judge's findings of fact and conclusions with respect to all material issues of fact, law or discretion as well as the reasons or basis thereof, (2) order, and (3) rules on findings, conclusions and orders submitted by the parties;
(p) The term petition includes an amended petition.
§ 900.52 Institution of proceeding.
(a) Filing and service of petition. Any handler desiring to complain that any marketing order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel.
(b) Contents of petition. A petition shall contain:
(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an incorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner.
(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;
(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;
(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;
(5) Prayers for the specific relief which the petitioner desires the Secretary to grant;
(6) An affidavit by the petitioner, or if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.
(c) Motion to dismiss petition—(1) Filing, contents, and responses thereto. If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the act or with the requirements of paragraph (b) of this section, or is not filed in good faith, or is filed for purposes of delay, he may, within thirty days after the filing of the petition, file with the Hearing Clerk a motion to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall serve a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion including any memorandum of law, must be filed by the petitioner with the Hearing Clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the Hearing Clerk shall transmit all
§ 900.52a Answer to petition.

(a) Time of filing. Within 30 days after the filing of the petition, the Administrator shall file an answer thereto: Provided, That if a motion to dismiss the petition, in whole or in part, is made pursuant to §900.52(c), the answer shall be filed within 15 days after the filing of an order of the administrative law judge denying the motion or granting the motion with respect to only a portion of the petition. The answer shall be filed with the hearing clerk who shall cause a copy thereof to be served promptly upon the petitioner.

(b) Contents. The answer shall specify which of the material allegations of fact or of law in the petition are controverted and which are not controverted. The answer also may contain affirmative allegations of fact constituting separate defenses and statements of objections to the sufficiency of the whole or any part of the petition.


§ 900.52b Amended pleadings.

At any time before the close of the hearing the petition or answer may be amended, but the hearing shall, at the request of the adverse party, be adjourned or recessed for such reasonable time as the judge may determine to be necessary to protect the interests of the parties. Amendments subsequent to the first amendment or subsequent to the filing of an answer may be made only with leave of the judge or with the written consent of the adverse party.

§ 900.53 Withdrawal of petition.

If, at any time after the petition is filed, the petitioner desires to withdraw the same, he shall file with the hearing clerk (or, if filed during the course of a hearing, with the judge) a written request for permission to withdraw. The judge may, in his discretion, thereupon dismiss the petition without further procedure: Provided, That, if the request to withdraw is filed after a hearing has been opened, permission to withdraw shall be granted only in exceptional circumstances.

§ 900.54 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.55 J udges.

(a) Assignment. No judge who has any pecuniary interest in the outcome of the proceeding, or who has participated in any investigation preceding the institution of the proceeding, shall serve as judge in such proceeding.

(b) Conduct. The judge shall conduct the proceeding in a fair and impartial manner and shall not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding in an advocative or investigative capacity.

(c) Powers of judges. Subject to review by the Secretary, as provided elsewhere in this subpart, the judge shall have power to:

1. Rule upon motions and requests;
2. Adjourn the hearing from time to time, and change the time and place of hearing;
3. Administer oaths and affirmations and take affidavits;
4. Issue subpoenas, under the facsimile signature of the Secretary, requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers, and other documentary evidence;
5. Examine witnesses and receive evidence;
6. Take or order, under the facsimile signature of the Secretary, the taking of depositions;
7. Admit or exclude evidence;
8. Hear oral argument on facts or law;
9. Consolidate hearings upon two or more petitions pertaining to the same order;
10. Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(d) Who may act in absence of judge. In case of the absence of the judge or his inability to act, the powers and duties to be performed...
§ 900.56 Consolidated hearings.

At the discretion of the judge, hearings upon two or more petitions pertaining to the same order may be consolidated, and the evidence taken at such consolidated hearing may be embodied in a single record.

§ 900.57 Intervention.

Intervention in proceedings subject to this subpart shall not be allowed, except that, in the discretion of the Secretary or the judge, any person (other than the petitioner) showing a substantial interest in the outcome of a proceeding shall be permitted to participate in the oral argument and to file a brief.

§ 900.58 Prehearing conferences.

In any proceeding in which it appears that such procedure will expedite the proceeding, the judge, at any time prior to the commencement of or during the course of the hearing, may request the parties or their counsel to appear at a conference before him to consider (a) the simplification of issues; (b) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (c) the limitation of the number of expert or other witnesses; and (d) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the judge shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the judge may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The judge shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the judge shall submit a written summary for the record if any action is taken.

§ 900.59 Motions and requests.

(a) General. All motions and requests shall be filed with the hearing clerk, except that those made during the course of an oral hearing may be filed with the judge or may be stated orally and made a part of the transcript.

The judge is authorized to rule upon all motions and requests filed after that time, except that, in the discretion of the judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation of holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.60 Oral hearings before judge.

(a) Time and place. The judge shall set a time and place for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. If any change in the time or place of hearing becomes necessary, it shall be made by the judge, who, in such event, shall file with the hearing clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

(b) Certification of motions. The submission or certification of any motion, request, objection, or other question to the Secretary shall be in the discretion of the judge.

§ 900.61 Debarment of counsel or representative.

Whenever, while a proceeding is pending before him, the judge finds that a person acting as counsel or representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative for any party to the proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal. Provided, That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative.

In case the judge has issued an order precluding a person from further acting as counsel or representative in the proceeding, the judge, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Secretary should take respecting the appearance of such person as
counsel or representative in other proceedings before the Secretary. Thereafter, the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) Failure to appear. If the petitioner, after being duly notified, fails to appear at the hearing, he shall be deemed to have authorized the dismissal of the proceeding, without further procedure, and with or without prejudice as the judge may determine. In the event that the petitioner appears at the hearing and no representative of the Department appears, the judge shall proceed ex parte to hear the evidence of the petitioner. Provided, That failure on the part of such representative of the Department to appear at a hearing shall not be deemed to be waiver of the Department's right to file suggested findings of fact, conclusions and order; to be served with a copy of the judge's initial decision and to appeal to the Secretary with respect thereto.

(c) Order of proceeding. Except as may be determined otherwise by the judge, the petitioner shall proceed first at the hearing.

(d) Evidence—(1) In general. The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim. The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination.

Any witness may, in the discretion of the judge, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

The judge shall exclude, insofar as practicable, evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) Objections. If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, or any other ruling of the judge, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow which may be pursued in an appeal pursuant to §900.65 by the party adversely affected by the judge's ruling.

(3) Depositions. The deposition of any witness shall be admitted, in the manner herein-after provided in and subject to the provisions of §900.65.

(4) Affidavits. Except as is otherwise provided in this subpart, affidavits may be admitted only if the evidence is otherwise admissible and the parties agree (which may be determined by their failure to make timely objections) that affidavits may be used.

(5) Proof and authentication of official records or documents. An official record or document, when admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be admitted as evidence by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(6) Exhibits. All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the admissibility of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Except where the judge finds that the furnishing of copies is impracticable, a copy of each exhibit, in addition to the original, shall be filed with the judge for the use of each other party to the proceeding. The judge shall advise the parties as to the exact number of copies which will be required to be filed and shall make and have noted on the record the proper distribution of the copies. If the testimony of a witness refers to a statute, or to a report, document, or transcript, the judge, after inquiry relating to the identification of such statute, report, document, or transcript, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report, document, or transcript containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(7) Official notice. Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character. Provided, That the parties shall be given adequate notice, at the hearing or by reference in the judge's report or the tentative order or otherwise, of matters so noticed, and (except where official notice is taken, for the first time in the proceeding, in the final order) shall be given adequate opportunity to show that such facts are erroneously noticed.

(8) Offer of proof. Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was
erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if on appeal the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

(e) [Reserved]

(f) Transcript. (1) During the period in which the proceeding has an active status the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(2) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter, and upon payment of fees at the rate (if any) provided in the contract between the reporter and the Secretary.


§ 900.61 Depositions.

(a) Procedure in lieu of deposition. Before any party may have testimony taken by deposition, said party shall, if practicable, submit to the other party an affidavit which shall set forth the facts to which the witness would testify, if the deposition should be taken. If, after examination of such affidavit, the other party agrees, or (within 10 days after submission of the affidavit) fails to object, that the affidavit may be used in lieu of the deposition, the judge shall admit the affidavit in evidence and shall not order the deposition to be taken.

(b) Application for taking deposition. Upon the application of a party to the proceeding, the judge may, at any time after the filing of the moving paper, order, under the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing and shall be filed with the hearing clerk and shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to hereinafter in this section as the "officer"), qualified under the rules in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which shall be at least 15 days after the date of the mailing of the application; and (4) the reasons why such deposition should be taken.

(c) Judge's order for taking deposition. If, after the examination of the application, the judge is of the opinion that the deposition should be taken, he shall order its taking. The order shall be filed with the hearing clerk and shall be served upon the parties and shall state: (1) The time and place of the examination (which shall not be less than 10 days after the filing of the order); (2) the name of the officer before whom the examination is to be made; (3) the name of the deponent. The officer and the time and place need not be the same as those suggested in the application.

(d) Qualifications of officer. The deposition shall be taken before the judge or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(e) Procedure on examination. The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. In lieu of oral examination, parties may transmit written interrogatories to the officer prior to the examination and the officer shall propound such interrogatories to the deponent.

The applicant must arrange for the examination of the witness either by oral examination or by written interrogatories. If it is found by the judge, upon the protest of a party to the proceeding, that such party has his residence and his place of business more than 100 miles from the place of the examination and that it would constitute an undue hardship upon such party to be represented at the examination, the applicant will be required to conduct the examination by means of interrogatories. When the examination is conducted by means of interrogatories, copies of the interrogatories shall be served upon the other parties to the proceeding at least five days prior to the date set for the examination, and the other parties shall be afforded an opportunity to file with the officer cross-interrogatories at any time prior to the time of the examination.

(f) Certification by officer. The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and mail the same by registered mail to the hearing clerk.

(g) Use of depositions. A deposition ordered and taken in accord with the provisions of this section may be used in a proceeding under the act if the judge finds that the evidence is otherwise admissible and (1) that the witness is dead; or (2) that the witness is at a distance greater than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because
§ 900.62 Subpenas.

(a) Issuance of subpenas. The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the judge, under the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) Application for subpena duces tecum. Subpenas for the production of documentary evidence, unless issued by the judge upon his own motion, shall be issued only upon a verified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) Service of subpenas. Subpenas may be served (1) by a United States Marshal or his deputy, or (2) by any other person who is not less than 18 years of age, or (3) by registering and mailing a copy of the subpena addressed to the person to be served at his or its last known residence or principal place of business or residence. Proof of service may be made by the return of service on the subpena by the United States Marshal or his deputy, or, if served by an individual other than a United States Marshal or his deputy, by an affidavit of such person stating that he personally served a copy of the subpena upon the person named therein; or, if service was by registered mail, by an affidavit made by the person mailing the subpena that it was mailed as provided in this paragraph and by the signed return post-office receipt: Provided, That, if the subpena is issued on behalf of the Department, the return receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpena with the person subpenaed; the original, bearing or accompanied by the subpena with the person subpenaed; the original, bearing or accompanied by the subpena with the person subpenaed; and stating that, to the best of his knowledge and belief, the transcript, as corrected, is a true, correct, and complete transcript of the testimony given at the hearing, and that the exhibits are all the exhibits properly a part of the hearing record. The original of such certificate shall be attached to the original transcript and a copy of such certificate shall be served upon each of the parties by the hearing clerk who shall also enter onto the transcript (without obscuring the text) any correction noted in the certification.

(b) Proposed findings of fact, conclusions, and orders. Within 10 days (unless the judge shall have announced at the hearing a shorter or longer period of time) after the transcript has been filed with the hearing clerk, as provided in paragraph (a) of this section, each party may file with the hearing clerk proposed findings of fact, conclusions and order, or briefs, as the case may be, the judge shall file with the hearing clerk his certificate indicating any corrections to be made in the transcript, and stating that, to the best of his knowledge and belief, the transcript, as corrected, is a true, correct, and complete transcript of the testimony given at the hearing, and that the exhibits are all the exhibits properly a part of the hearing record. The original of such certificate shall be attached to the original transcript and a copy of such certificate shall be served upon each of the parties by the hearing clerk who shall also enter onto the transcript (without obscuring the text) any correction noted in the certification.

(c) Administrative Law Judge's decision. The judge, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions, and orders, and briefs in support thereof, shall prepare upon the basis of the record, and shall file with the hearing clerk, his initial decision, a copy of which shall be served by the hearing clerk, upon each of the parties. Such decision shall become final without further proceedings 35 days after the date of service thereof, unless there is an appeal to the Secretary by a party to the proceeding: Provided, however, That no decision shall be made by the United States Marshal or his deputy; or, if served by an individual other than a United States Marshal or his deputy, by an affidavit of such person stating that he personally served a copy of the subpena upon the person named therein; or, if service was by registered mail, by an affidavit made by the person mailing the subpena that it was mailed as provided in this paragraph and by the signed return post-office receipt: Provided, That, if the subpena is issued on behalf of the Department, the return receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpena with the person subpenaed; the original, bearing or accompanied by the subpena with the person subpenaed; and stating that, to the best of his knowledge and belief, the transcript, as corrected, is a true, correct, and complete transcript of the testimony given at the hearing, and that the exhibits are all the exhibits properly a part of the hearing record. The original of such certificate shall be attached to the original transcript and a copy of such certificate shall be served upon each of the parties by the hearing clerk who shall also enter onto the transcript (without obscuring the text) any correction noted in the certification.

(b) Proposed findings of fact, conclusions, and orders. Within 10 days (unless the judge shall have announced at the hearing a shorter or longer period of time) after the transcript has been filed with the hearing clerk, as provided in paragraph (a) of this section, each party may file with the hearing clerk proposed findings of fact, conclusions and order, or briefs, as the case may be, the judge shall file with the hearing clerk his certificate indicating any corrections to be made in the transcript, and stating that, to the best of his knowledge and belief, the transcript, as corrected, is a true, correct, and complete transcript of the testimony given at the hearing, and that the exhibits are all the exhibits properly a part of the hearing record. The original of such certificate shall be attached to the original transcript and a copy of such certificate shall be served upon each of the parties by the hearing clerk who shall also enter onto the transcript (without obscuring the text) any correction noted in the certification.
final for the purpose of judicial review except a final decision issued by the Secretary pursuant to an appeal by a party to the proceeding.


§ 900.65 Appeals to Secretary: Transmittal of record.

(a) Filing of appeal. Any party who disagrees with a judge's decision or any part thereof, may appeal the decision to the Secretary by transmitting an appeal petition to the hearing clerk within 30 days after service of said decision upon said party. Each issue set forth in the appeal, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations and authorities being relied upon in support thereof. The appeal petition shall be served upon the other party to the proceeding by the hearing clerk.

(b) Argument before Secretary—(1) Oral argument. A party bringing an appeal may request within the prescribed time period for filing such appeal, an opportunity for oral argument before the Secretary. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Secretary, in his discretion, may grant, refuse or limit any request for oral argument on appeal.

(2) Scope of argument. Argument to be heard on appeal, whether oral or in a written brief, shall be limited to the issues raised by the appeal, except that if the Secretary determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all the issues to be argued.

(c) Response. Within 20 days after service of an appeal brought by a party to the proceeding, any other party may file a response in support of or in opposition to such appeal.

(d) Transmittal of record. Whenever an appeal is filed by a party to the proceeding, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: The pleadings; any motions and requests filed, and the rulings thereon; the transcript of the testimony taken at the hearing, as well as the exhibits filed in connection therewith; any statements filed under the shortened procedure; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the hearing; the judge's initial decision; and the appeal petition; briefs in support thereof, and responses thereto as may have been filed in the proceeding.

[38 FR 29799, Oct. 29, 1973]
§ 900.69 Filing; service; extensions of time; computation of time.

(a) Filing; number of copies. Except as provided otherwise herein, all documents or papers required or authorized in this subpart to be filed with the hearing clerk shall be filed in quadruplicate: Provided, That, if there are more than two parties to the proceeding, a sufficient number of additional copies shall be filed so as to provide for service upon all the parties to the proceeding. Any document or paper, required or authorized in this subpart to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge.

(b) Service; proof of service. Copies of all such papers shall be served upon the parties by the hearing clerk, by the judge, or by some other employee of the Department or by a United States Marshal or his deputy. Service shall be made either (1) by delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record; or (3) by registering and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office, place of business, or residence. Proof of service hereunder shall be made by the affidavit of the person who actually made the service. The affidavit contemplated herein shall be filed with the hearing clerk, and the fact of filing thereof shall be noted on the docket of the proceeding.

(c) Extensions of time. The time for the filing of any documents or papers required or authorized in this subpart to be filed may be extended upon (1) a written stipulation between the parties, or (2) upon the request of a party, by the judge before the transmittal of the record to the Secretary, or by the Secretary at any other time if, in the judgment of the Secretary or the judge, as the case may be, there is good reason for the extension.

(d) Effective date of filing. Any document or paper, except a petition filed pursuant to §900.52, required or authorized under these rules to be filed shall be deemed to have been filed when it is postmarked, or when it is received by the hearing clerk. Any petition filed under §900.52 shall be deemed to be filed when it is received by the hearing clerk.

(e) Computation of time. Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: Provided, That, when such time expires on a Sunday or legal holiday, such time shall be extended to include the next following business day.

§ 900.70 Applications for interim relief.

(a) Filing the application. A person who has filed a petition pursuant to §900.52 may by separate application filed with the hearing clerk, apply to the Secretary for an order...
§ 900.71 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding hereunder. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final order in the proceeding; Provided, That he may issue a tentative order in which event the parties shall be afforded an opportunity to file appeals before the issuance of the final order.

Subpart—Supplemental Rules of Practice for Marketing Orders, Marketing Agreements, and Requirements Issued Pursuant to 7 U.S.C. 608b(b) and 7 U.S.C. 608e Covering Fruits, Vegetables, and Nuts


Source: 61 FR 20717, May 8, 1996, unless otherwise noted.

§ 900.80 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.81 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term Act means Public Act No. 10, 73 Congress (48 Stat. 31) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) The term Department means the United States Department of Agriculture.

(c) The term Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The term Administrator means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(e) The term proceeding means a proceeding before the Secretary arising under sections 8a, 8b(b), 8c(14), 8e, 10(c) and 10(h).

(f) The term hearing means that part of the proceeding which involves the submission of evidence.

(g) The term marketing agreement means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the act.

(h) The term marketing order means any order or any amendment thereto which may be issued pursuant to section 8c of the act, and after notice and hearing as required by said section.

(i) The term handler means any person who, by the terms of a marketing order or marketing agreement, is subject thereto, or to whom a marketing order or marketing agreement is sought to be made applicable.

(j) The term importer means any person who, by the terms of section 8e of the act, is subject thereto.
§ 900.82 Stipulation procedures.

The Administrator, or the Administrator’s representative, may, at any time before the issuance of a complaint seeking a civil penalty under the Act, enter into a stipulation with any handler or importer in accordance with the following procedures:

(a) The Administrator, or the Administrator’s representative, shall give the handler or importer notice of the alleged violation of the applicable marketing order or marketing agreement in the requirements issued pursuant to 7 U.S.C. 608b(b) and 7 U.S.C. 608e, and an opportunity for a hearing thereon as provided by the Act;

(b) In agreeing to the proposed stipulation, the handler or importer expressly waives the opportunity for a hearing and agrees to pay a specified civil penalty within a designated time;

(c) The Administrator, or the Administrator’s representative, agrees to accept the specified civil penalty in settlement of the particular matter involved if it is paid within the designated time;

(d) In cases where the handler or importer does not pay the specified civil penalty within the designated time, or the handler or importer does not agree to the stipulation, the Administrator may issue an administrative complaint; and

(e) The civil penalty that the Administrator may have proposed in a stipulation agreement shall have no bearing on the civil penalty amount that the Department may administer to the proposed stipulation, or the requirements issued pursuant to 7 U.S.C. 608b(b) and 7 U.S.C. 608e, and an opportunity for a hearing thereon as provided by the Act;

(f) In agreeing to the proposed stipulation, the handler or importer expressly waives the opportunity for a hearing and agrees to pay a specified civil penalty within a designated time;

(g) The Administrator, or the Administrator’s representative, agrees to accept the specified civil penalty in settlement of the particular matter involved if it is paid within the designated time;

(h) In cases where the handler or importer does not pay the specified civil penalty within the designated time, or the handler or importer does not agree to the stipulation, the Administrator may issue an administrative complaint; and

(i) The civil penalty that the Administrator may have proposed in a stipulation agreement shall have no bearing on the civil penalty amount that the Department may seek in a formal administrative proceeding against the same handler or importer for the same alleged violation.

Subpart—Procedure Governing Meetings To Arbitrate and Mediate Disputes Relating to Sales of Milk or Its Products


§ 900.100 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.101 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term Act means section 3 of the Agricultural Marketing Agreement Act of 1937, as amended (50 Stat. 248, as amended; 7 U.S.C. 671); (b) The term Department means the United States Department of Agriculture; (c) The term Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The term General Counsel means the General Counsel of the Department;

(e) The term Administrator means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) The term Service means the Agricultural Marketing Service.

(g) The term Division means the Dairy Division of the Service.

(h) The term cooperative means any association, incorporated or otherwise, which is in good faith owned or controlled by producers, or organizations thereof, of milk or its products, and which is bona fide engaged in the collective processing or preparing for market or handling or marketing, in the current of interstate or foreign commerce, of milk or its products;

(i) The term arbitrator means any officer or employee of the Service designated by the Administrator, pursuant to the Act, to arbitrate a bona fide dispute with reference to the terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(j) The term mediator means any officer or employee of the Service designated by the Administrator, pursuant to the act, to mediate a bona fide dispute with reference to terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(k) The term hearing clerk means the hearing clerk, United States Department of Agriculture, Washington, DC.

§ 900.104 Inquiry by the Administrator.
Upon receipt of an application for mediation, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry deemed to be necessary or proper in order to determine whether a bona fide dispute exists.

§ 900.105 Notification.
The Administrator, acting on behalf of the Secretary will notify the applicant as to whether he considers that mediation will effectuate the purpose of the act and as to whether he will mediate.

§ 900.106 Assignment of mediator.
The Director of the Division shall assign a mediator, from the group designated by the Administrator, to act in such capacity.

§ 900.107 Meetings.
All meetings held pursuant to §§ 900.103 to 900.109 shall be held with and under the direction of the mediator.

§ 900.108 Mediator's report.
The mediator, upon the completion of mediation proceedings, shall submit to the Administrator a complete report on such proceedings.

§ 900.109 Mediation agreement.
An agreement arrived at by mediation shall not become effective until approved by the Secretary, and the Secretary will not approve an agreement if there is evidence of fraud, if there is a lack of evidence to support the agreement, or if the agreement provides for any unfair trade practice.

§ 900.110 Application for arbitration.
An application for arbitration by a cooperative shall be in writing and shall contain the following information:
(a) Names in full of the parties to the dispute and their addresses;
(b) The same information required under §900.109(b);
(c) Concise statement of dispute to be submitted;
(d) Originals or certified copies of all contracts, if any, involved in the dispute, and of correspondence which has passed between the parties and of any other documents or information relied upon;
(e) Dates before which it is desired that the hearing shall be had and the award shall become effective;
(f) Suggested time and place for arbitration hearing.
The applicant shall send a copy of the application to each other party to the dispute.

§ 900.111 Inquiry by the Administrator.
Upon receipt of an application for arbitration, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry deemed to be necessary or proper in order to determine whether a bona fide dispute exists, to assist the parties in reducing the dispute to well-defined issues, and to select an arbitrator who would be satisfactory to all parties.

§ 900.112 Notification.
The Administrator, acting on behalf of the Secretary, within a reasonable time after the receipt of an application, will notify the applicant as to whether he will grant the application.

§ 900.113 Submission.
Within a reasonable time after the receipt of the Administrator's consent to arbitrate, the parties to the dispute shall file with the Administrator a formal submission, which shall contain the following information:
(a) Names in full of the parties;
(b) Addresses of the parties to whom all notifications and communications concerning the arbitration shall be sent;
(c) Description of the organization and businesses of all parties to the dispute, including sufficient information to show that the cooperative is a bona fide one, and that the parties are engaged in activities in the current of interstate or foreign commerce;
(d) Concise statement of the specific questions submitted and a brief outline of the contentions of each party to the dispute, and a statement as to the period of time during which the award shall be in effect, said period to be not less than thirty days from the effective date of the award;
(e) Name of arbitrator;
(f) Time and place of arbitration, including street address;
(g) Stipulation by the parties that they will produce any books, records, and correspondence required by the arbitrator as being necessary to a fair determination of the dispute;
§ 900.114 Designation of arbitrator.

The Administrator, after receiving the submission, will designate one or more persons to act as arbitrator.

§ 900.115 Hearing.

The arbitrator shall have full discretion to conduct the hearing in such manner as will, in his opinion, enable him to ascertain all the facts in the case.

Parties to the dispute may appear in person or by duly accredited agents and may be represented by counsel.

All relevant and material evidence may be presented. The arbitrator shall not be bound by the legal rules of evidence.

The arbitrator, in the presence of the parties, may require the production of books and records for examination by himself, but not for examination of confidential information by other parties to the dispute unless the party producing the same consents to its examination by the other parties to the dispute.

No evidence offered by one party shall be received except in the presence of all parties unless the parties so agree in a submission specifying the nature of the evidence to be received.

Final determination as to what will be considered confidential information shall be made by the arbitrator.

The arbitrator may request the opinions of economists, marketing specialists, statisticians, lawyers, accountants, and other experts.

When more than two arbitrators are designated to hear a dispute, and they disagree, the award of the majority shall be the final award. If the arbitrators are evenly divided, there shall be no award.

A stenographic record of all the proceedings during an arbitration must be made.

§ 900.116 Award.

An award shall be made within ten days after the close of the hearing.

The award shall be in writing and shall cover only points of dispute raised in the submission.

The arbitrator, in making the award, may use his own technical knowledge in addition to the evidence submitted by the parties.

The award shall state the period during which it shall be in effect, said period to be not less than thirty days from the effective date thereof; and said period may be extended by agreement among the parties upon notification thereof to the Administrator, unless or until the Administrator withdraws his approval.

The arbitrator shall sign the award in the presence of a notary public, or, when more than one arbitrator is designated the arbitrator shall sign in the presence of each other.

Copies of the award shall be delivered to the parties by the Division.

§ 900.117 Approval of award.

The award shall not become effective until approved by the Secretary, and the Secretary will not approve an award if there is evidence of fraud, or evidence of misconduct upon the part of the arbitrator, or lack of evidence to support the award, or if the award provides for any unfair trade practice.

§ 900.118 Costs.

The parties jointly shall pay for the stenographic record. A copy of the record shall be furnished by the parties to the arbitrator and shall be forwarded by him to the Administrator, ultimately to be filed in the office of the hearing clerk.

The arbitrator shall not receive compensation for parties to the dispute.

Subpart—Miscellaneous Regulations

Authority: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

§ 900.200 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term Act means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U.S.C. 601), as amended;

(b) The term Department means the United States Department of Agriculture;
Agricultural Marketing Service, USDA

§ 900.201 Investigation and disposition of alleged violations.

Whenever the Administrator has reason to believe that any handler has violated, or is violating, the provisions of any marketing order, he may institute such investigation and, after due notice to such handler, conduct such hearing in order to determine the facts as, in his opinion, are warranted. If, in the opinion of the Administrator and the General Counsel, the facts developed as a result of such investigation or hearing warrant such action, the General Counsel shall file the matter to the Attorney General for appropriate action.

§ 900.210 Disclosures of information.

All information in the possession of any official which relates to the business or property of any person, and which was furnished by, or obtained from, such person pursuant to the provisions of any marketing agreement or marketing order, shall be kept confidential and shall not be disclosed, divulged, or made public, unless otherwise expressly provided in said marketing agreement or marketing order, or unless said person authorizes said official, in writing, to disclose such information, except that:

(a) Such information may be disclosed, divulged, or made public if it has been obtained from or furnished by a person who is not the person to whose business or property such information relates or an employee of such person if such information is otherwise required by law to be furnished to an official;

(b) Such information may be furnished to other officials for use in the regular course of their official duties;

(c) Such information may be combined and published in the form of general statistical studies or data in which the identity of the person furnishing such information or from whom it was obtained shall not be disclosed;

(d) Such information may be disclosed upon lawful demand made by the President or by either House of Congress or any committee thereof, or, if the Secretary determines that such disclosure is not contrary to the public interest, such information may be disclosed in response to a subpoena by any court of competent jurisdiction;

(e) Such information may be offered in evidence (whether or not it has been obtained from or furnished by the person against whom it is offered) by or on behalf of the Secretary, the United States, or the official who obtained it or to whom it was furnished, in any administrative hearing held pursuant to section 8c (15)(a) of the Act or in any action, suit, or proceeding, civil or criminal, in which the Secretary or the United States or any such official is a party, and (1) which is instituted (i) for the purpose of enforcing or restraining the violation of any marketing agreement or marketing order, or (ii) for the purpose of collecting any penalty or forfeiture provided for in the act, or (iii) for the purpose of collecting any monies due under a marketing agreement or marketing order, or any provision of either, is challenged or involved.

(f) Such information may be furnished to the duly constituted authorities of any State, pursuant to a written agreement made under authority of section 10(i) of the Act, to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities.

§ 900.211 Penalties.

Any official who shall have violated the provisions of §900.210 by wilfully divulging, disclosing, or making public any information
acquired by or furnished to or in the possession or custody of such official pursuant to the provisions of a marketing agreement or marketing order shall be subject to a penalty of $100 for each offense. (The civil penalty provided in this section is prescribed under the authority contained in sec. 10(c) of the Act (7 U.S.C. 603(c)); this provision is not intended to supersede the provision in sec. 8d(2) of the Act (7 U.S.C. 608d(2)) for criminal liability and removal from office.

Subpart—Procedure for Conduct of Referenda To Determine Producer Approval of Milk Marketing Orders To Be Made Effective Pursuant to Agricultural Marketing Agreement Act of 1937, as Amended


SOURCE: 30 FR 15412, Dec. 15, 1965, unless otherwise noted.

§ 900.300 General.

Unless otherwise prescribed, the procedure contained in this subpart shall be applicable to each producer referendum conducted for the purpose of ascertaining whether the issuance by the Secretary of a milk marketing order is approved or favored, as required under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 7 U.S.C. 601±674). The procedure in this subpart replaces the procedure for conducting similar referenda (15 FR 5177) issued August 7, 1950.

§ 900.301 Definitions.

As used in this subpart and in all supplementary instructions, forms, and documents, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:


(b) Department. "Department" means the United States Department of Agriculture.

(c) Secretary. "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) Administrator. "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(e) Person. "Person" includes any individual, partnership, corporation, association, and any other business unit.

(f) Order. "Order" means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(g) Producer. "Producer" means any person who is a dairy farmer and who, during the representative period, met the requirements of the term "producer" as defined in the order had such order been in effect during the representative period.

(h) Handler. "Handler" means any person who, during the representative period, met the requirements of the term "handler" as defined in the order had such order been in effect during the representative period.

(i) Referendum agent. "Referendum agent" means the person designated by the Secretary to conduct the referendum.

(j) Representative period. "Representative period" means the period designated by the Secretary pursuant to section 8 of the act (7 U.S.C. 608c).

(k) Cooperative association. "Cooperative association" means any association of producers that the administrator has found to be qualified pursuant to section 608c(12) of the Act.


§ 900.302 Associations eligible to vote.

(a) Any association of producers, not previously determined to be a cooperative association may file an application for a determination as to whether it is a cooperative association and thus eligible to vote in a referendum. Such application shall be filed with the Administrator at least 60 days prior to the holding of the referendum. Provided, however, That the Administrator may permit the filing of an application in less than 60 days when, in the opinion of the Administrator, such filing would not delay the conduct of the referendum.

(b) Within a time fixed by the referendum agent, but not later than 5 days prior to the final date for balloting, each cooperative association electing to vote shall, upon the request of the referendum agent, furnish to him a certified list showing the name and address of each producer for whom it claims the right to vote and the plant at which such person’s milk was received during the representative period.

§ 900.303 Conduct of referendum.

The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator.
§ 900.304 Who may vote.

(a) Each producer shall be entitled to only one vote and to cast one ballot in each referendum; and no person who may claim to be a producer shall be refused a ballot. Each producer casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer in such referendum. Each ballot cast shall contain a certification by the person casting the ballot that he is a producer.

(b) Except as provided in section 8c(5)(B) of the Act, as amended, any cooperative association eligible under § 900.302 may, if it elects to do so, vote and cast one ballot for producers who are members of, stockholders in, or under contract with, such cooperative association. A cooperative association shall submit with its ballot, a certified copy of the resolution authorizing the casting of the ballot. Each such cooperative association entitled to vote in a referendum casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer in such referendum.

(c) Voting by proxy or agent, or in any manner, except by the producer or cooperative association will not be permitted; however, a producer which is other than an individual may cast its ballot by a person who is duly authorized and such ballot shall contain a certification by such person that the person on whose behalf the ballot is cast is a producer.

§ 900.305 Duties of referendum agent.

The referendum agent shall also:

(a) For purposes of mailing, prepare a record of producers which will disclose the name of each such person, his address, the name of the handler who received the producer's milk during the representative period, and the name of the cooperative association, if any, which claims the right to vote for the producer. Such record may be compiled from readily available sources, including the following:

1. Records of the Department;
2. Producer records supplied by handlers;
3. Health authority records;
4. Certifications signed by dairy farmers who claim to be producers;
5. Any other reliable sources of information which may be available to the referendum agent.

(b) Apply, as a guide, the following criteria in preparing a record of producers:

1. When the order requires approval by an appropriate health authority before a person meets the definition of producer, only those persons having such approval and who otherwise meet the definition may be regarded as producers. When the definition of producer requires the shipment of milk to a handler or a plant as well as health authority approval, only those persons having such approval and whose milk was received by a handler or at a plant may be regarded as producers.
2. When the order requires shipment to a handler or to a plant, without regard to health authority approval, a person may not be regarded as a producer, except as provided in paragraph (b)(6) of this section, unless his name appears on the handler's producer records.
3. In the case of a producer that is other than an individual, the business unit shall be regarded as the producer.
4. No person may be included in the record more than once although he may operate more than one farm, hold more than one health authority approval, or appear on more than one handler's producer records.
5. In the event the health authority records are not available, are inaccurate, or are incomplete, the appearance of the producer's name on a handler's records as an approved producer shall be prima facie evidence of health authority approval.
6. In the event any handler refuses or fails to make his records available to the referendum agent, a certification signed by the producer shall be regarded by the referendum agent as prima facie evidence that such person is eligible to vote.

(c) Verify the information supplied by each cooperative association which wishes to vote on behalf of producers, as follows:

1. Examine the records of the cooperative association for the purpose of ascertaining whether each producer claimed by the cooperative association is a member of, stockholder in, or under contract with the cooperative association.
2. Identify the persons ascertained to be members of, stockholders in, or under contract with a cooperative association which wishes to vote on behalf of its producers with the names of producers which appear on the record compiled pursuant to paragraph (a) of this section.
3. In determining whether a cooperative association may vote on behalf of a producer the following criteria shall be used:

(i) The cooperative association may vote for each producer who is a member of, stockholder in, or under contract with such cooperative association on the date of the order directing that the referendum be conducted.
(ii) The cooperative association may cast only one ballot for all such producers.
(iii) Whenever more than one cooperative association claims the right to vote for a producer only the cooperative association which furnished evidence satisfactory to the referendum agent that such association was in fact marketing the milk of the producer on the date of the referendum order may vote for such producer.

§ 900.306 Notice of the referendum.

(a) The referendum agent shall at least 5 days prior to the final date for balloting:
§ 900.307 Time for voting.

There shall be no voting except within the time specified by the referendum agent as stated in the notice of the referendum.

§ 900.308 Tabulation of ballots.

(a) General. The referendum agent shall verify the information supplied with each ballot. If he ascertains that the person who cast the ballot was eligible to do so, that the ballot is complete and was mailed and received within the prescribed time, the ballot shall be eligible to be counted. If the referendum agent ascertains that the person who cast the ballot was not eligible to do so, or if the producer who cast the ballot was a member of, stockholder in, or under contract with a cooperative association which cast a valid ballot, or if the ballot is not completed or cast in accordance with instructions, or if the ballot was not mailed to or received by the referendum agent within the prescribed time, the ballot shall be marked “disqualified” with a notation on the ballot as to the reason for the disqualification. The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of eligible ballots cast approving and the number of eligible ballots cast disapproving the issuance of the order shall also be ascertained. The ballots marked “disqualified” shall not be considered as approving or disapproving the issuance of the order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) Individual-handler pool provisions. Whenever separate approval of the pooling provisions of the order is required by section 608c(5)(B)(i) of the Act, any ballot which approves the issuance of the order and disapproves the pooling provisions, or approves the pooling provisions and disapproves the issuance of the order, shall be disqualified; and the referendum agent shall mark the ballot accordingly.

(c) Record of results of the referendum. The referendum agent shall notify the Administrator of the number of eligible ballots cast, the count of the votes, the number of disqualified ballots and the number of producers who were eligible to cast ballots. The referendum agent shall seal the ballots, including those marked “disqualified”, the list of eligible voters and tabulation of ballots, and shall transmit to the Administrator a complete detailed report of all action taken in connection with the referendum together with all the ballots cast and all other information furnished to or compiled by the referendum agent.

(d) Announcement of the results of the referendum. Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent, or others who assist in the referendum, shall not disclose the results of the referendum or the total number of ballots cast.

§ 900.309 Confidential information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, shall be regarded as confidential.

§ 900.310 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of referenda by referendum agents.

§ 900.311 Submittals or requests.

Interested persons may secure information or make submittals or requests to the Administrator with respect to the provisions contained in this subpart.

Subpart—Procedure for Determining the Qualification of Cooperative Milk Marketing Associations


Source: 32 FR 9821, July 6, 1967, unless otherwise noted.

§ 900.350 General statement.

Cooperative marketing associations apply for qualification by the Secretary under the Federal milk order program for certain privileges and exemptions. These privileges and exemptions are expressed in the Agricultural Marketing Agreement Act of 1937 (50
§ 900.351 Applications for qualification.

Any association of producers may apply for determinations as to whether it is a qualified cooperative association with authority to represent producers in order referendums; has authorization to collect payment from handlers for members’ milk; and is rendering specified marketing services to producers. Applicant associations should supply information for these determinations, using as a guide Application Form DA–25. The application form may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250. Determinations required of the Secretary of Agriculture, or the Administrator of the Agricultural Marketing Service, by delegation are made by the Director of the Dairy Division. Once issued they are valid until amended, suspended or terminated.

§ 900.352 Confidential information.

The documents and other information submitted by an applicant association and otherwise obtained by investigation, examination of books, documents, papers, records, files and facilities, and in reports filed subsequent to initial determinations of qualification, shall be regarded as confidential and shall be governed by §900.210.

§ 900.353 Qualification standards.

Statutory requirements for qualification of cooperative associations are provided in subsections (5) and (12) of section 608c of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The association must: (a) Be a cooperative marketing association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the “Capper-Volstead Act,” (7 U.S.C. 201, 202; (b) have its entire organization and all of its activities under the control of its members; (c) have full authority in the sale of its members’ milk; and (d) be engaged in making collective sales or marketing of milk or milk products for the producers thereof. Qualification for exemption from deductions for marketing service payments under specific marketing orders and payment for milk of members under specific orders shall be determined in accordance with the terms of the respective marketing orders.

§ 900.354 Inspection and investigation.

The Secretary of Agriculture, or any duly authorized representative, shall have the right, at any time after an application is received, to examine all books, documents, papers, records, files and facilities of the association, to verify any of the information submitted and to procure such other information as may be required to determine whether the association is qualified in accordance with its application.

§ 900.355 Annual reporting.

Determinations of qualification for privileges and exemptions are subject to amendment, termination or suspension if the association does not currently meet the qualification standards. An association found to be qualified pursuant to the Act is required to file an annual report after its annual meeting has been held following the close of its fiscal year. Form DA–24 is used for this purpose. The report form is available at the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250. The association is required to file a copy of its report with the Dairy Division at Washington and with the market administrator of each order under which it operates.

§ 900.356 Listing of qualified associations.

A copy of each determination of qualification is furnished to the respective association. Copies are also filed in the Dairy Division, Agricultural Marketing Service, and with the Hearing Clerk, Office of the Secretary, U.S. Department of Agriculture, Washington, DC 20250, where they are available for public inspection. A list of qualified associations engaged in marketing milk under a particular milk marketing order is maintained at the office of the market administrator of the order.

§ 900.357 Denial of application; suspension or revocation of determination of qualification.

Any cooperative association whose application has been wholly or partially denied, or whose determination of qualification has been wholly or partly revoked or suspended, may petition the Secretary for a review of such action. Such petition shall state facts relevant to the matter for which review is sought. After due notice to such cooperative association, the Director of the Dairy Division, or in his absence the Acting Director, shall hold, in the manner hereinafter specified, an informal hearing.

(a) Notice. Notice shall be given in writing and shall be mailed to the last known address of the association, or of an officer thereof, at least 3 days before the date set for a hearing. Such notice shall contain: A statement of the time and place of the hearing, said place to be as convenient to the association as can reasonably be arranged, and may contain a statement of the reason for calling the hearing and the nature of the questions upon which evidence is desired or upon which argument may be presented.
§ 900.400 General.

(b) Parties. Hearings are not to be public and are to be attended only by representatives of the association and of the Government, and such other persons as either the association or the Government desires to have appear for purposes of submitting information or as counsel.

(c) Conduct of hearing. The Director or Acting Director of the Dairy Division, or a person designated by him, shall preside at the hearing. The hearing shall be conducted in such manner as will be most conducive to the proper disposition of the matter. Written statements or briefs may be filed by the association within the time specified by the presiding officer.

(d) Preliminary report. The presiding officer shall prepare a preliminary report setting forth a recommendation as to what action shall be taken and the basis for such action. A copy of said report shall be served upon the association by mail or in person. The association may file exceptions to said report within 10 days after service thereof.

§ 900.401 Definitions.

Subpart—Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended


§ 900.400 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a marketing order to regulate the handling of any fruit, vegetable, or nut, or product thereof, or the continuance or termination of such an order, is approved or favored by producers or processors shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 900.401 Definitions.


(b) Administrator means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead; and Department means the United States Department of Agriculture.

(c) Administrator means the Administrator of the Agricultural Marketing Service, with power to delegate or redelegate, to any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(d) Order means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(e) Referendum agent means the individual or individuals designated by the Secretary to conduct the referendum.

(f) Representative period means the period designated by the Secretary pursuant to section 8c of the Act (7 U.S.C. 608c).

(g) Person means any individual, partnership, corporation, association, or other business unit. For the purpose of this definition, the term “partnership” includes (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called “joint ventures,” wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing of the commodity for market and the authority to transfer title to the commodity so produced.

(h) Producer means any person defined as a producer in the order who: (1) Owns and farms land, resulting in his ownership of the commodity produced thereon; (2) rents and farms land, resulting in his ownership of all or a portion of the commodity produced thereon; or (3) owns land which he does not farm and, as rental for such land, obtains the ownership of a portion of the commodity produced thereon. Ownership of, or leasehold interest in, land and the acquisition, in any manner other than as hereinbefore set forth, of legal title to the commodity grown thereon shall not be deemed to result in such owners or lessees becoming producers.


§ 900.402 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum and who also was a producer during the representative period, shall be entitled to only one vote in the referendum, except that: (1) In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote in the referendum; and (2) a cooperative association of producers, bona fide engaged in marketing the commodity or product
§ 900.403 Instructions.

(a) Determine the time of commencement and termination of the period of the referendum, and the time prior to which all ballots must be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or processors, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and (2) the total volume (i) produced for market during the representative period, or (ii) canned or frozen for market during the representative period.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense available media of public information (including, but not being limited to, press and radio facilities) serving the production area, announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and

(e) Make available to producers and the aforesaid cooperative associations which indicate to the agent their intentions to vote, and to processors when required, instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, the text of the proposed order and a summary of its terms and conditions: Provided, That no person who claims to be qualified to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer (and processor when required) whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and, except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 900.404 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to
perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;
(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;
(c) Distribute ballots and the aforesaid texts to producers (and to processors when required) and receive any ballots which are cast; and
(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 900.405 Ballots.
The referendum agent and his appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 900.406 Referendum report.
Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 900.407 Confidential information.
All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart—Public Information

Authority: 5 U.S.C. 301, 552.

Source: 40 FR 20267, May 9, 1975, unless otherwise noted.

Availability of Program Information, Staff Manuals and Instructions, and Related Material

§ 900.500 General.
This subpart is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A, of subtitle A of this title (7 CFR 1.1-1.16), and appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary’s regulations, as implemented by the regulations of this subpart, govern the availability of records of AMS to the public.

§ 900.501 Public inspection and copying.
(a) Facilities for public inspection and copying of the indexes and materials required to be made available under § 1.2(a) of this title will be provided by AMS during normal hours of operation. Request for this information should be made to the Freedom of Information Act Officer at the following address:

Freedom of Information Act Officer, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250.

(b) Copies of such material may be obtained in person or by mail. Applicable fees for copies will be charged in accordance with the regulations prescribed by the Director, Office of Operations and Finance, USDA.

[44 FR 39151, July 5, 1979]

§ 900.502 Indexes.
Pursuant to the regulations in § 1.4(b) of this title, AMS will maintain and make available for public inspection and copying current indexes of all material required to be made available in § 1.2(a) of this title. Notice is hereby given that publication of these indexes is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of publication.

[44 FR 39151, July 5, 1979]

§ 900.503 Request for records.
(a) Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.3(a) of this title. Authority to make determinations regarding initial requests in accordance with § 1.4(c) of this title is delegated to the Freedom of Information Act Officer of AMS. Requests should be submitted to the FOIA Officer at the following address:

Freedom of Information Act Officer (FOIA Request), Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250.

(b) The request shall identify each record with reasonable specificity as prescribed in § 1.3 of this title.

(c) The FOIA Officer is authorized to receive requests and to exercise the authority to (1) make determinations to grant requests or deny initial requests, (2) extend the administrative deadline, (3) make discretionary release of exempt records, and (4) make determinations regarding charges pursuant to the fee schedule.

[44 FR 39151, July 5, 1979]
Agricultural Marketing Service, USDA

§ 900.504 Appeals.
Any person whose request under § 900.503 above is denied shall have the right to appeal such denial in accordance with § 1.3(e) of this title. Appeals shall be addressed to the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250.

Subpart—Information Collection

AUTHORITY: 44 U.S.C. Ch. 35.

§ 900.600 General.
This subpart shall contain such requirements as pertain to the information collection provisions under the Paperwork Reduction Act of 1995.
[63 FR 10492, Mar. 4, 1998]

§ 900.601 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
(a) Purpose. This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR parts 905 through 998 under the Paperwork Reduction Act of 1995.
(b) Display.

<table>
<thead>
<tr>
<th>7 CFR part where identified and described</th>
<th>Current OMB control No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>905, Florida Oranges, Grapefruit Tangerines, Tangelos</td>
<td>0581–0094</td>
</tr>
<tr>
<td>906, Texas Oranges &amp; Grapefruit</td>
<td>0581–0068</td>
</tr>
<tr>
<td>911, Florida Limes</td>
<td>0581–0091</td>
</tr>
<tr>
<td>915, Florida Avocados</td>
<td>0581–0078</td>
</tr>
<tr>
<td>916, California Nectarines</td>
<td>0581–0072</td>
</tr>
<tr>
<td>917, California Pears and Peaches</td>
<td>0581–0080</td>
</tr>
<tr>
<td>920, California Kiwifruit</td>
<td>0581–0149</td>
</tr>
<tr>
<td>922, Washington Apricots</td>
<td>0581–0095</td>
</tr>
<tr>
<td>923, Washington Sweet Cherries</td>
<td>0581–0133</td>
</tr>
<tr>
<td>924, Washington-Oregon Fresh Prunes</td>
<td>0581–0134</td>
</tr>
<tr>
<td>925, S.E. California Desert Grapes</td>
<td>0581–0109</td>
</tr>
<tr>
<td>927, Oregon-Washington-California Winter Pears</td>
<td>0581–0089</td>
</tr>
<tr>
<td>928, Hawaiian Papayas</td>
<td>0581–0102</td>
</tr>
<tr>
<td>929, Cranberries Grown in Designated States</td>
<td>0581–0103</td>
</tr>
<tr>
<td>930, Red Tart Cherries</td>
<td>0581–0177</td>
</tr>
<tr>
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<td>0581–0092</td>
</tr>
<tr>
<td>932, California Olives</td>
<td>0581–0142</td>
</tr>
<tr>
<td>945, Idaho-Eastern Oregon Potatoes</td>
<td>0581–0178</td>
</tr>
<tr>
<td>946, Washington Potatoes</td>
<td>0581–0178</td>
</tr>
<tr>
<td>947, Oregon-California Potatoes</td>
<td>0581–0178</td>
</tr>
<tr>
<td>948, Colorado Potatoes</td>
<td>0581–0178</td>
</tr>
<tr>
<td>953, Southeastern Potatoes</td>
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</tr>
<tr>
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</tr>
<tr>
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<td>0581–0178</td>
</tr>
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<td>0581–0178</td>
</tr>
<tr>
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<td>0581–0178</td>
</tr>
<tr>
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<td>0581–0178</td>
</tr>
<tr>
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<td>0581–0178</td>
</tr>
<tr>
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<td>0581–0071</td>
</tr>
<tr>
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<td>0581–0178</td>
</tr>
<tr>
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<td>0581–0178</td>
</tr>
<tr>
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<td>0581–0065</td>
</tr>
<tr>
<td>987, California Dates</td>
<td>0581–0178</td>
</tr>
<tr>
<td>989, California Raisins</td>
<td>0581–0178</td>
</tr>
<tr>
<td>993, California Dried Prunes</td>
<td>0581–0178</td>
</tr>
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<td>0581–0163</td>
</tr>
<tr>
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<td>0581–0067</td>
</tr>
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</table>

[63 FR 10492, Mar. 4, 1998]
PART 1000—GENERAL PROVISIONS  
OF FEDERAL MILK MARKETING  
ORDERS

Sec.  
1000.1 Scope and purpose of part 1000.  
1000.2 Definitions.  
1000.3 Market administrator.  
1000.4 Continuity and separability of provisions.  
1000.5 Handler responsibility for records and facilities.  
1000.6 Termination of obligations.  
1000.7 OMB control number assigned pursuant to the Paperwork Reduction Act.  

SOURCE: 36 FR 9845, May 29, 1971, unless otherwise noted.  

§ 1000.1 Scope and purpose of part 1000.  
This part sets forth certain terms, definitions, and provisions which shall be common to and part of each Federal milk marketing order except as specifically defined otherwise, or modified, or otherwise provided, in an individual order.  

§ 1000.2 Definitions.  
The following terms shall have the following meanings as used in the order:  
(b) Order. “Order” means the applicable part of Title 7 of the Code of Federal Regulations issued pursuant to section 8c of the Act as a Federal milk marketing order (as amended).  
(c) Department. “Department” means the U.S. Department of Agriculture.  
(d) Secretary. “Secretary” means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his stead.  
(e) Person. “Person” means any individual, partnership, corporation, association, or other business unit.  

§ 1000.3 Market administrator.  
(a) Designation. The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary’s discretion. The market administrator shall be entitled to compensation determined by the Secretary.  
(b) Powers. The market administrator shall have the following powers with respect to each order under his administration:  
(1) Administer the order in accordance with its terms and provisions;  
(2) Make rules and regulations to effectuate the terms and provisions of the order;  
(3) Receive, investigate, and report complaints of violations to the Secretary; and  
(4) Recommend amendments to the Secretary.  
(c) Duties. The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his administration, including, but not limited to, the following:  
(1) [Reserved]  
(2) Employ and fix the compensation of persons necessary to enable him to exercise his powers and perform his duties;  
(3) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of his office and in the performance of his duties, including his own compensation;  
(4) Keep records which will clearly reflect the transactions provided for in the order, and upon request by the Secretary, surrender the records to his successor or such other person as the Secretary may designate;  
(5) Furnish information and reports requested by the Secretary and submit his records to examination by the Secretary;  
(6) Announce publicly at his discretion, unless otherwise directed by the Secretary, by such means as he deems appropriate, the name of any handler who, after the date upon which he is required to perform such act, has not:
§ 1000.5 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of his operations and make such records and his facilities available to the market administrator. If adequate records of a handler, or of any other persons, that are relevant to the obligation of such handler are not maintained and made available, any

(i) Made reports required by the order;
(ii) Made payments required by the order;
(iii) Made available records and facilities as required pursuant to §1000.5;

(7) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities; and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect.

(8) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(9) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.


§ 1000.4 Continuity and separability of provisions.

(a) Effective time. The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) Suspension or termination. The Secretary shall suspend or terminate any or all of the provisions of the order whenever he finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act.

The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) Continuing obligations. If upon the suspension or termination of any or all of the provisions of the order, there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) Liquidation. (1) Upon the suspension or termination of any or all provisions of the order, the market administrator, or such other liquidating agent designated by the Secretary, shall if so directed by the Secretary liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) Separability of provisions. If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order to other persons or circumstances shall not be affected thereby.

§ 1000.5 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of his operations and make such records and his facilities available to the market administrator. If adequate records of a handler, or of any other persons, that are relevant to the obligation of such handler are not maintained and made available, any
§ 1000.6 Termination of obligations.

The provisions of this section shall apply to any obligation under the order for the payment of money:

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler’s report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler’s last known address and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;
(2) The month(s) on which such obligation is based; and
(3) If the obligation is payable to one or more producers or a cooperative association (except an obligation to be prorated to producers under an individual handler pool), the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

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(1) The amount of the obligation;
(2) The month(s) on which such obligation is based; and
(3) If the obligation is payable to one or more producers or a cooperative association (except an obligation to be prorated to producers under an individual handler pool), the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

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(1) The amount of the obligation;
(2) The month(s) on which such obligation is based; and
(3) If the obligation is payable to one or more producers or a cooperative association (except an obligation to be prorated to producers under an individual handler pool), the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.
period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler’s obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 et seq.) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims to be due him under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

§ 1000.7 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. chapter 35 and have been assigned OMB control number 0581-0032.

[49 FR 7102, Feb. 27, 1984]

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec. 1001.1 General provisions.
§ 1001.1  
Payments for Milk

1001.70 Producer-settlement fund.
1001.71 Handlers' producer-settlement fund debits and credits.
1001.72 Payments to and from the producer-settlement fund.
1001.73 Payments to producers.
1001.74 Payments to cooperative associations.
1001.75 Statements to producers.
1001.76 Butterfat differential.
1001.77 Adjustment of accounts.
1001.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1001.85 Assessment for order administration.
1001.86 Deduction for marketing services.


Source: 41 FR 8357, Feb. 26, 1976, unless otherwise noted.

Subpart—Order Regulating Handling

General Provisions

§ 1001.1 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

§ 1001.2 New England marketing area.

New England marketing area, hereinafter called the "marketing area," means all territory within the boundaries of the places set forth below, all waterfront facilities connected therewith and craft moored thereat, and all territory therein occupied by any governmental installation, institution, or other similar establishment:

Connecticut
All of the State of Connecticut.

Massachusetts
Counties:
Barnstable.
Bristol.
Essex.
Franklin (except the towns of New Salem, Orange, and Warwick).
Hampden (except the towns of Brimfield, Monson, Palmer, and Wales).
Hampshire (except the town of Ware).
Middlesex.
Norfolk.
Plymouth.
Suffolk.

New Hampshire
Counties:
Belknap.
Cheshire.
Grafton (the towns of Ashland, Bridgewater, Bristol, Holderness, and Plymouth only).
Hillsborough.
Merrimack.
Rockingham.
Stafford.
Sullivan (except the town of Plainfield).

Rhode Island
All cities and towns except New Shoreham (Block Island).

Vermont
Counties:
Bennington (the towns of Landgrove, Peru, and Winhall only).
Windham (except Somerset).
Windsor (the towns of Andover, Baltimore, Cavendish, Chester, Ludlow, Plymouth, Reading, Springfield, Weathersfield, Weston, West Windsor, and Windsor only).


§ 1001.3 Route disposition.

Route disposition means distribution of Class I milk by a handler to retail or wholesale outlets, which include vending machines but do not include plants or distribution points. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing and packaging plant.

§ 1001.4 Plant.

Plant means the land and buildings, together with their surroundings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing, or packaging of milk or milk
Agricultural Marketing Service, USDA

§ 1001.7

Pool plant.

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

(a) A distributing plant from which:

(i) Is not less than 10 percent of its total receipts of fluid milk products (except filled milk); and

(ii) Exceeds its route disposition in any other Federal marketing area; and

(iii) Exceeds 700 quarts on any day or a daily average of 300 quarts.

(b) A supply plant which meets the conditions specified in paragraphs (a)(1), (2), or (3) of this section. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions. For the purposes of this paragraph, milk received at a plant from a cooperative association in its capacity as a handler under §1001.9(d) shall be considered as having been received at that plant from dairy farmers’ farms.

(1) It is a plant from which in any month of August and December at least 15 percent, and in any month of September through November at least 25 percent, of its total receipts of milk from dairy farmers’ farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants.

(2) For any month of August through December, it is one of a group of plants that meets the conditions specified in this paragraph.

(i) The handler’s written request for continuation of pool supply plant status, which the plant held under the handler’s operation in the preceding month, is received by the market administrator on or before the 16th day of the month.

(ii) The group of plants, considered as a unit, meets the shipping requirements specified in paragraph (b)(2)(i) of this section.

(iii) To qualify as a pool supply plant under this paragraph in December of any year, the plant, considered individually, shall have shipped at least 5 percent of its total receipts of milk from dairy farmers’ farms as fluid milk products, other than as diverted milk, to pool distributing plants in one of the months of August through December of that year.

(iv) In the event of the failure of a group of plants to meet fully the requirements of paragraph (b)(2)(ii) of this section, termination of pool supply plant status shall be limited to the
§ 1001.8

Nonpool plant.

Nonpool plant means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) Other order plant means a pool plant under another Federal order or any other plant at which all fluid milk products handled become subject to the

(i) A pool distributing plant; or
(ii) A regulated plant under another Federal order if its Class I disposition of fluid milk products, except filled milk, in the marketing area regulated by that order exceeds its shipments of fluid milk products, except filled milk, to pool distributing plants under this order.

(c) Each plant, other than a plant operated as a pool distributing plant or a pool supply plant, that is located in the marketing area and operated by a cooperative association shall be a pool plant in any month in which its route disposition does not exceed 2 percent of its total receipts of fluid milk products. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

(d) The term “pool plant” shall not apply to the following plants:

(1) An exempt distributing plant under §1001.8(e);
(2) The plant of a producer-handler under any Federal order;
(3) A plant designated as a regular pool plant under the New York-New Jersey Federal order; or
(4) Any plant for which the market administrator determines that a specified proportion or quantity of the receipts from dairy farmers and of milk from other sources handled at a plant is not available for Class I use because there is in force an unconditional contract for the plant to supply fluid milk products for Class II or Class III use, the plant shall not be a pool plant for the month in which the market administrator notifies the handler of the determination and for any subsequent month in which the contract is in force for any part of the month.

§ 1001.8 Nonpool plant.

Nonpool plant means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) Other order plant means a pool plant under another Federal order or any other plant at which all fluid milk products handled become subject to the
§ 1001.10 Producer-handler.

Producer-handler means any person who, during the month, is both a dairy farmer and a handler and who meets all of the following conditions:

(a) Provides as the person's own enterprise and at the person's own risk the maintenance, care, and management of the dairy herd and other resources and facilities that are used to produce milk, to process and package such milk at the producer-handler's own plant, and to distribute it as route disposition.

(b) The person's own route disposition constitutes the majority of the route disposition from the plant.

(c) The quantity of route disposition in the marketing area from the person's plant is greater than in any other Federal marketing area.

(d) The producer-handler receives no fluid milk products except from such handler's own production and from pool handlers, either by transfer or diversion pursuant to § 1001.15. If the producer-handler's receipts from own production and the total route disposition from the producer-handler's plant each exceed 4,300 pounds per day for the month, the producer-handler's receipts from pool plants are not in excess of 2

\[56 FR 5310, Feb. 11, 1991]
§ 1001.11  Dairy farmer for other markets.

Dairy farmer for other markets means any dairy farmer described in this section. For the purposes of this section, the acts of any person who is an affiliate of, or who controls or is controlled by, a handler shall be considered as having been performed by the handler or dealer. Receipts from a “dairy farmer for other markets” under paragraphs (a), (b), and (c) of this section shall be considered as receipts from the unregulated plant at which the greatest quantity of his milk was received in the most recent month.

(a) The term includes a dairy farmer with respect to milk that is purchased from him during the month by a dealer who operates a plant but does not operate a pool plant, if the milk is moved to a pool plant directly from the dairy farmer’s farm. The term shall not apply to the dairy farmer, however, if all the nonpool milk purchased from him during the month by the same dealer is a receipt of producer milk under the provisions of another Federal order or will be such if the dairy farmer is a producer under this order.

(b) The term includes a dairy farmer with respect to milk that is purchased from him by a handler and moved to a pool plant or that is purchased from him by a cooperative association in its capacity as a handler under §1001.9(d) if that handler caused milk from the same farm to be moved as nonpool milk to any plant during the same month. The term shall not apply to the dairy farmer, however, if all the nonpool milk is a receipt of producer milk under the provisions of another Federal order or will be such if the dairy farmer is a producer under this order.

(d) Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, the term shall apply to any dairy farmer with respect to milk moved from his farm to a handler’s pool plant or purchased from him by a cooperative association in its capacity as a handler under §1001.9(d) during any month in which milk from that farm was received as base milk under another Federal order.

§ 1001.12  Producer.

Producer means a dairy farmer who produces milk that is moved, other than in packaged form, from his farm to a pool plant, or to any other plant as diverted milk. However, the term shall not include:

(a) A producer-handler under any Federal order;

(b) A dairy farmer with respect to milk caused to be moved from his farm to a pool plant under this order by a handler under another Federal order if all of the dairy farmer’s milk so received is considered as a receipt from a producer under the provisions of the other Federal order;

(c) A dairy farmer for other markets;

(d) A dairy farmer who is a local or state government that has nonproducer status for the month under §1001.16(c).
§ 1001.15 Diverted milk.

Diverted milk means milk, other than that excluded under §1001.12 from being considered as received from a producer, that meets the conditions set forth in paragraph (a) or (b) of this section and is not excluded from diverted milk under paragraph (c) of this section.

(a) Milk that a handler in its capacity as the operator of a pool plant reports as having been moved from a dairy farmer’s farm to the pool plant, but which the handler caused to be moved from the farm to another plant, if the handler specifically reports such movement to the other plant as a movement of diverted milk, and the conditions of paragraph (a) (1) or (2) of this section have been met. Milk that is diverted milk under this paragraph shall be considered to have been received at the pool plant from which it was diverted, but for pricing purposes the location adjustments for the zone location specified in §1001.53 shall be used.

(1) During any 2 months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the handler caused milk to be moved from the dairy farmer’s farm during the month, all of the milk that the handler caused to be moved from that farm was physically received as producer milk at the handler’s pool plant or at another of the handler’s pool plants that is no longer operated as a plant.
§ 1001.16 Exempt milk.

Exempt milk means:

(a) Fluid milk products received at a pool plant in bulk from a nonpool plant to be processed and packaged, for which an equivalent quantity of packaged fluid milk products is returned to the operator of the nonpool plant during the same month, if the receipt of bulk fluid milk products and return of packaged fluid milk products occur during an interval in which the facilities of the nonpool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the nonpool plant operator’s control;

(b) Packaged fluid milk products received at a pool plant from a nonpool plant in return for an equivalent quantity of bulk fluid milk products moved from a pool plant for processing and packaging during the same month, if the movement of bulk fluid milk products and receipt of packaged fluid milk products occur during an interval in accordance with the preceding provisions of this paragraph.

(c) Milk moved, as described in paragraphs (a) and (b) of this section, from dairy farmers’ farms to nonpool plants in excess of 35 percent in the months of September through November and 45 percent in other months, of the total quantity of producer milk received (including diversions) by the handler during the month shall not be diverted milk. Such milk, and any other milk reported as diverted milk that fails to meet the requirements set forth in this section, shall be considered as having been moved directly from the dairy farmers’ farms to the plant of physical receipt, and if that plant is a nonpool plant the milk shall be excluded from producer milk. If the handler fails to designate the dairy farmers whose milk is to be so excluded, the entire quantity of milk that the handler caused to be moved from dairy farmers’ farms directly to nonpool plants during the month shall be excluded from producer milk.

§ 1001.22 Commercial food processing establishment.

Commercial food processing establishment means any facility other than a milk or filled milk plant, to which bulk fluid milk products and bulk fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. Producer milk diverted to
§ 1001.30

commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including but not limited to, provisions in §§ 1001.15, 1001.41 and 1001.52.

[58 FR 27775, May 11, 1993]

REPORTS

§ 1001.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, or not later than the 10th day if the report is delivered in person to the office of the market administrator, 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 the handler’s pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk (including the specific quantities of diverted milk and receipts from the handler’s own production);

(2) Receipts of milk from cooperative associations in their capacity as handlers under § 1001.9(d);

(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 § 1001.40(b)(1);

(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 § 1001.9(d) shall report:

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

(2) The utilization or disposition of all such receipts.

(d) Each handler shall report bulk milk received at a handler’s pool plant from a cooperative association in the capacity as the operator of a pool plant or as a handler under § 1001.9(d), if such milk was rejected by the handler subsequent to such handler’s receipt of the milk on the basis that it was not of marketable quality at the time the milk was delivered to the handler’s plant, and such milk was removed from the plant in bulk form by the cooperative association and was replaced with other milk from the association. Except for purposes of this paragraph and § 1001.31(b), such milk that was so removed from the handler’s plant shall be treated for all other purposes of the order as though it had not been delivered to and received at the handler’s plant.

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

[56 FR 5312, Feb. 11, 1991]

§ 1001.31 Other reports of receipts and utilization.

(a) Each handler who dumps fluid milk products at a pool plant shall:

(1) Give the market administrator, at the request and in accordance with instructions of the market administrator, advance notice of the handler’s intention to dump such products and the quantities involved; and

(2) Submit to the market administrator at the time and in the manner prescribed by the market administrator such detailed reports of dumping as the market administrator requests.

(b) Each handler who intends to have a receipt of unmarketable milk replaced with other milk in the manner described under § 1001.30(d) shall give
the market administrator, at the request and in accordance with instructions of the market administrator, advance notice of the handler’s intention to have such milk replaced.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§1001.30 and 1001.32, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler’s obligation under the order.

[56 FR 5312, Feb. 11, 1991]

§ 1001.32 Reports regarding individual producers and dairy farmers.

(a) Each handler shall report on or before the 15th day after the end of each month the information required by the market administrator with respect to producer additions, producer withdrawals, changes in farm locations, and changes in the name of farm operators.

(b) Each handler that is not a cooperative association, upon request from any such association, shall furnish it with information with respect to each of its producer members from whose farm the handler begins, resumes, or stops receiving milk at his pool plant. Such information shall include the applicable date, the producer-member’s post office address and farm location, and, if known, the plant at which his milk was previously received, or the reason for the handler’s failure to continue receiving milk from his farm. In lieu of providing the information directly to the association, the handler may authorize the market administrator to furnish the association with such information, derived from the handler’s reports and records.

(c) Each handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the month, his producer payroll for the month, which shall show for each producer:

(1) The daily and total pounds of milk delivered and its average butterfat test; and

(2) The net amount of the handler’s payments to the producer, with the prices, deductions, and charges involved.

§ 1001.33 Notices to producers.

Each handler shall furnish each producer from whom he receives milk the following information regarding the weight and butterfat test of the milk:

(a) Whenever he receives milk from the producer on the basis of farm bulk tank measurements, the handler shall give the producer at the time the milk is picked up at the farm a receipt indicating the measurement and the equivalent pounds of milk received;

(b) Whenever he receives milk from the producer on a basis other than farm bulk tank measurements, the handler shall give the producer within 3 days after receipt of the milk a written notice of the quantity so received; and

(c) If butterfat tests of the producer’s milk are determined from fresh milk samples, the handler shall give the producer within 10 days after the end of each month a written notice of the producer’s average butterfat test for the month. Such notice shall not be required if the handler has given the producer a written notice of the butterfat test for each of the sampling periods within the month; and

(d) If butterfat tests of the producer’s milk are determined from composite milk samples, the handler shall give the producer within 7 days after the end of each sampling period a written notice of the producer’s average butterfat test for the period.

CLASSIFICATION OF MILK

§ 1001.40 Classes of utilization.

Except as provided in §1001.42, all skim milk and butterfat required to be reported by a handler pursuant to §1001.30 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 inventory of fluid milk products at the end of the month; and

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

(b) Class II milk. Class II milk shall be all skim milk and butterfat:
§ 1001.40

(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 §1001.17 and the
Agricultural Marketing Service, USDA

§ 1001.42

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 definition pursuant to § 1001.18; and

(7) In shrinkage assigned pursuant to § 1001.41(a) to the receipts specified in § 1001.41(a)(2) and in shrinkage specified in § 1001.41 (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.


§ 1001.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1001.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1001.9(d));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1001.9(d) and in milk diverted to such plant from another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero;

(3) Plus 1.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

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

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

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts from dairy farmers for other markets and 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 shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1001.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

[56 FR 5313, Feb. 11, 1991]
product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk and 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 §1001.44(a)(12) and the corresponding step of §1001.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1001.44(a)(7) or the corresponding step of §1001.44(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 §1001.44(a)(11) or (12) or the corresponding steps of §1001.44(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 §1001.40.

(c) Transfers and diversions to producer-handlers and to exempt distributing plants. Skim milk or butterfat in the following forms is transferred or diverted from a pool plant to a producer-handler under this or any other Federal order or to an exempt distributing 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 an exempt distributing 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 its report of receipts and utilization filed pursuant to §1001.30 for the month within which such transaction occurred; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining
§ 1001.43 General classification rules.

In determining the classification of producer milk pursuant to §1001.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1001.30 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 §1001.9(d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1001.40, 1001.41, and 1001.42.

(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;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1001.9(d) shall be determined separately from the operations of any pool plant operated by such cooperative; and

(d) If receipts from more than one pool plant are to be assigned, the receipts shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the lowest-numbered zone for assignments to Class I milk and beginning with the plant in the highest-numbered zone for assignments to Class III milk; and

(e) Receipts of other source milk from more than one plant shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the lowest-numbered zone for assignments to Class I milk and beginning with the plant in the highest-numbered zone for assignments to Class III milk.

(f) 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.

(g) 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 §1001.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1001.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.


§ 1001.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1001.9(a) for each of the handler’s pool plants separately and of each handler described in §1001.9(d) by allocating the handler’s receipts of skim milk and butterfat to the handler’s utilization pursuant to paragraphs (a) through (c) of this section.
(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 §1001.41(b);

2. Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:
   (i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and
   (ii) Receipts of exempt milk;
   (iii) 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 products specified in §1001.40(b) that were received in packaged form from an other 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 §1001.40(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 §1001.40(b)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(5) 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 §1001.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1001.40(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 §1001.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (a)(5) and (a)(6) of this section;
   (ii) Receipts from dairy farmers of fluid milk products which are rejected and segregated in the handler’s normal operation for receiving milk, and which receipts are accepted and disposed of by the handler as salvage product rather than as milk;
   (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 an exempt distributing 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;
(vii) Receipts of fluid milk products (other than exempt milk) from a local or State government which has elected nonproducer status for the month pursuant to §1001.16(c); and

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

(b) 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)(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;

(iii) 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)(2)(i), (7)(v), and (8)(i) of this section and that were not offset by transfers or diversions of fluid milk products from unregulated supply plants remaining at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

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

(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 §1001.40(b)(1), in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(i), (a)(5) and (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)(2) 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, prorata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v) and (8)(i) of this section and that were not offset by transfers or diversions of fluid milk products from unregulated supply plants remaining at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(A) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step (exclusive of transfers between pool plants of the same handler) at all pool plants of the handler;

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, 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 remaining at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler.
products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk 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. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler’s other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk 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 another 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 (b)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii), (iii) and (iv) of this section, such subtraction shall be prorata 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 §1001.45(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)(i) 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 each class 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 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)(i) of this section, should the
§ 1001.45 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 a regulated plant or handler under another Federal order pursuant to §1001.44(a)(12) and the corresponding step of §1001.44(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 §1001.43(g) and §1001.44 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.


§§ 1001.46-1001.48 [Reserved]

CLASS PRICES

§ 1001.50 Class prices.

Subject to the provisions of §1001.52, the class prices per hundredweight of milk for the month shall be as follows:

(a) Class I price. The Class I price in Zone 21 shall be the basic formula price for the second preceding month plus $2.52. The differential value for Zone 1 shall be $3.24.

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

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

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<td>November</td>
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(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, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

§ 1001.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1001.76 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 Cheddar cheese 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 reporting 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 reporting 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 18953, Apr. 14, 1995]

§ 1001.52 Plant location adjustments.

The Class I and blended prices computed under §§ 1001.50 and 1001.61 shall be subject to plant location adjustments based upon the zone locations of plants. The zone location of any plant and the location adjustments applicable to each zone location shall be determined as specified in this section.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include the State of Rhode Island and the Massachusetts counties of Barnstable, Bristol, Dukes, Norfolk, Plymouth and Suffolk, and between Boston and Massachusetts highway route number 128.

(2) Zone 2 shall include the Massachusetts counties of Middlesex (only that portion south of Massachusetts highway route number 2) and Worcester (only the townships of Berlin, Blackstone, Bolton, Douglas, Hopkinton, Mendon, Milford, Millville, Northborough, Northbridge, Southbridge, Sutton, Upton, Uxbridge, Westborough and that portion of Harvard township south of Massachusetts highway route number 2).

(3) Zone 3 shall include: (i) The Connecticut counties of Middlesex (except the townships of Cromwell, Durham, Haddam, Middleton, Middletown, and Portland), New London, Tolland (except the townships of Ellington and Somers), and Windham.


(4) Zone 5 shall include: (i) The Connecticut counties of Fairfield, Hartford, Litchfield, Middlesex (only the townships of Cromwell, Durham, Haddam, Middlefield, Middletown and Portland), New Haven, and Tolland (only the townships of Ellington and Somers).

(ii) The Massachusetts counties of Hampden (except the townships of Brimfield, Holland, Monson, Palmer and Wales), Hampshire (except the township of Ware) and Worcester (only the townships of Brookfield, East Brookfield, Hardwick, New Braintree, North Brookfield, Oakham, Spencer, Sturbridge, Warren and West Brookfield).

(5) Zone 6 shall include the Massachusetts counties of Hampden (except the townships of Brimfield, Holland, Monson, Palmer and Wales), and Hampshire (except the township of Ware).

(b)-(c) [Reserved]

(d) The zone location of each plant in the State of Massachusetts (except Berkshire County) that is outside the areas specified in paragraph (a) of this section shall be based upon its highway mileage distance to Boston, Massachusetts. The distance for each plant shall be the mileage between Boston, Massachusetts, and the named point nearest to the plant, measured to the greatest extent possible over roads designated as principal roads, on the road maps specified in paragraph (e) of this section.

(e) The zone location of each plant that is outside the areas specified in
paragraphs (a) through (d) of this section shall be based upon its highway mileage distance to Boston, Mass., as determined by use of Mileage Guide No. 11, and supplements to and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Arlington, Va. The mileages used shall be those shown between designated key points in the mileage charts, and between named points on the appropriate State road maps, as published in the mileage guide. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located. The distance for each plant shall be the mileage between Boston and the named point nearest to the plant, as shown in the mileage charts. If that named point is not listed in the mileage charts, the distance for the plant shall be the lowest mileage distance between Boston and that named point, computed as follows:

(1) Determine from the charts the mileage between Boston and each of the three key points nearest to the named point which are nearer to Boston than the named point; and

(2) For each of these key points, add to the result in paragraph (e)(1) of this section the mileage between the key point and the named point, measured to the greatest extent possible over roads designated as principal roads.

(f) Notwithstanding the provisions of paragraph (e) of this section, for any named point located in Maine, New Hampshire, Vermont, New York, or Berkshire County, Mass., determine the highway mileage distance between Boston and the named point by use of the appropriate State maps contained in Mileage Guide No. 7, issued by Household Goods Carriers' Bureau, Agent, Arlington, Va. Such distance shall be the lowest highway mileage between Boston and the named point on the map, over roads designated thereon as paved, all-weather roads. In the event that the named point is not located on a through, paved, all-weather road, such other roads shall be used to reach a through, paved, all-weather road as will result in the lowest highway mileage to Boston, except that such other roads shall not be used for a distance of more than 15 miles if it is otherwise possible to connect with a through, paved, all-weather road. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located. The mileage so determined, or the mileage determined under paragraph (e) of this section, whichever is less, shall be considered to be the lowest highway mileage distance between Boston and the named point.

(g) The location adjustments for each plant shall be the amounts shown in the following table for the zone in which the plant is located:

<table>
<thead>
<tr>
<th>Location Adjustments for Determination of Zone Price</th>
<th>Class I and blended price adjustments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distance to Boston (miles)</td>
<td>Plant location zone</td>
</tr>
<tr>
<td>1 to 10</td>
<td>1</td>
</tr>
<tr>
<td>11 to 20</td>
<td>2</td>
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<tr>
<td>21 to 30</td>
<td>3</td>
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<tr>
<td>31 to 40</td>
<td>4</td>
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<tr>
<td>41 to 50</td>
<td>5</td>
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<td>51 to 60</td>
<td>6</td>
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<td>61 to 70</td>
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<td>71 to 80</td>
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<td>81 to 90</td>
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<td>91 to 100</td>
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<td>101 to 110</td>
<td>11</td>
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<td>111 to 120</td>
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<td>121 to 130</td>
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<td>211 to 220</td>
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<td>221 to 230</td>
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<td>231 to 240</td>
<td>24</td>
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<tr>
<td>241 to 250</td>
<td>25</td>
</tr>
<tr>
<td>251 and over</td>
<td>26</td>
</tr>
</tbody>
</table>

1 Class I and blended price location adjustments applicable to plants located in subsequent zones shall be obtained by extending the table at the rate of 2.5 cents for each additional 10 miles except that in no event shall the Class I or blended price at any zone be less than the Class II price for the month.

2 Includes 26 and over.

§ 1001.53 Determination of applicable zone locations for pricing purposes.

In computing the value of fluid milk products at class prices under §§ 1001.60 and 1001.61, the handlers' producer-settlement fund debits and credits under § 1001.7, the minimum amounts payable to producers under § 1001.73, and the minimum amounts payable to cooperative associations under § 1001.74, the location adjustments specified in § 1001.52 for the zone location of the plant for which the computation is being made shall be used except that for the following items the adjustments for the zone locations specified shall be used:

(a) For producer milk diverted by any handler, including a cooperative association in its capacity as a handler under § 1001.9(d), the location of the plant to which the milk was diverted;

(b) For producer milk of a cooperative association in its capacity as a handler under § 1001.9(d) moved to a pool plant, the zone location of the pool plant to which the milk was moved;

(c) For milk of a cooperative association in its capacity as a handler under § 1001.9(d) in shrinkage, overage, extraordinary loss, and ending inventory, at the pool plant to which the milk was moved;

(d) For beginning inventory of a cooperative association in its capacity as a handler under § 1001.9(d) at which the milk was priced as ending inventory during the previous month;

(e) [Reserved]

(f) For receipts from unregulated supply plants assigned to Class I milk, the zone location of the plant from which the product was received;

(g) For any excess of beginning inventory assigned to Class I milk under § 1001.44(a)(2)(iii), (a)(5), (a)(7)(i), or (a)(9) over the quantities of producer milk and of milk from cooperative associations in their capacity as handlers under § 1001.9(d) assigned to Class I and Class III milk in the preceding month, the zone location of the pool plant from which an equivalent quantity of receipts of fluid milk products were assigned to Class II or Class III milk in the preceding month in sequence beginning with the plant in the lowest-numbered zone; and

(h) For purposes of computing the value of fluid milk products at class prices, any fluid milk products moved in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I milk shall be priced at the Class I price applicable at the location of the plant to which the milk was moved subject to a location adjustment credit for the transferee-plant determined by the market administrator as follows:

(1) After the allocation step of § 1001.44(a)(12) for the transferee-plant, multiply the remaining pounds of Class I skim milk and Class I butterfat, plus the pounds of skim milk and butterfat in receipts of concentrated fluid milk products from other plants that are assigned to Class I use, by 110 percent and 150 percent, respectively;

(2) Subtract the respective pounds of skim milk and butterfat in bulk fluid milk products physically received at the plant from the following sources:

   (i) Producers;
   (ii) Cooperative associations in their capacity as handlers under § 1001.9(d);
   (iii) Receipts of diverted milk from pool plants; and
   (iv) Receipts (other than diverted milk) from pool plants at which the same or a higher Class I price applies;

(3) Assign any pounds remaining (which are not in excess of Class I transfers) to skim milk and butterfat in bulk receipts of fluid milk products (except diverted milk) from other pool plants at which a lower Class I price applies in sequence according to the zone location of the plants, beginning with the plant in the lowest numbered zone; and

(4) Multiply the hundredweight computed for each transferor-plant in paragraph (h)(3) of this section by the difference in the Class I prices applicable at the transferee-plant and transferor-plant and total such amounts.

§ 1001.54 Announcement of class prices.

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

[60 FR 6607, Feb. 2, 1995]

§ 1001.55 Equivalent price.

If, for any reason, a price specified in this part for use in computing class prices or for other purposes is not reported or published in the manner described in this part, the market administrator shall use one determined by the Secretary to be equivalent to the price that is specified.

Blended Price

§ 1001.60 Handler's value of milk for computing basic blended price.

For the purpose of computing the basic blended price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants, and of each handler described in §1001.9(d) with respect to milk that was not received at a pool plant, as directed in this section. The prices used shall be those for the applicable zone locations as determined under §1001.53.

(a) Multiply the pounds of producer milk and milk received from a handler described in §1001.9(d) that were classified in each class as determined pursuant to §1001.44 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 §1001.44(a)(14) and the corresponding step of §1001.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1001.74, 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 §1001.44(a)(9) and the corresponding step of §1001.44(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 subtracted from Class I pursuant to §1001.44(a)(7)(i) through (iv), (vii), and (viii) and the corresponding step of §1001.44(b), excluding receipts of bulk fluid cream products from an 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 §1001.44(a)(7)(i) through (iv), (vii), and (viii) and the corresponding step of §1001.44(b);

(f) Add the amount obtained from multiplying the difference between 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 §1001.43(g) and §1001.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1001.44(a)(11) and the corresponding steps of §1001.44(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 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
§ 1001.61

hundredweight of skim milk and butterfat contained in 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 § 1001.61(e); and

(i) 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.


§ 1001.61 Partially regulated distributing plant operator's value of milk for computing basic blended price.

For the purpose of computing the basic blended price, the market administrator shall determine for each month the value of milk distributed as route disposition in the marketing area by the operator of a partially regulated distributing plant, as follows:

(a) Subtract from the quantity of route disposition, except reconstituted milk products, distributed in the marketing area by the partially regulated distributing plant operator the quantity of fluid milk products (except reconstituted milk products and those described in paragraph (b) of this section) received at the plant during the month that is classified and priced as Class I milk or the equivalent thereof under any marketwide pool Federal order and that is not used to offset route disposition in any other marketing area, and multiply the result by the applicable Class I price;

(b) Multiply by the difference between the applicable Class I price and the Class III price for the month the quantity of filled milk distributed as route disposition in the marketing area from the partially regulated distributing plant which is not proved to have been made from other fresh fluid milk products;

(c) 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. Add the amount obtained from multiplying the pounds of labeled reconstituted milk included previously in this paragraph 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.

(d) Add the values pursuant to paragraphs (a) through (c) of this section.

(e) 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 § 1001.43(g). 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.


§ 1001.62 Computation of basic blended price.

The market administrator shall compute the basic blended price per hundredweight applicable to milk received at plants located in zone 21 and containing 3.5 percent butterfat as follows:

(a) Combine into one total the values computed pursuant to §§ 1001.60 and 1001.61 for all handlers from whom the market administrator has received at the market administrator’s office prior to the 11th day after the end of the month the reports for the month prescribed in § 1001.30 and the payments for the preceding month required under § 1001.72(a);

(b) Deduct the amount of the plus adjustments, and add the amount of the minus adjustments, that are applicable under §§ 1001.52 and 1001.53;

(c)-(d) [Reserved]

(e) Add an amount equal to not less than one-half of the unobligated balance of the producer-settlement fund at the close of business on the 10th day after the end of the month;

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

(1) The total hundredweight of producer milk;

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(f); and

(3) The total hundredweight for which a value is computed pursuant to § 1001.61(a); and

(g) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in the producer-settlement fund. The result shall be the basic blended price for the month.


§ 1001.63 Announcement of blended prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth 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 zone blended prices resulting from the adjustment of the basic blended price for such month, as computed under § 1001.62, by the location adjustments set forth in § 1001.52.

[56 FR 5320, Feb. 11, 1991]

Payments for Milk

§ 1001.70 Producer-settlement fund.

(a) The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund.” He shall deposit into the fund all amounts received from handlers under §§ 1001.72, 1001.77, and 1001.78 and the amount subtracted under § 1001.62(c). He shall pay from the fund all amounts due handlers under §§ 1001.72, 1001.77, and 1001.78 and the amount added under § 1001.62(d), subject to his right to offset any amounts due from the handler under these sections and under §§ 1001.85 and 1001.86.

(b) All amounts subtracted under § 1001.62(c), including interest earned thereon, shall remain in the producer-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1001.62(d).

(c) The market administrator shall place all monies subtracted under § 1001.62(c) in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities.

§ 1001.71 Handlers' producer-settlement fund debits and credits.

On or before the 15th day after the end of the month, the market administrator shall render a statement to each handler showing the amount of the handler's producer-settlement fund debit or credit, as calculated in this section.

(a) The producer-settlement fund debit or credit for each plant and each cooperative association in its capacity as a handler under §1001.9(d) shall be computed as specified in this paragraph.

(1) Multiply the quantities of producer milk, the quantities of fluid milk products received at the pool plant from cooperative associations in their capacity as handlers under §1001.9(d), the quantities of other source fluid milk receipts at pool plants that were allocated to Class I pursuant to §1001.44; and the quantities of route disposition in the marketing area by partially regulated distributing plants for which a value was determined pursuant to §1001.61(a) by the basic blended price computed under §1001.62 adjusted by any location adjustments applicable under §§1001.52 and 1001.53.

(2) For any cooperative association in its capacity as a handler under §1001.9(d), multiply the quantities of milk moved to each pool plant by the basic blended price computed under §1001.62 adjusted by any location adjustments applicable under §§1001.52 and 1001.53.

(3) If the value of fluid milk products, as determined under §1001.60 for any pool plant, under §1001.61 for any partially regulated distributing plant, or under paragraph (a)(2) of this section for any cooperative association in its capacity as a handler under §1001.9(d), is greater than the credit as determined under paragraph (a)(1) of this section, the difference shall be the producer-settlement fund debit as a handler under §1001.9(d), as less than the credit as determined under paragraph (a)(1) of this section, the difference shall be the producer-settlement fund credit for the plant or the cooperative association in its capacity as a handler under §1001.9(d).

(b) The producer-settlement fund debit or credit of any handler shall be the net of the producer-settlement fund debits and credits as computed for all of its operations under paragraph (a) of this section.

§ 1001.72 Payments to and from the producer-settlement fund.

(a) On or before the 18th day after the end of the month, each handler shall pay to the market administrator the handler's producer-settlement fund debit for the month as determined under §1001.71.

(b) On or before the 20th day after the end of the month, the market administrator shall pay to each handler the handler's producer-settlement fund credit for the month as determined under §1001.71. If the unobligated balance in the producer-settlement fund is insufficient to make such payments, the market administrator shall reduce uniformly such payments and shall complete them as soon as the funds are available.

§ 1001.73 Payments to producers.

(a) On or before the 5th day after the end of the month, each handler shall pay each producer for milk received from him during the first 15 days of the month at a rate that is not less than the Class III price for the preceding month.

(b) On or before the 20th day after the end of the month, each handler shall make final payment to each producer for the total value of milk received from him during the month at not less than the basic blended price per hundredweight computed under §1001.62, adjusted by the location adjustment applicable under §§1001.52 and 1001.53 and the butterfat differential applicable under §1001.76, minus the amount of the payment made to the producer under paragraph (a) of this section. If
the handler has not received full payment from the market administrator under §1001.72(b) by the date payments are due under this paragraph, he may reduce pro rata his payments to producers by an amount not to exceed such underpayment. Such payments shall be completed after receipt of the balance due from the market administrator by the next following date for making payments under this paragraph.

(c) If the handler’s net payment to a producer is for an amount less than the total amount due the producer under this section, the burden shall rest upon the handler to prove to the market administrator that each deduction from the total amount due is properly authorized and properly chargeable to the producer.

(d) In making payment to producers under paragraph (b) of this section for milk diverted from a pool plant the handler may elect to pay such producers at the price applicable at the zone location of the plant from which the milk was diverted, if the resulting net payment to each producer is not less than that otherwise required under this section and the rate of payment and the deductions shown on the statement required to be furnished under §1001.75 are those used in computing the payment.


§1001.74 Payments to cooperative associations.

(a) Each cooperative association may file with a handler who is not a cooperative association a claim either for the payments that the handler is required to make to the association’s producer members under §1001.73 or for authorized deductions from such payments. The claim shall contain a list of the producers to whom the payments are due or to whom the deductions apply, an agreement to indemnify the handler in the making of such payments or deductions, and a certification that the association has for each producer listed an unterminated membership contract authorizing the payment or deduction.

(b) The handler shall withhold from the association’s producer members the payments or the deductions specified in paragraph (a) of this section in accordance with the association’s claim. He shall pay the amounts withheld to the association on or before the dates on which such amounts otherwise would have been due to the producer members under §1001.73.

(c) For each producer member from whom payment was withheld, the handler shall furnish the association a supporting statement showing the information required to be furnished to the producer under §1001.75. Such information with respect to milk received during the first 15 days of the month shall be furnished not later than the 27th day of the month and with respect to milk received during the remainder of the month not later than the 12th day of the following month. For each producer member from whom a deduction is made under this section, the handler shall furnish the association a statement showing the pounds of milk received.

(d) Each handler who receives fluid milk products at his plant from a cooperative association in its capacity as the operator of a pool plant or in its capacity as a handler under §1001.9(d) shall make payment to the association for such receipts as follows:

(1) On or before the 5th day after the end of the month, for the fluid milk products received from the association during the first 15 days of the month at a rate that is not less than the Class III price for the preceding month. The payment made to the association under this subparagraph shall constitute partial payment of the total amount required to be paid under this paragraph.

(2) On or before the 20th day after the end of the month, for not less than the total value of fluid milk products received from the association’s pool plants, as determined by multiplying the respective quantities assigned to each class under §1001.44 by the class price for the month, adjusted by the location adjustments applicable under §§1001.52 and 1001.53 and the butterfat differential applicable under §1001.76, minus the amount of the payment made to the association under this subparagraph.

(3) On or before the 20th day after the end of the month, for not less than the
§ 1001.75 Statements to producers.

In making the payments to producers required under §1001.73, each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

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

(b) The pounds and butterfat test of milk that is received from the producer, or if more than one minimum rate of payment is applicable to the producer’s milk under §1001.73, the respective pounds and test to which each minimum rate of payment applies;

(c) The minimum rate or rates, including the butterfat differential, at which payment to the producer is required under §1001.73;

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

(e) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions claimed under §§1001.74 and 1001.86, together with a description of the respective deductions; and

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

§ 1001.76 Butterfat differential.

(a) In making the payments to producers required under §1001.73 and the payments to cooperative associations required under §1001.74(d), each handler shall add for each one-tenth of one percent of average butterfat content above 3.5 percent, or may deduct for each one-tenth of one percent of average butterfat content below 3.5 percent, as a butterfat differential, an amount per hundredweight that shall be computed by the market administrator under paragraph (b) of this section.

(b) Round 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 §1001.51(a) through (c), 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.

§ 1001.77 Adjustment of accounts.

(a) Whenever the market administrator’s verification of a handler’s reports or payments discloses an error in payments to or from the market administrator under §1001.72, §1001.85, or §1001.86, the market administrator shall promptly issue to the handler a charge bill or a credit, as the case may be, for the amount of the error. Adjustment charge bills issued during the period beginning with the 11th day of the prior month and ending with the 10th day of the current month shall be payable by the handler to the market administrator on or before the 18th day of the current month. Adjustment credits issued during that period shall be payable by the market administrator to the handler on or before the 20th day of the current month.

(b) Whenever the market administrator’s verification of a handler’s payments discloses payment to a producer or a cooperative association of an amount less than is required by §§1001.73 and 1001.74, the handler shall
make payment of the balance due the producer or the cooperative association not later than the 20th day after the end of the month in which the handler is notified of the deficiency.

§ 1001.78 Charges on overdue accounts.

Any producer-settlement fund account balance due from or to a handler under §1001.72, §1001.77, or §1001.78, for which remittance has not been received in or paid from the market administrator’s office by the close of business on the 20th day of any month, shall be increased one percent effective the following day.

[56 FR 5320, Feb. 11, 1991]

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1001.85 Assessment for order administration.

On or before the 18th day after the end of the month, each handler shall pay to the market administrator his pro rata share of the expense of administration of this order. The payment shall be at the rate of 4 cents per hundredweight, or such lesser rate as the Secretary may prescribe. The payment shall apply to:

(a) All of a handler’s receipts at pool plants during the month of fluid milk products from all sources, except receipts from pool plants, receipts from regulated plants or pool bulk tank units under other Federal orders if such receipts were subject to an administrative expense assessment under the other order, and receipts of exempt milk processed at plants other than pool plants;

(b) All receipts and beginning inventory of a cooperative association in its capacity as a handler under §1001.9(d) for the month less its disposition to pool plants and ending inventory for the month; and

(c) The quantity distributed as route disposition in the marketing area from a partially regulated distributing plant for which a value is determined under §1001.61.


PART 1002—Milk in New York-New Jersey Marketing Area

Subpart—Order Regulating Handling

GENERAL PROVISIONS AND DEFINITIONS

Sec.
1002.1 General provisions.
1002.2 Marketing area.
1002.3 Dairy farmer.
1002.4 Producer.
1002.5 Handler.
1002.6 Unit.
1002.7 Farm.
1002.8 Own farm milk.
1002.9 Other order.
1002.10 Pool milk.
1002.11 Other source milk.
1002.12 Fluid milk product.
1002.13 Fluid cream product.
1002.14 Filled milk.
1002.15 Other milk.
1002.16 Commercial food processing establishment.

MARKET ADMINISTRATOR

1002.22 Additional duties of the market administrator.
§ 1002.1

POOL PLANTS AND BULK TANK UNITS

1002.24 Regular pool plants.
1002.25 Bulk tank units.
1002.26 Operating requirements.
1002.27 Suspension and cancellation of designation.
1002.28 Temporary pool plants.
1002.29 Partial pool plants.

REPORTS

1002.30 Reports of receipts and utilization.
1002.31 Producer payroll reports.
1002.32 Other reports.

CLASSIFICATION

1002.40 General classification rules.
1002.41 Classes of utilization.
1002.42 Shrinkage.
1002.44 Transfers.
1002.45 Allocation of skim milk and butterfat classified.
1002.46 Rules and regulations.

MINIMUM PRICES

1002.50 Class prices.
1002.51 Basic formula price.
1002.52 Transportation differentials.
1002.53 Producer-handler price differential.
1002.54 Use of equivalent price or index.
1002.55 Transportation credit on bulk unit pool milk.
1002.56 Announcement of class prices and butterfat differential.

DETERMINATION OF UNIFORM PRICE

1002.60 Net pool obligation of handlers.
1002.61 Computation of the uniform price.
1002.62 Announcement of uniform price.

PRODUCER SETTLEMENT FUND AND ITS OPERATION

1002.70 Producer settlement fund.
1002.71 Handler's accounts.
1002.72 Payments to the producer-settlement fund.
1002.73 Payments out of the producer-settlement fund.
1002.74 Handler's pool debit or credit.
1002.75 Adjustments of errors in payments.
1002.76 Charges on overdue accounts.
1002.77 Cooperative payments for marketwide services.

PAYMENT BY HANDLERS DIRECTLY TO PRODUCERS

1002.80 Time and rate of payments.
1002.81 Butterfat differential.
1002.82 Transportation differentials.

EXPENSE OF ADMINISTRATION

1002.86 Payment by handlers.


Subpart—Order Regulating Handling

SOURCE: 33 FR 8201, June 1, 1968, unless otherwise noted.

GENERAL PROVISIONS AND DEFINITIONS

§ 1002.1 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.

[36 FR 9847, May 29, 1971]

§ 1002.3 Marketing area.

New York-New Jersey milk marketing area (hereinafter called the "marketing area") means all of the territory within the boundaries of the city of New York, and the counties and parts of counties set forth below together with all piers, docks, and wharves connected therewith, and all craft moored thereat, and including territory within such boundaries which is occupied by Government (municipal, State, Federal, or international) reservations, installations, institutions, or other establishments.

NEW YORK COUNTIES

Albany.
Broome.
Cayuga (except the townships of Sterling, Victory, Conquest, and Montezuma).
Chemung.
Chenango.
Cortland.
Dutchess.
Essex (Schroon, Ticonderoga, Crown Point, and Moriah townships only).
Fulton (except the township of Stratford).
Greene.
Herkimer (except the townships of Webb, Ohio, and Salisbury).
Madison.
Montgomery.
Nassau.
Oneida (except the townships of Ava, Boonville, Forestport, and Florence).
Onondaga.
Orange.
Oswego (except the townships of Redfield and Boylston).
Otsego
Putnam.
Rensselaer.
Rockland.
§ 1002.8  Plant.
(a) Plant means the land, buildings, surroundings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products as determined by the market administrator.
(b) Pool plant means any plant which is designated as a pool plant pursuant to §§ 1002.24 to 1002.28 and any plant, except an other order plant, which receives no milk from dairy farmers or units and from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products is disposed of in consumer packages or dispenser inserts in the marketing area by direct distribution or is moved either in packaged form or bulk to other plants in the marketing area.
(c) Partial pool plant means a plant which is so designated pursuant to § 1002.29.
(d) Other order plant means a plant which is fully subject to the pricing and payment provisions of an other order.

§ 1002.7  Handler.
Handler means:
(a) Any person who engages in the handling of skim milk or butterfat which was received at a pool plant, a partial pool plant, a pool unit or a partial pool unit or at a plant approved by any health authority as a source of skim milk or butterfat for disposition as fluid milk products in the marketing area;
(b) Any person who engages in the handling of fluid milk products, all or a portion of which is shipped to, or received in, the marketing area; or
(c) Any cooperative association with respect to milk which it causes to be delivered from producers to any other handler for the account of such association and for which such association receives payment.

§ 1002.5  Dairy farmer.
Dairy farmer means any person who produces milk.

§ 1002.6  Producer.
Producer means any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption and who delivers pool milk as specified in § 1002.14 to a pool plant, a pool unit, a plant specified in § 1002.28(f)(2) which is a partial pool plant, or a partial pool unit whose pool designation was canceled for failure to meet the requirements specified in § 1002.26(a), except that it shall not include any such dairy farmer delivering to such partial pool plant or partial pool unit unless at least 50 percent of such dairy farmer's milk delivered to such plant or unit is pool milk pursuant to § 1002.14. Each dairy farmer delivering milk to a partial pool plant or a partial pool unit shall be considered to have delivered pool milk for such dairy farmer's proportionate share of total milk delivered by dairy farmers to such plant or unit.

[56 FR 5320, Feb. 11, 1991]

NEW JERSEY COUNTIES

Bergen.
Essex.
Hudson.
Hunterdon.
Middlesex.
Monmouth.
Morris.
Ocean (except the boroughs of Barnegat Light, Beach Haven, Harvey, Cedars, Ship Bottom, Surf City, Tuckerton, and the townships of Eagleswood, Lacey, Little Egg Harbor, Long Beach, Ocean, Stafford, and Union).
Passaic.
Somerset.
Sussex.
Union.
Warren.

§ 1002.8  Plant.
(a) Plant means the land, buildings, surroundings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products as determined by the market administrator.
(b) Pool plant means any plant which is designated as a pool plant pursuant to §§ 1002.24 to 1002.28 and any plant, except an other order plant, which receives no milk from dairy farmers or units and from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products is disposed of in consumer packages or dispenser inserts in the marketing area by direct distribution or is moved either in packaged form or bulk to other plants in the marketing area.
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(b) Any person who engages in the handling of fluid milk products, all or a portion of which is shipped to, or received in, the marketing area; or
(c) Any cooperative association with respect to milk which it causes to be delivered from producers to any other handler for the account of such association and for which such association receives payment.

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[56 FR 5320, Feb. 11, 1991]
§ 1002.9 Unit.

(a) Pool unit means a bulk tank unit established pursuant to §1002.25 and which meets the requirements of a pool unit pursuant to such section.

(b) Partial pool unit means a bulk tank unit so designated pursuant to §1002.25(k).

§ 1002.10 Farm.

Farm means the production facilities and resources supplying milk to a milk house of a dairy farmer. The location of the farm shall be deemed to be the same as the location of the milk house, and in the event of a change in the location of the dairy farmer’s milk house, any question as to whether milk received from the new milk house is from the same or a different farm shall be determined by the market administrator.

§ 1002.11 Own farm milk.

(a) Own farm milk means milk received at a plant from a farm operated by the person who is the operator of such plant.

(b) The market administrator shall publicly announce the name of any handler operating a pool plant receiving own farm milk and the location of the plant operated by such handler. This public announcement shall not include the name of:

(1) Any person meeting the definition of producer-handler as set forth in §1002.12;

(2) Any person receiving no milk from other dairy farmers and selling no more than 100 quarts per day of Class I-A milk to persons in the marketing area other than to other plants; or

(3) A charitable, religious, educational, or governmental institution which is not engaged in the practice of receiving bulk milk from other sources for processing or packaging and is not engaged in the practice of selling packaged milk to persons not associated with such institution.

§ 1002.12 Producer-handler.

Producer-handler means a handler who, following the filing of an application pursuant to paragraph (a) of this section, has been so designated by the market administrator upon determina-
Agricultural Marketing Service, USDA § 1002.12

designation as a producer-handler: Provided, That all milk production resources and facilities owned, operated, or controlled by the applicant either directly or indirectly shall be considered as constituting a part of the applicant's milk production unit in the absence of proof satisfactory to the market administrator that some portion of such facilities or resources do not constitute an actual or potential source of milk supply for the applicant's operation as a producer-handler.

(5) Such other information as may be required by the market administrator.

(b) Requirements. (1) The handler has and exercises (in his capacity as a handler) complete and exclusive control over the operation and management of a plant at which he handles milk received from production facilities and resources (milking herd, buildings housing such herd, and the land on which such buildings are located) the operation and management of which also are under the complete and exclusive control of the handler (in his capacity as a dairy farmer), all of which facilities and resources for the production, processing, and distribution of milk and milk products constitute an integrated operation over which the handler (in his capacity as a producer-handler) has and exercises complete and exclusive control.

(2) The handler is an individual and handles no fluid milk products other than those derived from the milk production facilities and resources designated as constituting the applicant's operation as a producer-handler.

(3) The handler is not, either directly or indirectly, associated with control or management of the operation of another plant or another handler, nor is another handler so associated with his operation.

(4) The handler sells more than an average of 100 quarts per day of Class I-A milk to persons in the marketing area other than to other plants.

(5) In case the plant of the applicant was operated by a handler whose designation as a producer-handler previously had been cancelled pursuant to paragraph (c) of this section, the quantity of fluid milk products handled during the 12 months preceding the application which was derived from sources other than the designated milk production facilities and resources constituting the applicant's operation as a producer-handler is less than the volume set forth for cancellation pursuant to paragraph (c)(3) or (4) of this section.

(c) Cancellation. The designation as a producer-handler shall be cancelled under conditions set forth in paragraphs (c)(1) and (2) of this section or, except as specified in paragraphs (c)(3) and (4) of this section, upon determination by the market administrator that any of the requirements of paragraph (b) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met.

(1) Milk from the designated production facilities and resources of the producer-handler is delivered in the name of another person as pool milk to another handler or except in the months of June through November with prior notice to the market administrator, a dairy herd, cattle barn, or milking parlor is transferred to another person who uses such facilities or resources for producing milk which is delivered as pool milk to another handler. This provision, however, shall not be deemed to preclude the occasional sale of individual cows from the herd.

(2) A dairy herd, cattle barn, or milking parlor, previously used for the production of milk delivered as pool milk to another handler, is added to the designated milk production facilities and resources, except in the months of December through May, with prior notice to the market administrator, or if such facilities and resources were a part of the designated production facilities and resources during any of the preceding 12 months. This provision, however, shall not be deemed to preclude the occasional purchase of individual cows for the herd.

(3) If the producer-handler handles an average of more than 150 product pounds per day of fluid milk products which are derived from sources other than the designated milk production facilities and resources, the cancellation of designation shall be effective.
the first of the month in which he handled such fluid milk products.

(4) If the producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources in a volume less than specified in paragraph (c)(3) of this section, the designation shall be cancelled effective on the first of the month following the third month in any six-month period in which the producer-handler handled such fluid milk products. Provided, That the receipt of up to an average of ten pounds per day of packaged fluid milk products in the form of fluid skim milk, or of any volume of other packaged fluid milk products (except milk) from pool plants, shall not be counted for purposes of this paragraph (c)(4).

(d) Public announcement. The market administrator shall publicly announce the name, plant, and farm location of persons designated as producer-handler, and those whose designations have been canceled. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from such producer-handler on and after the first of the month following the date of such announcement.

(e) Burden of establishing and maintaining producer-handler status. The burden rests upon the handler who is designated as a producer-handler (and upon the applicant for such designation) to establish through records required pursuant to §1000.5 that the requirements set forth in paragraph (b) of this section have been and are continuing to be met and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.


§ 1002.13 Other order.

Other order means an order issued by the Secretary pursuant to the Act, which order regulates the handling of milk in a marketing area other than that defined in this part.

§ 1002.14 Pool milk.

Pool milk means all skim milk and butterfat contained in milk except as set forth in paragraphs (a) through (k) of this section which is pumped at the farm into a tank mounted on a truck or trailer for a handler who has included such milk in a pool unit, or a partial pool unit or which is delivered direct from a farm to a pool plant or a partial pool plant but is not put into a tank truck prior to such delivery. This definition shall include any milk so delivered by a person defined in §1002.11(b)(2), by an institution defined in §1002.11(b)(3), or by a producer-handler designated pursuant to §1002.12 which milk is produced in accordance with methods and standards of the American Association of Medical Milk Commissions for the production of certified milk and which is delivered in bulk to another handler but for marketing as other than certified milk.

(a) Milk first received at a pool plant which otherwise would be considered producer milk under an other order if all of such milk is assigned to Class II or Class III pursuant to §1002.45(a)(9) and the corresponding step of §1002.45(b).

(b) Milk not approved by a duly constituted regulatory agency for fluid consumption.

(c) Milk delivered by a pool unit direct to a plant other than a pool plant or a partial pool plant if such milk is pooled as producer milk under an other order.

(d) Milk which is pumped into a tank truck at the farm for delivery to a handler during any of the months of December through June if any milk from such farm was delivered to such handler as producer milk under an other order during any of the preceding months of July through November unless such farm becomes part of a partial pool unit.

(e) Milk delivered to a partial pool plant set forth in §1002.29(a) and milk of a partial pool unit pursuant to §1002.25(k)(1) in excess of the quantity of such milk classified as Class I-A and Class I-B.

(f) Milk delivered to a partial pool plant set forth in §1002.29(b) and milk of a partial pool unit pursuant to §1002.25(k)(2) in excess of the quantity of such milk classified as Class I-A in the marketing area or at a pool plant, except that if milk is shipped from a partial pool plant in the 401 miles and
Agricultural Marketing Service, USDA

§ 1002.17 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 27778, May 11, 1993]

§ 1002.16 Other source milk.

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

(a) Receipts in the form of fluid milk products from any source other than receipts of pool milk from dairy farmers, receipts from other pool plants and pool units, and receipts of pool milk from partial pool plants and partial pool units;

(b) Receipts in a form other than as a fluid milk product (including those produced at the plant during a prior month) which are reprocessed, converted or combined with another product during the month; and

(c) Receipts in a form other than a fluid milk product for which the handler fails to establish a disposition.


§ 1002.17 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).

[34 FR 18604, Nov. 22, 1969]
§ 1002.18 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 27778, May 11, 1993]

§ 1002.19 [Reserved]

§ 1002.20 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 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.

[58 FR 27778, May 11, 1993]

MARKET ADMINISTRATOR

§ 1002.22 Additional duties of the market administrator.

In addition to the duties specified in §1000.3(c) of this chapter, the market administrator shall perform the following duties:

(a) Maintain a main office and such branch offices as may be necessary;

(b) Promptly notify a handler, upon receipt of the handler's written request therefor, of the market administrator's determination: as to whether one or more plants exist at a specified location, as to whether any specified item constitutes a part of the handler's plant, or as to which plant a specified item is a part in the event that the particular premises in question constitutes more than one plant: Provided, That if the request of the handler is for revision or affirmation of a previous determination, there is set forth in the request a statement of what the handler believes to be the changed conditions which make a new determination necessary. If a handler has been notified in writing of a determination with respect to an establishment operated by him, any revision of such determination shall not be effective prior to the date on which such handler is notified of the revised determination;

(c) Place the sums deducted under §1002.61(d) and retained pursuant to §1002.70 in an interest-bearing account or accounts in a bank or banks duly approved as a Federal depository for such sums or invest them in short-term United States Government securities;

(d) For the purpose of allocating receipts from other Federal order plants under §1002.45(a)(15) and the corresponding step of §1002.45(b), publicly announce the market administrator's estimate of the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in pool milk of all handlers. Such estimate shall be final for such purpose.

(e) 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 another order plant, the class to which such receipts are allocated pursuant to §§1002.40(c) and 1002.45 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.


POOL PLANTS AND BULK TANK UNITS

§ 1002.24 Regular pool plants.

A plant may be designated a regular pool plant pursuant to either paragraph (a) or paragraph (b) of this section. Designation shall be applicable to the plant as such and subject to cancellation only pursuant to §1002.27, regardless of change in the person owning or operating the plant. The market administrator shall be notified by the handlers involved of any transfer from one person to another of ownership or operation of a pool plant.

(a) Any plant shall be designated a pool plant upon determination by the Secretary that the provisions of paragraphs (a)(1) through (4) of this section have been met. Not later than the end
of the month following the month in which an application is received by the Secretary pursuant to paragraph (a)(1) of this section, the Secretary shall either determine that the provisions of paragraphs (a)(1) through (4) of this section either have been met or have not been met, or notify the applicant that additional information is needed prior to making a determination. Such designation shall be effective the first of the month following the date of designation and shall continue until such designation is canceled pursuant to §1002.27. Provided, That notwithstanding the provisions of paragraphs (a)(1) through (4) of this section, any plant which for the month immediately preceding the effective date of this section, had a designation pursuant to §1002.24 as then in effect, is hereby designated a regular pool plant from the effective date of this section until such designation is canceled pursuant to §1002.27.

(1) An application by the operator of the plant for such determination has been addressed to the Secretary and filed at the office of the market administrator: Provided, That if 50 percent or more of the dairy farmers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be filed by such cooperative association as well as the person operating the plant.

(2) The plant is located in New York, New Jersey, or Pennsylvania.

(3) The plant was a pool plant pursuant to paragraph (a) or (b) of §1002.28 for each of the 12 months immediately preceding the month during which an application is filed.

(4) The operating requirements of §1002.26 are being met.

(b) A plant may be designated at any time as a regular pool plant upon application made by the person operating the plant to the Secretary showing that the plant is a replacement for one or more pool plants, designated pursuant to this section, which are operated by him and that substantially all of the dairy farmers delivering milk at the plant previously delivered milk to the pool plant or plants replaced.

§1002.25 Bulk tank units.

Any handler receiving milk from farms in a tank truck shall establish such farms in one or more bulk tank units (hereinafter called “units”) each consisting of one or more farms, in accordance with provisions of this section. The milk of any farm included in a unit shall be considered for pricing purposes as having been received by the handler in the unit at the nearest point of the township (as determined pursuant to §1002.52(b)) in which such farm is located. Any handler who receives milk at a pool plant or a plant distributing Class I-A milk in the marketing area which is delivered from a farm to such plant in a tank truck shall be deemed to have received such milk from a unit, pool, partial pool, or nonpool, and any handler who receives bulk milk from a farm in a tank truck containing pool milk shall be deemed to have received such milk from a farm of a unit either pool, partial pool, or nonpool.

(a) Handlers who may establish, maintain, and be responsible for pool units are as follows:

(1) A handler who operates a pool plant or a handler who operates a plant from which Class I-A milk is distributed in the marketing area other than to another plant: Provided, That a handler who is affiliated with or is a subsidiary of a handler operating a pool plant may also operate pool units if both handlers notify the market administrator in writing of such relationship: Provided further, That such handler who operates a distributing plant but not a pool plant, to be eligible to maintain a pool unit for any month, must have combined receipts of skim milk and butterfat from such unit for such month classified as Classes I-A and I-B in a percentage at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month of the preceding year.

(2) A cooperative handler who does not operate a plant but who receives milk from farms in a tank truck and delivers such milk to plants of other handlers if such cooperative for 12 months has been qualified as a basis for payments pursuant to §1002.77 or if such cooperative has operated a pool
§ 1002.25

unit for 12 consecutive months: Provided, That such cooperative must meet the definition of a cooperative set forth in §1002.77(a)(1).

(3) Any other cooperative handler who does not operate a plant if such cooperative meets the definition of a cooperative set forth in §1002.77(a)(1) subject to the conditions of this section.

(4) For the months specified in paragraph (a)(4)(i) or (ii) of this section, any other handler operating a unit in any of the months of April, May, or June which unit had for such month any skim milk or butterfat classified as Class I-A milk in the marketing area (on some basis other than failure to account for such milk) and had a total Class I-A and Class I-B classification in a percentage at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year.

(i) Such month.

(ii) Each of the months through March following such month except for any month when the Class I-B or combined Class I-A and Class I-B of such unit is less than 60 percent.

(b) The handler may establish the units in any manner chosen by him, subject to the following limitations:

(1) Each unit shall have a headquarters where the basic record of receipts and butterfat tests of milk from each farm are maintained and where there is maintained the basic record of each receipt and each delivery of milk by each tank truck receiving milk from farms of the unit and related details with respect to the movement of such milk.

(2) Each unit shall be given a name indicating the general geographic area in which farms comprising such unit are located.

(3) The handler shall declare whether each unit is to be operated as a pool unit. Farms from which the milk is to be pooled shall be established in a separate unit from those which are not to be pooled.

(4) Farms in the area specified in paragraph (e) of this section shall be in units separate from farms in the area specified in paragraph (f) of this section.

(5) Except as set forth in paragraphs (c)(1) through (5) of this section, a handler may declare that a unit is to be operated as a pool unit and at any time may add a farm to a pool unit: Provided, That a handler pursuant to paragraph (a)(4) of this section may not add farms to a pool unit during the months of July through March unless such handler's Class I-A skim milk or butterfat utilization exceeds the total receipts of skim milk or butterfat, respectively, in milk from the pool unit, and in the latter case he may add only the smallest number of farms necessary to provide sufficient milk to cover such Class I-A utilization.

(1) If the unit is a declared nonpool unit or if the farm is a part of a declared nonpool unit of such handler, the unit or farm may be changed to a pool status, except as excluded from the pool milk definition pursuant to §1002.14(d), only beginning the first day of a month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month except as specified in paragraph (c)(5) of this section.

(2) In the period of December through June, no new pool unit may be established, no nonpool or partial pool unit may be declared to be a pool unit, and no farm may be added to a pool unit if the handler caused, as specified in paragraph (d) of this section, any pool unit or any farm of a pool unit to become nonpool in the period of July through November immediately preceding: Provided, That this limitation shall not prevent the handler from including in a pool unit a farm which for the first time has converted from can delivery to bulk tank delivery and from which the handler received as pool milk all milk delivered by such farm in cans for a period of 30 days immediately preceding: Provided further, That, except in the case set forth in paragraph (d)(3) of this section, this paragraph (c)(2) shall not be applicable if the farm which is caused to become nonpool thereby becomes a producer farm under another order with a provision for marketwide equalization.

(3) No farm which was caused to become nonpool may be made a part of a pool unit by a handler set forth in paragraphs (c)(3)(i) through (iv) of this
section until after the passage of a complete April-May-June period following the time such farm was caused to become nonpool:

(i) The handler who caused the farm to become nonpool.

(ii) The handler or other person who received the milk as nonpool milk.

(iii) A handler who is substantially under the same management control, or ownership as the handler or other person set forth in paragraph (c)(3)(i) or (ii) of this section.

(iv) A handler who receives the milk through arrangement with the handler or other person set forth in paragraph (c)(3)(i), (ii), or (c)(3)(iii) of this section.

(4) A handler may transfer a farm from one pool unit to another of his pool units on the first day of any month upon notice to the market administrator by not later than the 10th day of such month.

(5) A farm shall automatically be added to a pool unit or a nonpool unit shall automatically become a pool unit effective the first day of any month in which any of the skim milk or butterfat in milk of such farm or unit is assigned pursuant to §1002.45 to Class I-A milk unless the handler is precluded from doing so pursuant to paragraph (c)(2) or (c)(3) of this section or unless such milk is considered producer milk under an other order with a provision for marketwide equalization. If some but not all skim milk or butterfat in milk received from such farms previously a part of a nonpool unit is assigned to Class I-A milk the handler operating such unit has until the time of filing the report required pursuant to §1002.30 to specify which farms are to be added to a pool unit and if upon verification by audit the market administrator finds that other skim milk or butterfat in milk of a declared nonpool unit is assigned to Class I-A milk, the handler operating such unit has until ten days after notification by the market administrator to specify which farms are to be added to a pool unit. In absence of such specification, all eligible farms shall be added to the pool unit.

(d) A handler may cause a pool unit or a farm which is a part of a pool unit to become nonpool by the methods set forth in paragraphs (d)(1) through (4) of this section: Provided, That the failure of a unit to meet the pool requirements set forth in paragraph (f) of this section shall not be considered for purposes of this paragraph to be a change of pool status caused by the handler.

Provided further, That a handler pursuant to paragraph (a)(4) of this section must continue in a pool unit any farm which was a part of such handler's pool unit in any of the months of April, May, or June preceding from which he receives milk or from which any other handler receives milk through arrangement with him: Provided further, That if a unit operated by a handler is reported by another handler which is a cooperative, the actions specified in paragraphs (d)(1), (2), and (4) of this section must be concurred in by such cooperative handler.

(1) The handler may change the status of a declared pool unit to a declared nonpool unit effective the first day of any month upon notice to the market administrator by not later than the 10th day of the following month.

(2) The handler may transfer a farm from a pool unit to a nonpool unit effective the first day of any month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month.

(3) The handler may so operate a unit located in the area specified in paragraph (e) of this section that its pool status is cancelled pursuant to §1002.27.

(4) The handler may arrange for the milk of a farm in his pool unit to be delivered to another person as nonpool milk. Any delivery of milk by a farm in a handler's pool unit to another person as nonpool milk shall be considered to have been arranged by such handler unless such handler can establish that such other person is not substantially under the same management, control or ownership as such handler and that such handler was in no way a party to such nonpool delivery.

(e) A declared pool unit must be operated to meet the requirements set
forth in §1002.26 if the farms of such unit are located in the following area: New York, New Jersey, the counties of Addison, Rutland, and Bennington in Vermont, the county of Berkshire in Massachusetts, or in Pennsylvania. Failure to meet such requirements shall make such declared pool unit subject to suspension and cancellation pursuant to the procedure set forth in §1002.27. This paragraph shall not be applicable to a cooperative handler specified in paragraph (a)(3) of this section.

(f) A declared pool unit made up of farms located outside the area specified in paragraph (e) of this section or a declared pool unit made up of farms specified in paragraph (e) of this section and operated by a cooperative handler specified in paragraph (a)(3) of this section shall be a pool unit in the months of July through March if at least 25 percent of the milk in such unit is delivered in such month to pool plants, and shall be a pool unit in the months of April through June only if 60 percent of the milk of such unit was received at pool plants during the period of October through December immediately preceding or if such handler received no milk of such unit or from farms of such unit in the preceding October through December.

(g) Any unit declared to be a pool unit shall be designated a pool unit in any month (1) if the handler is qualified in such month pursuant to paragraph (a) of this section, (2) if such unit meets all the requirements of this section applicable to it to be a pool unit, or (3) if the designation of such unit has not been cancelled pursuant to §1002.27.

(h) Each handler shall report by not later than the 10th day of the month any changes in units during the preceding month and as of the first day of such month.

(i) Whenever the market administrator finds that a handler has caused bulk tank milk from a farm required to be included in an established unit but which has not been so included, he shall tentatively assign such farm to a unit and promptly notify the handler of such action. Unless otherwise requested by the handler within 10 days of such notice, the tentative assignment by the market administrator will become final.

(j) Whenever the market administrator finds that a handler has caused milk to become nonpool pursuant to paragraph (d)(4) of this section he shall promptly notify the handler of such finding. Within 10 days of such notice the handler may, except as to any such milk pooled under another order, (1) make a written claim that the failure to include the milk involved as pool milk was an error and, in such event, the market administrator shall pool such milk and rescind his finding, or (2) make a written offer to submit proof that he had not caused such milk to become nonpool. In the latter event, the market administrator shall examine such proof and shall either rescind his original finding or confirm it. Failure to respond to the market administrator's notice shall be deemed to confirm the finding.

(k) Units other than those which are pool units pursuant to paragraph (g) of this section shall be designated partial pool units if they meet the provisions set forth in paragraphs (k)(1) and (2) of this section.

(1) Any nonpool unit which would have been automatically made a pool unit pursuant to paragraph (c)(5) of this section except that the handler is precluded from adding farms thereof to a pool unit pursuant to paragraph (c)(2) or (c)(3) of this section. If a unit of a handler becomes a partial pool unit pursuant to this paragraph, all of the handler's pool units and partial pool units shall be combined and the skim milk and butterfat in milk of the partial pool units assigned to Class I-A. Any unit whose milk fails to meet the pooling requirements of paragraph (f) of this section, or any unit operated by a handler not specified in paragraph (a) of this section, as being eligible to establish and maintain pool units, or any unit made up of farms located in the 401 miles and over freight zone unless the handlers operating such unit is eligible to establish a pool unit and has specifically requested such unit to be so designated.
Agricultural Marketing Service, USDA

§ 1002.27 Suspension and cancellation of designation.

The designation of a pool plant pursuant to § 1002.24 or of a declared pool unit consisting of farms in the area specified in § 1002.25(e) may be suspended or canceled under any of the following provisions:

(a) The designation shall be canceled effective on the first of the month following the filing with the market administrator, and on a form prescribed by him, of an application by the handler operating the plant: Provided, That a plant whose designation is so canceled on the first of any of the months of August through November shall be a pool plant if it meets the provisions of paragraph (e) of § 1002.28, and shall not be a pool plant pursuant to any other provision of this order prior to December 1 following such cancellation: Provided further, That such application for cancellation shall be accompanied by proof that the handler, if not a cooperative association qualified pursuant to § 1002.77 has notified any qualified cooperative association which has any members who deliver milk to such plant, and has notified individually all producers delivering to such plant who are not members of such qualified cooperative association, of his intention to make such application: Provided further, That if 50 percent or more of the producers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be made by such cooperative association as well as by the handler operating the plant: Provided further, That if a handler applies for a replacement designation pursuant to § 1002.24(b), the designation of the plant or plants replaced shall be canceled automatically at the time the replacement designation becomes effective.

(b) The designation of any plant which in any month is not approved by a health authority as a source of milk for the marketing area shall be automatically suspended at the beginning of the second month following the month that the handler receives notice that the plant does not have health approval as a source of milk for the marketing area unless the absence of
health approval is a temporary condition covering a period of not more than 15 days: Provided, That the designation of a plant approved by a health authority as a source of milk for the marketing area, even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant, shall not be suspended pursuant to this provision.

(c) The designation of a plant pursuant to §1002.24 shall be suspended at the beginning of the second month following any consecutive 12-month period in which the plant failed to receive any pool milk or at the beginning of the second month following a month in which there is a failure to maintain the facilities and equipment that constitute a plant pursuant to §1002.8(a).

(d) The designation of any plant or unit shall be suspended, effective no sooner than 10 days nor later than 20 days after the date of mailing of notice, by registered letter, to the handler, whenever the market administrator, subject to the limitations set forth in paragraphs (h) and (j) of this section, finds on the basis of available information that the handler operating the plant or unit is not meeting the requirements set forth in §1002.26: Provided, That, if the handler operating the plant or unit is not a cooperative association qualified pursuant to §1002.77, the market administrator shall notify any qualified cooperative association which has any members who deliver milk to such plant or unit, and shall also notify individually all producers delivering to such plant or unit who are not members of such qualified cooperative association, of such suspension of designation.

(e) In the case of suspension pursuant to this section of the designation of one or more plants or units for failure to meet the requirements of §1002.26(a) or (c) the handler operating such plant or unit may select, prior to the effective date of such suspension, one or more other pool plants or pool units consisting of farms in the area specified in §1002.25(e) for suspension in lieu thereof if, during the preceding month, the quantity of pool milk received from producers at such substituted plants or units was not less than the quantity of pool milk received from producers at the plants or units named for suspension. The handler may also select the order in which plant or unit designations are to be canceled in the event of a later determination by the Secretary canceling the designation of some but not all of the plants or units suspended.

(f) Not later than 10 days after the effective date of suspension of designation pursuant to this section, the handler operating the plant or unit may apply to the Secretary for a review. If the handler fails to so apply for such review, the designation shall be canceled as of the effective date of the suspension. If the handler does so apply, the Secretary shall, after review, either determine that the requirements set forth in §1002.26 have been met and order the suspension revoked, or determine that such requirements have not been met and order the designation canceled as of the effective date of the suspension: Provided, That, if the Secretary has made no determination within two months after the end of the month in which the suspension was made effective, but later orders the designation canceled, such cancellation shall be effective as of the first of the month following the date of such determination.

(g) Beginning with the effective date of a suspension pursuant to this section, and until the Secretary has either ordered the designation canceled or ordered the suspension revoked, the plant or unit shall be treated as a pool plant or pool unit: Provided, That all payments into or out of the producer settlement fund (except such payments on the basis of operations during a month in which the plant meets the requirements of §1002.28 or the unit meets the requirements of §1002.25(g)) shall be held in reserve by the market administrator until an order is issued by the Secretary, but not longer than 2 months after the end of the month in which the suspension was made effective.

(h) No pool plant or pool unit designation shall be suspended for failure
to meet the requirements of §1002.26(a) except under the following conditions or pursuant to paragraph (l) of this section:

(1) A meeting has been held no sooner than three days after notice by the market administrator to all handlers operating pool plants designated pursuant to §1002.24 or pool units consisting of farms in the area specified in §1002.25(e) for consideration of the desirable utilization of milk received from producers during a period ending not later than the end of the second month after the month during which such meeting is held.

(2) There has been issued by the market administrator, following such meeting, and mailed to all handlers operating pool plants designated pursuant to §1002.24 or pool units consisting of farms in the area specified in §1002.25(e) the market administrator’s determination of the desirable utilization of milk received from producers each month during all or a part of the period set forth in paragraph (h)(1) of this section. Such determination shall include a schedule setting forth, by months, the desired minimum percentage of pool milk received from producers to be utilized in specified classes. Such specified classes shall include Class I–A in the marketing area, and may include all or a part of other Class I–A and Class I–B.

(3) The market administrator finds on the basis of available information that the handler operating a plant or unit or the cooperative reporting a plant or unit is not utilizing milk received from producers in accordance with the minimum percentage set forth in the determination of the market administrator previously announced pursuant to paragraph (h)(2) of this section: Provided, That the suspension of the designation of a plant or unit may be made effective during the months of November and December if the market administrator finds that the handler is utilizing any milk received from producers in classes other than those set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section.

(4) Cancellation of designations shall be limited to those plants or units necessary to result in a utilization of milk received at the remaining pool plants and pool units operated by the handler, or reported by the cooperative, as the case may be, in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section.

(5) Loss of approval by health authorities of a plant as a source of milk for the marketing area may in itself constitute adequate reason for the
market administrator to suspend the designation of the plant for failure to meet the requirements of §1002.26(b) only if the absence of such approval continues for more than 15 days.

(k) The designation shall be canceled effective on the first of the month following three consecutive months if in the absence of this designation milk received from dairy farmers and units at the plant would have been classified and priced under another order with a provision for marketwide equalization and if in each of such months the percentage of milk received from dairy farmers and units at the plant which is classified as Class I-A and disposed of in the marketing area defined in such other order is greater than the percentage of such milk so classified and disposed of in this marketing area.

(l) The designation of any pool plant pursuant to §1002.24 or any pool unit pursuant to §1002.25(e) shall be canceled unless 5 percent or more of the pool milk received from producers at such plant or by such unit during each of the months of December and January, and 10 percent during each of the months of September through November, is utilized as Class I-A milk unless the percentage has been revised pursuant to paragraph (h) of this section.

Provided, at the option of the handler the plant shall not be a pool plant if less than 25 percent of such combined receipts of skim milk and butterfat in milk from other than pool units is classified in such Class I-A.

(b) For any of the months of April, May, or June in which 10 percent or more of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units was classified in Class I-A the plant shall be a pool plant.

(c) Any plant which is a pool plant in any of the months of April, May, or June in which 10 percent or more of combined receipts of skim milk and butterfat in such milk from other than pool units as classified in such Class I-A.

§ 1002.28 Temporary pool plants.

Except for plants which, pursuant to paragraph (f) of this section, are not eligible for designation, any plant not designated pursuant to §1002.24 shall automatically be designated a pool plant in accordance with provisions of paragraphs (a) through (e) of this section: Provided, That no plant shall be a pool plant pursuant to this section if, in the absence of this provision, milk received from dairy farmers and units at the plant would be classified and priced under another order with a provision for marketwide equalization, and if the percentage of the milk received from dairy farmers and units at the plant which is classified in Class I-A and disposed of in the marketing area defined in such other order is greater than the percentage of such milk so classified and disposed of in this marketing area: Provided, further, that for purposes of the computations of percentages set forth in this section, skim milk and butterfat in filled milk shall be excluded from skim milk and butterfat classified in Class I-A and Class I-B.

(a) For any of the months of January through March and July through December, any plant at which 25 percent or more of the combined receipts of skim milk and butterfat in milk from dairy farmers and units is classified as Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant on some basis other than the failure to account for such milk shall automatically be designated a pool plant for such month: Provided, That at the option of the handler the plant shall not be a pool plant if less than 25 percent of such combined receipts of skim milk and butterfat in milk from other than pool units is classified in such Class I-A.

(b) For any of the months of April, May, or June in which 10 percent or more of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units was classified in Class I-A the plant shall be a pool plant.

(c) Any plant which is a pool plant in any of the months of April, May, or June in which 10 percent or more of combined receipts of skim milk and butterfat in such milk from other than pool units as classified in such Class I-A.

33 FR 8201, June 1, 1968, as amended at 56 FR 5322, Feb. 11, 1991
Agricultural Marketing Service, USDA § 1002.29

this section or on the basis of paragraph (d) of this section and in the latter case, the percentage of combined receipts of skim milk and butterfat in milk from dairy farmers and units classified in Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, is at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year unless such plant qualifies as a pool plant under an other order with a provision for marketwide equalization.

(f) A plant shall not be a pool plant on the basis of this section for the periods and under the conditions set forth in paragraphs (f)(1) and (2) of this section:

(1) If the pool plant designation was canceled on the first of August, September, October, or November pursuant to §1002.27(a), for the period through November 30 except as specified in paragraph (e) of this section.

(2) If the pool plant designation was canceled pursuant §1002.27 for failure to meet the requirements of §1002.26(a), for the period from the date the cancellation was effective through the following June 30.

(g) At the time of announcing the uniform price for each month, the market administrator shall make public the location and name of the operator of any plant for which a report of receipts from dairy farmers was used in the computation of that uniform price.

§1002.29 Partial pool plants.

The following plants not designated pool plants pursuant to §§1002.24 and 1002.28, which plants distribute fluid milk products in the marketing area or transfer fluid milk products to a pool plant shall be designated partial pool plants:

(a) Plants set forth in §1002.28(f).

(b) Plants other than those set forth in paragraph (a) of this section which have some skim milk or butterfat in milk received from dairy farmers or nonpool units classified in Class I-A or some basis other than failure to account for such milk, except a plant which would otherwise qualify as a pool plant pursuant to §1002.28(d) but which has less than a daily average of 800 pounds of skim milk or butterfat in milk received from dairy farmers or

85
§ 1002.30 Reports of receipts and utilization.

Each handler, except a handler receiving own farm milk and not required to be listed pursuant either to § 1002.11 or § 1002.12, shall report each month to the market administrator for the preceding month in the manner and on the forms prescribed by the market administrator with respect to each pool plant, partial pool plant, pool unit or partial pool unit operated by such person, the information set forth in paragraphs (a) through (d) of this section. Such report shall be physically received at the office of the market administrator no later than the close of business on the 10th day of the month.

(a) The quantity of skim milk and butterfat contained in:
   (1) Receipts of milk from producers;
   (2) Receipts of fluid milk products from other pool plants or partial pool plants and from pool units or partial pool units; and
   (3) Receipts of other source milk.

(b) Inventories at the beginning and the end of the month of fluid milk products and products specified in §1002.41(c)(1);

(c) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including the destination of any fluid milk product, the classification of which wholly or partially depends upon its destination; and

(d) The computation pursuant to §1002.60 of such handler’s net pool obligation.

[33 FR 8201, June 1, 1968, as amended at 41 FR 8367, Feb. 26, 1976]

§ 1002.31 Producer payroll reports.

Each handler shall report with respect to producers as set forth in paragraphs (a) and (b) of this section:

(a) On or before the 10th day after the end of each month, the information required by the market administrator with respect to producer additions, producer withdrawals, and changes in names of farm operators; and

(b) On or before the last day of each month such handler’s producer payroll for the preceding month, which shall show for each producer:
   (1) The total pounds of milk from such producer;
   (2) The average butterfat content of such milk: Provided, That if no butterfat tests are made on any of the milk received from producers, and if such milk is received by the handler from no more than 10 producers, 3.5 percent shall be reported as the average butterfat test of milk received from producers;
   (3) The amount of payment due each producer;
   (4) The nature and amount of any deductions and charges made by the handler;
   (5) The net amount of payment to such producer; and
   (6) Such other information with respect thereto as the market administrator shall require.

§ 1002.32 Other reports.

At such time as the market administrator may request, each handler shall report to the market administrator in the manner and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat in milk and each milk product received at his nonpool plants, from dairy farmers, from other plants or nonpool units, from such handler’s own farm, from other handlers, and from other sources;

(b) The quantities of skim milk and butterfat in milk and each milk product moved out of, or on hand at, his nonpool plants and the destination of such skim milk and butterfat;

(c) Information concerning land, buildings, surroundings, facilities and equipment at any of his plants;
(d) The current receipts and utilization of skim milk and butterfat at each of his pool plants and pool units; and

(e) Such other information as may be necessary for the administration of the provisions of this part.

CLASSIFICATION

§ 1002.40 General classification rules.

All skim milk and butterfat required to be reported by each handler pursuant to §§1002.30 and 1002.32 shall be classified each month pursuant to the provisions of §§1002.41 through 1002.46, subject to the following conditions:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1002.30, including the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1002.40 through 1002.44;

(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 used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such products plus all the water originally associated with such solids; and

(c) 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, 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 §1002.45. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1002.45 on a pro rata basis, unless a specific use of such receipts is established by the handler.

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


§ 1002.41 Classes of utilization.

Subject to the conditions set forth in §§1002.42 through 1002.46, the classes of utilization shall be as follows:

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

(1) Disposed of as a fluid milk product, except as otherwise provided in paragraphs (c) and (d) of this section:

(i) Inside the marketing area;

(ii) As route disposition in another marketing area;

(iii) To an other order plant and assigned under such other order to Class I;

(iv) In packaged form to an other order plant if such product is not defined as a fluid milk product under such other order; and

(v) To a partially regulated plant under other order and there applied as an offset to Class I sales in any other order market;

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

(3) In shrinkage assigned to Class I-A pursuant to §1002.42(c); and

(4) Not specifically accounted for as Class I-B, Class II or Class III milk.

(b) Class I-B milk. Class I-B milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product outside this or any other Federal order marketing area, except for:

(i) Milk moved to a partially regulated plant under another order and there applied as an offset to Class I sales in any other order market; and

(ii) Inventory of packaged fluid milk products at nonpool plants that are not other order plants.

(2) In shrinkage assigned to Class I-B pursuant to §1002.42(c).

(c) 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 (d) of this section;

(2) In packaged inventory at the end of the month of the products specified
§ 1002.41

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

in paragraph (c)(1) of this section and
in bulk concentrated fluid milk prod-
ucts in inventory at the end of the month;

(3) In bulk fluid milk products and
bulk fluid cream products disposed of
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 des-
tert 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, pan-
cake mixs, buttermilk biscuit mixes,
coatings, batter, and similar products;
(v) Formulas especially prepared for
infant feeding or dietary use (meal re-
placement) that are packaged in her-
metically sealed containers;
(vi) Candy, soup, bakery products and
other prepared foods which are proc-
essed for general distribution to the
public, and intermediate products, in-
cluding sweetened condensed milk, to
be used in preparing such prepared
food products; and
(vii) Any product not otherwise spec-
ified in this section.

(d) 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 para-
graph (c)(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 con-
densed milk in a consumer-type pack-
age and evaporated or sweetened con-
densed 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 (c)(1) of this sec-
tion in bulk form;

(3) In fluid milk products, products
specified in paragraph (c)(1) of this sec-
tion, and products processed by the dis-
posing handler that are specified in
paragraphs (c)(4)(i) through (iv) of this
section, that are disposed of by a han-
dler for animal feed;

(4) In fluid milk products, products
specified in paragraph (c)(1) of this sec-
tion, and products processed by the dis-
posing handler that are specified in
paragraphs (c)(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 han-
dler 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 admin-
istrator on the next business day fol-
lowing such use;

(5) In fluid milk products and prod-
ucts specified in paragraph (c)(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 satisfac-
tory to the market administrator;

(6) In skim milk in any modified fluid
milk product or in any product speci-
fied in paragraph (c)(1) of this section
that is in excess of the quantity of
skim milk in such product that was in-
cluded within the fluid milk product
definition pursuant to § 1002.15 and the
fluid cream product definition pursu-
ant to § 1002.18, and

(7) In shrinkage assigned pursuant to
§ 1002.42(a) to the receipts specified in
§ 1002.42(a)(2) and in shrinkage specified
in §1002.42(b) and (c).
Agricultural Marketing Service, USDA

§ 1002.44 Transfers.

(a) Transfers to pool plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant or a pool unit to another pool plant shall be classified as Class I-A milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers 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 after the computations pursuant to §1002.45(a)(1)(7) and the corresponding step of § 1002.45(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to §1002.45(a)(8) or the corresponding step of § 1002.45(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1002.45(a)(13) or (15) or the corresponding steps of §1002.45(b), the skim milk or butterfat so transferred, 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.

(b) Transfers to other order plants. Skim milk or butterfat transferred 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:

(1) If transferred as packaged fluid milk products, classification shall be in the classes (either Class I-A, II or III) 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 the transferor and the transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers 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 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-A, subject to adjustment at a later date;

(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-A 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 §1002.41.

(c) Transfers to producer-handlers. Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I-A milk, if transferred 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 to other nonpool plants. Skim milk or butterfat transferred in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

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

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

(i) The transferring handler claims classification pursuant to the assignment set forth in paragraph (d)(3) of this section in the handler’s report submitted to the market administrator pursuant to §1002.30 for the month within which such transaction occurred;

(ii) The operator of such transferee 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 the purpose of verification;

(iii) In determining the nonpool plant’s utilization for purposes of this section, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a second nonpool plant shall be classified pursuant to the same assignment procedure with respect to receipts and utilization at such second nonpool plant, except that classification of such transfers in Class I-A and I-B shall not be less than the quantities which would be assigned to those classes if the transfer of such products had been directly from a pool plant or pool unit.
Agricultural Marketing Service, USDA

§ 1002.45

(3) Skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at the transferee plant pursuant to paragraph (d)(2)(ii) of this section:

(i) Packaged receipts of fluid milk products from Federal order sources shall first be assigned to route disposition in Federal order marketing areas (assigning receipts to sales in the same market to the extent possible) and any residual shall be assigned to Class 1-B route sales.

(ii) Such bulk transfers and other bulk receipts of fluid milk products at such transferee plant from pool plants and units and from other order plants shall next be assigned to remaining route disposition in any Federal order marketing area. For this purpose receipts from each Federal order market shall first be assigned to remaining route sales in such marketing area and any remainder of such receipts shall be prorated with all Federal order receipts to remaining route disposition in all Federal order marketing areas.

(iii) Receipts from dairy farmers shall then be assigned to any remaining route sales in the marketing area.

(iv) Remaining receipts from dairy farmers and other unregulated other source receipts (excluding opening inventory) in the form of fluid milk products shall be assigned pro rata to Class I-B, Class II and Class III utilization at such plant to the extent of such utilization available at such plant and any remainder of such receipts shall be assigned pro rata to Class I-A bulk sales to plants regulated under this order and Class I bulk sales to plants regulated under other orders.

(v) Receipts of bulk fluid cream products from plants defined pursuant to §1002.8 (b) and (d) shall be assigned pro rata among such plants to any remaining Class II and Class III utilization at such plant to the extent of such utilization available at such plant and any remainder of such receipts shall be assigned pro rata to Class I-A bulk sales to plants regulated under this order and Class I bulk sales to plants regulated under other orders.

(vi) Any remaining receipts of fluid milk products or bulk fluid cream products being assigned pursuant to this paragraph shall be assigned pro rata with remaining receipts from other order plants, first to remaining Class I-A utilization, then to Class I-B utilization, then to Class II utilization, and finally to Class III utilization at such plant: Provided, That if on inspection of the books and records of such plant the market administrator finds that there is insufficient utilization to cover such receipts, the remainder shall be classified as Class I-A.

(vii) Any remaining Class I-A route disposition in any Federal marketing area shall be subject to the pricing specified in §1002.60(d)(2).


§ 1002.45 Allocation of skim milk and butterfat classified.

The classification of milk received from producers at each pool plant or pool unit for each handler shall be determined each month pursuant to paragraphs (a), (b), and (c) of this section: Provided, That for the purpose of establishing the pool status of any plant with Class I-A route disposition in the marketing area which is not a pool plant pursuant to §1002.24, skim milk and butterfat in milk received at such plant directly from dairy farmers or units up to an amount sufficient to qualify such plant as a pool plant pursuant to §1002.28 (a) or (b) shall be considered the source of such Class I-A route disposition of such plant and be subtracted from Class I-A prior to the application of the allocation sequence set forth in paragraphs (a) and (b) of this section, unless at the time of filing the handler's report pursuant to §1002.30 the handler elects not to have it so allocated.

(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 classified as Class III pursuant to §1002.42(b);

(2) Subtract the pounds of skim milk received in packaged form from a producer–handler for marketing as certified fluid milk products from the total pounds of skim milk in Class I-A and Class 1-B milk, respectively, in accordance with its proportionate disposition in such classes;

(3) Subtract from the remaining pounds of skim milk in Class III, 2 percent of the pounds of skim milk in packaged fluid milk products received

91
§ 1002.45 7 CFR Ch. X (1-1-99 Edition)

from other order plants, and subtract the balance from Class I-A;

(4) Subtract from the remaining pounds of skim milk in Class 1-A the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(4) or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in §1002.41(c)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in §1002.41(c)(1) that were received in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(6) or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in §1002.41(c) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1002.41(d)(6)), but not in excess of the pounds of skim milk remaining in Class II.

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class I-A, Class II and Class III milk, in series beginning with Class III, the pounds of skim milk in:

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

(ii) Receipts of fluid milk products not approved by a duly constituted health authority which are excepted from the pool milk definition pursuant to §1002.14(b);

(iii) Receipts of fluid milk products from a producer-handler pursuant to an other order or a producer-handler defined pursuant to §1002.12 (except pool milk designated in the preamble of §1002.14).

(iv) Receipts of fluid milk products from a handler's plant at which milk is excepted from the pool milk definition pursuant to §1002.14(h).

(v) Receipts of fluid milk products from a handler with own farm milk, which milk is excepted from the pool milk definition pursuant to §1002.14(i).

(9) Subtract in series beginning with Class III from the pounds of skim milk remaining in Class II and Class III milk the pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants other than those defined in §1002.8 (b) or (d) and units other than pool units for which the handler requests a Class II or Class III classification, but not in any case to exceed the pounds of skim milk remaining in such class;

(10) Subtract from the remaining pounds of skim milk in Class II or Class III milk the pounds of skim milk in bulk receipts of fluid milk products from other order plants not previously assigned and for which a Class II or Class III classification is requested by both the transferor and transferee handler in filing reports of receipts and utilization for the month with their respective market administrators, but not in any case to exceed the pounds of skim milk remaining in such class;

(11) 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 §1002.41(c)(1), in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(4), (6) and (8)(i) of this section;
(12) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to paragraph (a)(1) of this section;

(13)(i) Subtract pro rata from the pounds of skim milk remaining in Class I-B, Class II and Class III milk the remaining pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants not defined pursuant to §1002.8(b) or (d) and from units other than pool units. Provided, That if the pounds of skim milk to be assigned pursuant to this paragraph (a)(13)(i) exceed the available pounds of skim milk in Class I-B, Class II, and Class III the handler shall designate the priority of sources to be assigned to such classes;

(ii) No assignment shall be made pursuant to this paragraph with respect to milk received from a plant not defined pursuant to §1002.8(b) or (d) in the 401 miles and over freight zone at a plant from which 50 percent or more of the gross receipts of skim milk and butterfat leaves the plant in the form of fluid milk products in consumer packages or dispenser inserts and is classified as Class I-A;

(14) Subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts from dairy farmers and from the handler's own farm which are excepted from the pool milk definition pursuant to §1002.14(h) and (i);

(15) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products from other order plants not previously assigned pursuant to paragraph (a)(3) and (10) of this section:

(i) Subject to the provisions of this paragraph, such subtraction shall be pro rata to the pounds of skim milk in each class with respect to whichever of the following quantities represents the higher proportion of Class I and Class III milk combined:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to §1002.22(d); 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)(15)(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-A milk and Class I-B milk after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(15)(ii) of this section, should the computations pursuant to paragraph (a)(15)(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 I 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-A milk and Class I-B milk combined shall be decreased by a like amount, pro rata to remaining utilization in each such class. 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)(15)(ii) of this section, should the computations pursuant to paragraph (a)(15)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I-A milk and Class I-B milk combined that exceeds the pounds of skim milk remaining in that class, the pounds of skim milk in such class 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
§ 1002.46

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 in sequence beginning with the nearest other pool plant of such handler at which Class I-A or Class I-B utilization is available;

(16) If the plant at which assignment is being made is a plant from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products left the plant in the form of fluid milk products in consumer packages or dispenser inserts and was classified as Class I-A, subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts of fluid milk products from plants in the 401 miles and over freight zone, not defined pursuant to §1002.8(b) or (d);

(17) Subtract from the remaining pounds of skim milk in Class I-A milk the pounds of skim milk in remaining receipts from plants (except other order plants) or units the pool status of which has not yet been established and which receipts have not previously been assigned pursuant to paragraph (a)(13) and (16) of this section;

(18) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received in the form of fluid milk products and bulk fluid cream products from other pool plants and from pool units (not previously assigned pursuant to the pre- amble of this section), in accordance with the classification assigned by the transferee handler subject to the conditions of paragraph (a)(18)(i) through (iii) of this section:

(i) The skim milk so assigned to any class of utilization shall be limited to the amount thereof remaining in such class in the transferee plant;

(ii) If the transferor plant received during the month other source milk to be allocated pursuant to paragraph (a)(7) of this section the skim milk so transferred shall be classified so as to allocate the least possible Class I-A or I-B utilization to such other source milk; and

(iii) If the transferor handler received during the month other source milk to be allocated pursuant to paragraph (a)(13) of this section, the skim milk so transferred shall not be classified as Class I-A or I-B to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(19) Add to the remaining pounds of skim milk in Class I-A the pounds of skim milk received directly from dairy farmers or units which was deducted pursuant to the proviso in the pre- amble of this section;

(20) If the pounds of skim milk remaining in all classes exceeds the pounds of skim milk in receipts from producers 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) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class.


§ 1002.46 Rules and regulations.

Accounting rules and regulations to effectuate the provisions of §§1002.40 through 1002.45 shall be issued by the market administrator and shall include (but not be limited to) conversion factors to be used in the absence of specific weights and tests, specific definitions of products, specific shrinkage allowances and procedures for determining the quantities of skim milk and butterfat disposed of in specified products. Such rules and regulations shall be made, and may from time to time be amended, by the market administrator in accordance with the procedure set forth in this section: Provided, That at any time upon a determination by the Secretary that an emergency exists which requires the immediate adoption of rules and regulations, the market administrator may issue, with the approval of the Secretary, temporary rules and regulations without regard to the following procedure: Provided further, That, if any interested person makes written request for the issuance,
amendment, or repeal of any rule, the market administrator shall within 30 days either issue notice of meeting pursuant to paragraph (a) of this section or deny such request and except in affirming a prior denial, or where the denial is self-explanatory, shall state the grounds for such denial. Provided further, that if the market administrator finds it necessary to promulgate formal rules with respect to units, he shall follow the procedure set forth in this section.

(a) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator at which time all interested persons shall have opportunity to be heard. Notice of such meeting shall be given by the market administrator, and a copy of the proposed rules and regulations shall be sent at least 5 days prior to the date of the meeting to all handlers operating pool plants. A stenographic record shall be made at all such meetings and such record shall be public information available for inspection at the office of the market administrator.

(b) A period of at least 5 days after the meeting held pursuant to paragraph (a) of this section shall be allowed for the filing of briefs. Such briefs shall be public information available for inspection at the office of the market administrator.

(c) Not later than 30 days after a meeting held pursuant to paragraph (a) of this section, the market administrator shall issue and send to all handlers, operating pool plants and pool units the tentative rules and regulations or amendments thereto relating to the issues considered at such meeting, or a tentative notice that no rules or regulations or amendments thereto are to be issued prior to further consideration at another meeting. The tentative rules and regulations, or tentative notice, together with copies of the stenographic record and briefs, shall also at the same time be forwarded by the market administrator to the Secretary.

(d) Not later than 30 days after issuance by the market administrator, the Secretary shall either approve the tentative rules and regulations or tentative notice as issued, or direct the market administrator to reconsider. In which latter event, the market administrator shall within 30 days either issue revised tentative rules and regulations or tentative notice, or call another meeting pursuant to paragraph (a) of this section.

(e) The tentative rules and regulations and amendments thereto or tentative notice issued pursuant to paragraph (c) of this section shall be effective as of the first of the month following approval by the Secretary, but not sooner than 10 days after issuance by the market administrator.

§ 1002.50 Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.52 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before 2 days before the last day of the month if paid by check, or the last day of the month if paid in cash or cash equivalent, at not less than the lowest class price pursuant to this section for the preceding month for milk received from such cooperative during the first 15 days of the month, and shall pay the cooperative association on or before the 15th day of the following month the balance due for milk received during the month from such cooperative at not less than the class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.52 and 1002.81 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

(a) Class I-A price. For Class I-A milk the Class I price in the 201-210 mile freight zone shall be the basic formula price for the second preceding month
§ 1002.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1002.81 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 9.87; and
   (iii) 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.

<table>
<thead>
<tr>
<th>Month</th>
<th>Amount</th>
<th>Month</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
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<td>January</td>
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<tr>
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<td>December</td>
<td>+.06</td>
</tr>
</tbody>
</table>

(e) 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, 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, and subject to the adjustments set forth in paragraph (d) of this section for the applicable 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 reporting 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 18954, Apr. 14, 1995]

§ 1002.52 Transportation differentials.

The class prices set forth in §1002.50 shall be subject to a transportation differential determined in accordance with paragraphs (a) through (e) of this section.

(a) The market administrator shall determine a freight zone for each pool plant and each partial pool plant. Such freight zone shall be the shortest highway mileage from the plant to the nearest of the following points as computed by the market administrator from data contained in Mileage Guide No. 5, without supplements, issued on July 20, 1949, effective August 21, 1949, by the Household Goods Carriers' Bureau, Agent, Washington, DC: Mount Vernon or Yonkers in the State of New York; Tenafly, Glen Ridge, East Orange, Elizabeth, Hackensack, Hillside, Irvington, or Passaic in the State of New Jersey. The freight zone for plants located in New York City, Nassau, and Suffolk Counties in the State of New York, or in Essex, Hudson, and Union Counties in the State of New Jersey shall be in the 1- to 10-mile zone. The market administrator shall publicly announce the freight zones for pool plants.

(b) The market administrator shall determine and publicly announce a freight zone for each minor civil division (township, borough, incorporated village, or city) within which farms included in a pool or partial pool unit are located by computing the shortest highway mileage distance from the nearest point in the minor civil division to the nearest point specified in paragraph (a) of this section, using the mileage guide specified in such paragraph supplemented by U.S. Geological Survey maps. In States where the smallest governmental unit except for incorporated cities or villages is the county, a zone for the county shall be determined in the same manner as for minor civil divisions. The zone for each farm shall be the zone of the minor civil division or county in which the farm is located.

(c) The differential rates applicable at plants shall be as set forth in the following schedule:

<table>
<thead>
<tr>
<th>Freight zone miles</th>
<th>Classes I-A and I-B</th>
<th>Classes II and III and III-A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-10</td>
<td>-</td>
<td>+72.0</td>
</tr>
<tr>
<td>11-20</td>
<td>+69.5</td>
<td>+8</td>
</tr>
<tr>
<td>21-25</td>
<td>+67.0</td>
<td>+8</td>
</tr>
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§ 1002.53

Producer-handler price differential.

For skim milk and butterfat received from a handler who is a producer-handler under this or any other order and is assigned to Class I-A pursuant to §1002.45(a)(8)(iii), the transferee handler shall pay a differential equal to the difference between the Class I-A price and the Class III price both appropriately adjusted for differentials pursuant to §1002.52.

§ 1002.54 Use of equivalent price or index.

If for any reason a price or index specified by this part for use in computing class prices or other purposes is not reported or published in the manner therein described, the market administrator shall use a price or index determined by the Secretary to be equivalent to or comparable with the price or index specified.

§ 1002.55 Transportation credit on bulk unit pool milk.

For pool milk received by a handler in a pool or partial pool unit, a transportation credit at the rate of 35 cents per hundredweight shall be computed.

§ 1002.56 Announcement of class prices and butterfat differential.

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

(a) The Class I price for the following month applicable at the 201-210 mile zone and at the 1-10 mile zone.

(b) The Class II price for the following month applicable at the 201-210 mile zone and at the 1-10 mile zone.

(c) The Class III and Class III-A prices for the preceding month applicable at the 201-210 mile zone and at the 1-10 mile zone;

(d) The butterfat differential for the preceding month;

(e) The basic formula price for the preceding month, pursuant to §1002.51, as reported by the United States Department of Agriculture;

(f) The average price per hundredweight for manufacturing grade milk.
Agricultural Marketing Service, USDA

§ 1002.60 Net pool obligation of handlers.

Each handler’s net pool obligation for milk received at each plant and unit shall be computed separately pursuant to paragraphs (a) through (d) of this section and then combined into one total to be adjusted by any credit applicable pursuant to paragraph (e) of this section to determine the handler’s total net pool obligation.

(a) Multiply the quantity of milk in each class remaining after the computation pursuant to §1002.45(a)(20) and the corresponding step of §1002.45(b) by the applicable class price adjusted by the differentials pursuant to §§1002.52 and 1002.81.

(b) For each partial pool plant or partial pool unit multiply the quantity of pool milk in each class by the applicable class price adjusted by the applicable differential pursuant to §1002.52.

(c) Deduct, in the case of each plant or unit nearer than the 201-to-210-mile zone and add, in the case of each plant or unit farther than the 201-to-210-mile zone, the sum obtained by multiplying the quantity of pool milk received from dairy farmers by the differential in Column B of §1002.52(c) applicable at the plant and weighted average Column B differential computed pursuant to §1002.52(d) applicable to the unit.

(d) Add the amounts computed in paragraph (d) (1) through (4) of this section:

1. Multiply the pounds of overage deducted from each class pursuant to §1002.45(a)(20) and the corresponding step of §1002.45(b) by the applicable class price adjusted by the differentials pursuant to §§1002.52 and 1002.81.

2. Multiply the pounds of skim milk and butterfat in receipts of nonfluid milk products subtracted from Class I±A pursuant to §1002.45(a)(8)(i) and the corresponding step of §1002.45(b) and the pounds of skim milk and butterfat specified in §1002.44(d)(3)(vii) by the difference between the Class I–A and Class III prices, each adjusted by the applicable differential pursuant to §1002.52.

3. Multiply the pounds of skim milk and butterfat in receipts of nonfluid milk products assigned to Class I pursuant to §1002.40(c) by the difference between the Class I price less $1.00 (but not to be less than the Class III price) and the Class III price, both adjusted by the applicable differential pursuant to §1002.52.

Alternatively, the handler may, with respect to such receipts of nonfluid milk products processed from producer milk regulated under another Federal order, elect to make payment to the producer-settlement fund of the other order at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk products 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 products 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 products. This payment option shall not apply if the source of the nonfluid milk products used in reconstituted fluid milk products cannot be determined by the market administrator.

4. Multiply the quantity of skim milk and butterfat in receipts of concentrated fluid milk products from plants other than those defined in §1002.8(b) or (d) or as a producer-handler and which are assigned to Class I pursuant to §1002.40(c) or which are subtracted from Class I–A pursuant to §1002.45(a)(8)(i) and the corresponding
§ 1002.61 Computation of the uniform price.

The market administrator shall, on or before the 14th day of each month, audit for mathematical correctness and obvious errors the report submitted for the preceding month by each handler. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of pool milk on all reports, the report of any handler who has not made payment of the last monthly pool debit account rendered pursuant to §1002.71 shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly pool debits. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(a) Combine into one total the net pool obligations of all handlers computed pursuant to §1002.60;

(b) Subtract the total of payments required to be made pursuant to §1002.77;

(c) Subtract an amount computed by multiplying the quantity of pool milk delivered directly from farms to pool plants and partial pool plants that was not put into a tank truck prior to such delivery, by a rate per hundredweight that is equal to the rate specified in §1002.55;

(d) Add the amount of unreserved cash in the producer settlement fund;

(e) Subtract an amount equal to not less than 8 cents nor more than 9 cents per hundredweight of pool milk and receipts of concentrated fluid milk products for which a payment obligation is computed pursuant to §1002.60(d)(4) to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers; and

(f) Deduct any credit applicable pursuant to §1002.55.


§ 1002.62 Announcement of uniform price.

The market administrator shall publicly announce, on or before the 14th
Agricultural Marketing Service, USDA

§ 1002.73 Payments to the producer-settlement fund.

On or before the 18th day of each month each handler shall make full payment to the market administrator of the debit balance, if any, of such handler shown on the last statement of account rendered pursuant to §1002.71. Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator. If the date by which such payments must be received by the market administrator falls on a Saturday or Sunday or a national holiday, such payments shall not be due until the next day that the market administrator’s office is open for public business.


§ 1002.73 Payments out of producer-settlement fund.

(a) On or before the 17th day of each month the market administrator shall make payment to each handler of the credit balance, if any, of such handler shown on the last statement of account rendered pursuant to §1002.71. If the date by which such payments are to be made falls on Saturday or Sunday or a national holiday, such payments need not be made until the next day that the market administrator’s office is open for public business. If payments to the producer-settlement fund under §1002.72 were delayed because the due date fell on a Saturday or Sunday or a national holiday, payments under this paragraph may be delayed by the same number of days.

(b) If the balance in the producer-settlement fund is insufficient to make full payment required under paragraph (a) of this section, the market administrator shall reduce uniformly the payments to each handler and shall complete such payments as soon as the necessary funds are available. No handler who, on the 20th day of the month, has not received such payments in full from the market administrator shall be deemed to be in violation of §§1002.80 through 1002.82 if he reduces his total payments in the same proportion as the fund is reduced.

[33 FR 8201, June 1, 1968. Redesignated and amended at 56 FR 5329, Feb. 11, 1991]

§ 1002.72 Payments to the producer-settlement fund.

On or before the 16th day of each month each handler shall make full payment to the market administrator of the debit balance, if any, of such handler shown on the last statement of account rendered pursuant to §1002.71. Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator. If the date by which such payments must be received by the market administrator falls on a Saturday or Sunday or a national holiday, such payments shall not be due until the next day that the market administrator’s office is open for public business.

[56 FR 5329, Feb. 11, 1991]

§ 1002.71 Handler’s accounts.

The market administrator shall establish an account for each handler who is required to make payments to the producer settlement fund or who received payments from the producer settlement fund. After computing the uniform price and each handler’s pool debit or credit each month, and at such times as he deems appropriate, the market administrator shall render each handler a statement of his account showing the debit or credit balance, together with all debits or credits entered on such handler’s account since the previous statement was rendered: Provided, That the handler operating a pool plant receiving milk from a partial pool plant or partial pool unit without producers as defined in §1002.6, or from a partial pool plant in the 401 miles or over freight zone, shall be responsible for the debit or credit arising on milk so received and for the payment of the administration assessment pursuant to §1002.85 on such milk.

[33 FR 8201, June 1, 1968. Redesignated and amended at 56 FR 5329, Feb. 11, 1991]
§ 1002.74 Handler’s pool debit or credit.

After computing the uniform price for each month, the market administrator shall compute each handler’s pool debit or credit as follows:

(a) Add the contents computed as follows:

(1) Multiply the quantity of pool milk received by each handler from dairy farmers by the uniform price;

(2) Multiply the quantity of pool milk received by the handler at a pool plant or partial pool plant directly from farms that was not put into a tank truck prior to delivery by a rate per hundredweight that is equal to the rate specified in §1002.55;

(3) Multiply the quantity of concentrated fluid milk products for which a payment obligation is computed pursuant to §1002.60(d)(4) by the uniform price.

(b) If the result obtained in paragraph (a) of this section is less than the handler’s net pool obligation, the difference shall be entered on the handler’s producer settlement fund account as such handler’s pool debit.

(c) If the result obtained in paragraph (a) of this section is greater than the handler’s net pool obligation, the difference shall be entered on the handler’s producer settlement fund account as such handler’s pool credit.


§ 1002.76 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§1002.72 and 1002.85 shall be increased 1 percent on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid.


§ 1002.77 Cooperative Payments for Marketwide Services.

Payments shall be made to qualified cooperatives or to federations under the conditions, in the manner, and at the rates set forth in this section.

(a) Definitions. As used in this section the following terms shall have the following meanings:

(1) Cooperative means a cooperative association of producers which is duly incorporated under the cooperative corporation laws of a state; is qualified under the Capper-Volstead Act (7 U.S.C. 291 et seq.); has all its activities under the control of its members; and has full authority in the sale of its members’ milk.

(2) Federation means a federation of cooperatives which is duly incorporated under the laws of a State.

(3) Federated cooperatives means a cooperative which is a member of a federation and on whose membership the federation is an applicant for or receives payments under paragraph (f)(2) of this section.

(4) Affiliated cooperatives means a cooperative upon whose entire membership another cooperative, by mutual consent, is an applicant for or receives payments under paragraph (f)(2) of this section.

(5) Member producer means, when used with respect to a cooperative or federation which is an applicant for or is receiving payments, is a producer as defined in §1002.6 who has met the following conditions:
(i) He is a member of the cooperative or one of its affiliated cooperatives, or in the case of a federation, he is a member of one of its federated cooperatives from whom the cooperative, affiliated cooperative, or federated cooperative is receiving at least 1 cent per hundredweight of milk delivered by him: Provided, That the cooperative of which he is a member is meeting the requirements of this part applicable to it;

(ii) He has been a producer, or his farm, as defined in §1002.10, had been the farm of a producer for at least a prior 12-month period; and

(iii) He has not for a prior 12-month period been a member producer of another cooperative or federation: Provided, That in the case of membership transfers resulting from mergers of designated organizations, or from affiliation, federation or merger of cooperatives not previously meeting the definition of paragraph (a)(3) or (a)(4) of this section, this paragraph shall not apply.

(6) Marketwide services means services performed by cooperatives or federations, as defined herein, which benefit all producers in the marketing of their milk under this order; such services are not limited to those specified in paragraphs (e)(1) through (6) of this section and may include services directly or indirectly related to the order.

(b) Designated cooperatives and federations. A cooperative or federation may submit an application to the market administrator for payments under the provisions of this section or for modification of the basis of a previous designation. In accordance with the requirements of the rules and regulations issued by the market administrator such application shall include a written description of the applicant’s program for the performance of marketwide services, including evidence that adequate facilities and personnel will be maintained by it so as to enable it to perform the marketwide services; and the application shall contain a statement by the applicant that it will perform the required marketwide services for which it is applying for payments: Provided, That in the case of an application for modification of the basis of a previous designation the market administrator may waive the requirement for submission of the written description of the programs. The application shall set forth all necessary data so as to enable the market administrator to determine whether it meets the designation requirements with respect to the payments for which the application is submitted. An application shall be approved by the market administrator only if he determines that:

(1) In the case of a cooperative:

(i) It has as member producers not less than 15 percent of all producers, as defined in §1002.6;

(ii) It has contracts with each of its affiliated cooperatives under which the cooperatives agree to continue as affiliated cooperatives for at least 1 year, and such contracts cover or will be renewed for a yearly period for every subsequent year for which member producers of the affiliated cooperative are to be included within its membership for cooperative payment purposes;

(iii) It receives from each of its affiliated cooperatives not less than 1 cent per hundredweight of milk delivered by member producers of such cooperatives; and

(iv) If the application is also for an additional payment under paragraph (f)(3) of this section, the cooperative or its affiliated cooperatives operate marketing facilities, i.e., pool plants and pool bulk tank units, at which is received at least 25 percentum, by weight, of all milk delivered by its member producers; and, in addition, the cooperative or its affiliated cooperatives control processing facilities capable of handling at least 10 percentum, by weight, of all milk marketed by its member producers: Provided, That such processing facilities must be capable of handling not less than 1 million pounds of milk daily: Provided further, That the cooperative must be willing to accept nonmember milk on a temporary basis under the generally prevailing conditions for acceptance of milk from its own members.

(2) In the case of a federation:

(i) It has contracts with each of its federated cooperatives under which the cooperatives agree to remain in the federation at least 1 year, and such
contracts cover or will be renewed for a yearly period for every subsequent year for which the federated cooperatives are to be included within the membership of the federation for cooperative payment purposes;

(ii) It has as member producers not less than 15 percent of all producers, as defined in § 1002.6;

(iii) It receives from each of its federated cooperatives not less than 1 cent per hundredweight of milk delivered by member producers of such cooperative;

(iv) If the application is also for an additional payment under paragraph (f)(4) of this section, the federation or its federated cooperatives operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percent, by weight, of the milk marketed by its member producers; and, in addition, the federation or its federated cooperatives control processing facilities capable of handling at least 10 percent, by weight, of all milk marketed by its member producers: Provided, That such processing facilities must be capable of handling not less than 1 million pounds of milk daily: Provided further, That the federation must be willing to accept nonmember milk on a temporary basis under the generally prevailing conditions for such acceptance of milk from its own members.

3 The applicant cooperative or federation demonstrates that it has the ability to perform the marketwide services for which application is made, and that such services will be performed.

4 The applicant cooperative or the federated cooperatives of an applicant federation are in no way precluded from arranging for the utilization of milk under their respective control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification.

(c) Notice of designation or denial; effective date. Upon determination by the market administrator that a cooperative or a federation shall be designated to receive payment for performance of the marketwide services, he shall transmit such determination to the applicant cooperative or federation and publicly announce the issuance of the determination. The determination shall be effective with respect to milk delivered on and after the first day of the month following issuance of the determination. If, after consideration of an application for payments for marketwide services, the market administrator determines that the cooperative or federation is not qualified to receive such payments he shall promptly notify the applicant and specifically set forth in such notice his reasons for denial of the application.

(d) Requirements for continued designation. From time to time and in accordance with the rules and regulations which may be issued by the market administrator, each designated cooperative or federation must demonstrate to the market administrator that it continues to meet the designation requirements for the payments and is fully performing the marketwide services for which it is being paid.

(e) Marketwide services. Each cooperative or federation shall perform the marketwide services enumerated in this paragraph. Such services shall include:

1 Analyzing milk marketing problems and their solutions, conducting market research and maintaining current information as to all market developments, preparing and assembling statistical data relative to prices and marketing conditions, and making an economic analysis of all such data;

2 determining the need for the formulation of amendments to the order and proposing such amendments or requesting other appropriate action by the Secretary or the market administrator in the light of changing conditions;

3 participating in proceedings with respect to amendments to the order, including the preparation and presentation of evidence at public hearings, the submission of appropriate briefs and exceptions, and also participating, by voting or otherwise, in the referenda relative to amendments;

4 participating in the meetings called by the market administrator, such as meetings with respect to rules and regulations issued under the order, including activities such as the preparation and presentation of data at such
meetings and briefs for submission thereafter;

(5) conducting a comprehensive education program among producers—i.e., members and nonmembers of cooperatives—and keeping such producers well informed for participation in the activities under the regulatory order and, as a part of such program, issuing publications that contain relevant data and information about the order and its operation, and the distribution of such publications to members and, on the same subscription basis, to nonmembers who request it, and holding meetings at which members and nonmembers may attend;

(6) in the case of a cooperative or federation which receives an additional payment under paragraph (f)(3) or (4) of this section, operating marketing facilities, or having affiliated cooperatives or federated cooperatives that operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percentum, by weight, of milk marketed by its member producers; and in addition, controls, or having affiliated cooperatives or federated cooperatives that control processing facilities capable of handling at least 10 percentum, by weight, of the milk marketed by its member producers: Provided, That such processing facilities must be capable of handling at least one million pounds of milk daily: Provided further, That the cooperative or federation must be willing to accept nonmember milk on a temporary basis under the generally prevailing conditions for such acceptance of milk of its own members; and

(7) performing such other services as are needed to maintain satisfactory marketing conditions and promote market stability.

(f) Rate, computation, time, and method of payment. (1) Subject to the provisions of paragraph (g) of this section, the market administrator, on or before the 20th day of each month, shall make payment out of the producer-settlement fund, or issue equivalent credit therefore, to each cooperative or federation which is designated for such payments for marketwide services. The payments to a cooperative or federation shall be based upon the milk reported by cooperative or proprietary handlers to have been received during the preceding month from its member producers, subject to adjustment upon verification by the market administrator.

(2) Such payment or credit shall be at the rate of 3 cents per hundredweight of milk in accordance with paragraph (f)(1) of this section.

(3) Any cooperative that operates marketing facilities or whose affiliated cooperatives operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percentum, by weight, of the milk marketed by its member producers, and, in addition, controls, or has affiliated cooperatives that control, processing facilities capable of handling, at least 10 percentum, by weight, of the milk marketed by its member producers; and, in addition, controls, or has affiliated cooperatives that control, processing facilities capable of handling at least one million pounds of milk daily shall receive a payment in addition to that provided for in paragraph (f)(2) of this section of one cent per hundredweight of all milk marketed by member producers in accordance with paragraph (f)(1) of this section.

(4) Any federation that operates marketing facilities, or whose federated cooperatives operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percentum, by weight, of the milk marketed by its member producers; and, in addition, controls, or whose federated cooperatives control, processing facilities capable of handling at least 10 percentum, by weight, of the milk marketed by its member producers but not less than one million pounds of milk daily shall receive a payment, in addition to the payment provided for in paragraph (f)(2) of this section, of 1 cent per hundredweight of all milk marketed by member producers in accordance with paragraph (f)(1) of this section.

(5) If an individually designated cooperative is affiliated with a federation, the cooperative payment shall be made to such cooperative unless its contract with the federation specified in writing that the federation is to receive the payments. Any such contract must authorize the federation to receive the payments for at least 1 year, and such agreement must cover or be renewed
§ 1002.77

for a yearly period for every subse-
quently year for which the federation is
to receive the payments.

(g) Cancellation of designation. (1) The
market administrator shall issue an
order wholly or partly canceling the
designation of a previously designated
cooperative or federation for payments
authorized pursuant to this section and
such payments shall not thereafter be
made to it if he determines that:

(i) The cooperative or federation no
longer complies with the requirements
of this part: Provided, That if one of its
affiliated or federated cooperatives has
failed to comply with the requirements
of this part applicable to it or has
failed, promptly after demand by the
market administrator, to arrange for
the utilization of milk under its con-
trol so as to yield the highest available
net return to all producers without dis-
placing an equivalent quantity of other
producer milk in the preferred clas-
sification, the cooperative or federation
shall be disqualified only to the extent
that its qualification for payments or
the amount of its payment are based
upon the membership, milk, or oper-
ations of such noncomplying affiliated
or federated cooperatives.

(ii) The cooperative or federation has
failed to make reports or furnish
records pursuant to this section or pur-
suant to rules and regulations issued
by the market administrator; or

(iii) In the case of the cooperative, it
has failed, promptly after demand by
the market administrator, to arrange
for the utilization of milk under its
control so as to yield the highest avail-
able net return to all producers with-
out displacing an equivalent quantity
of other producer milk in the preferred
classification.

(2) An order of the market adminis-
trator wholly or partly canceling the
designation of a cooperative or federa-
tion shall not be issued until after the
cancellation period has expired.

(h) Appeals—(1) From denials of appli-
cation. Any cooperative or federation
whose application for designation has
been denied by the market adminis-
trator may, within 30 days after notice
of such denial, file with the Secretary
a written petition for review. But the
failure to file such petition shall not
bar the cooperative or federation from
again applying to the market adminis-
trator for designation.

(2) From cancellation orders. A can-
cellation order by the market adminis-
trator shall become final 30 days after
its service on the cooperative or fed-
eration unless within such 30-day pe-
riod the cooperative or federation files
a written petition with the Secretary
for review thereof. If such petition for
review is filed, payments for which the
cooperative or federation has been can-
celed by the order shall be held in re-
serve by the market administrator
pending ruling of the Secretary, after
which the sums so held in reserve shall
either be returned to the producer-set-
ttlement fund or paid over to the coop-
operative or federation depending on the
Secretary's ruling on the petition. If
such petition for review is not filed,
any payments which otherwise would
be made within the 30-day period fol-
lowing issuance of the cancellation
order shall be held in reserve until such
order becomes final and shall then be
returned to the producer-settlement
fund.

(3) Record on appeal. If an appeal is
taken under paragraph (h) (1) or (2) of
this section, the market administrator
shall promptly certify to the Secretary
the ruling or order appealed from and
the evidence upon which it was issued:
Provided, That if a hearing was held the
complete record thereof, including the
applications, petitions, and all exhibits
or other documentary material sub-
mitted in evidence shall be the record
so certified. Such certified material
§ 1002.80 Time and rate of payments.

(a) On or before the last day of the month, each handler shall make payment to each producer for milk received from such producer during the first 15 days of the month at not less than the lowest class price for the preceding month.
(b) On or before the 20th day of the month, each handler shall make payment, pursuant to paragraphs (c), (d), (e), (f) and (g) of this section, to each producer for the balance due for all milk received from such producer during the preceding month at not less than the uniform price for such month, subject to the following adjustments:

1. Appropriate differentials set forth in §§1002.81 and 1002.82;
2. Proper deductions for the month that were authorized in writing by producers from whom the handler received milk (except as specified in paragraph (a)(3) of this section);
3. For milk received in a bulk tank unit and for which transportation was provided by the handler or at his expense, there may be deducted, as proper and as authorized in writing by the producer, or by a cooperative association authorized to act on behalf of such producer, a tank truck service (transportation) charge. This charge may include any farm-to-first plant transportation costs for which the handler was not reimbursed through the transportation credit pursuant to §1002.55, but such charge shall be reduced by the amount that the class use location value of milk at the plant of first receipt exceeds its class use location value where the milk was accounted for as a receipt in the bulk tank unit from which the milk was transferred. Any such deduction, plus the transportation credit, and plus the amount of the increase in class use location value of the milk at the plant compared to the unit shall not exceed the actual transportation costs incurred. Any such deduction also must be made by the handler not later than the date on which the producer is required to be paid for such milk. If authorization for such deduction is cancelled by the producer or by the cooperative by notifying the handler in writing, such cancellation shall be effective on the first day of the month following its receipt by the handler; and
4. For pool milk delivered directly from a farm to a pool plant or a partial pool plant that was not put into a tank truck prior to such delivery, the handler shall pay to the producer an additional amount computed by multiplying the quantity of such milk by a rate per hundredweight that is equal to the rate specified in §1002.55.

(c) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before 2 days before payments are due to individual producers if paid by check, or the same day such payments are due to individual producers if paid in cash or cash equivalent, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraphs (a) and (b) of this section.

(d) Each handler which is also a cooperative marketing association, determined by the Secretary to be qualified under the Capper-Volstead Act with respect to producers who are members of and under contract with such association, may make distribution in accordance with the contract between the association and such members of the net proceeds of all its sales in all markets in all use classifications.

(e) Whenever verification by the market administrator of the payment to any producer or cooperative association of producers for milk delivered to any handler discloses payment of less than is required by this part, the handler shall make up such payment to the producer or cooperative association of producers not later than the time of making payment next following such disclosure.

(f) If a handler claims that he cannot make the required payment because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, such payment shall be made to the producer settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make such payment from the producer settlement fund to the handler or to the lawful claimant as the case may be.
(g) If not later than the date when such payment is required to be made, legal proceedings have been instituted by the handler for the purpose of administrative or judicial review of the market administrator's findings upon verification as provided above such payment shall be made to the producer settlement fund and shall be held in reserve until such time as the above-mentioned proceedings have been completed or until the handler submits proof to the market administrator that the required payment has been made to the producer or association of producers in which latter event the payment shall be refunded to the handler.

§ 1002.81 Butterfat differential.

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

§ 1002.82 Transportation differentials.

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

§ 1002.85 Payment by handlers.

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

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§ 1004.1
1004.11 Dairy farmer.
1004.12 Producer.
1004.13 Producer milk.
1004.14 Other source milk.
1004.15 Fluid milk product.
1004.16 Fluid cream product.
1004.17 Filled milk.
1004.18 Exempt milk.
1004.19 Federation.
1004.20 Cooperative association.
1004.21 [Reserved]
1004.22 Commercial food processing establishment.

HANDLER REPORTS
1004.30 Reports of receipts and utilization.
1004.31 [Reserved]
1004.32 Other reports.

CLASSIFICATION OF MILK
1004.40 Classes of utilization.
1004.41 Shrinkage.
1004.42 Classification of transfers and diversions.
1004.43 General classification rules.
1004.44 Classification of producer milk.
1004.45 Market administrator's reports and announcements concerning classification.

CLASS AND COMPONENT PRICES
1004.50 Class and component prices.
1004.51 Basic formula prices.
1004.52 Location differentials to handlers.
1004.53 Announcement of class prices and component prices.
1004.54 Equivalent prices or indexes.

DIFFERENTIAL POOL AND HANDLER OBLIGATIONS
1004.60 Handler's value of milk for computing uniform prices.
1004.61 Computation of weighted average differential price, and producer nonfat milk solids price.
1004.62 Computation of uniform price.
1004.63 Announcement of weighted average differential price, nonfat milk solids price and producer nonfat milk solids price.

PAYMENTS FOR MILK
1004.70 Producer-settlement fund.
1004.71 Payments to the producer-settlement fund.
1004.72 Payments from the producer-settlement fund.
1004.73 Value of producer milk.
1004.74 Payments to producers and to cooperative associations.
1004.75 Location differentials to producers and on nonpool milk.
1004.76 Payments by a handler operating a partially regulated distributing plant.
1004.77 Adjustment of accounts.
1004.78 Charges on overdue accounts.

§ 1004.79 Direct-delivery differential.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION
1004.85 Assessment for order administration.
1004.86 Deductions for marketing services.

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

Subpart—Order Regulating Handling

GENERAL PROVISIONS
§ 1004.1 General provisions.
The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1004.2 Middle Atlantic marketing area.
Middle Atlantic marketing area (hereinafter called the "marketing area") means all territory within the boundaries of the following places, including piers, docks and wharves and territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) The District of Columbia.
(b) The State of Delaware.
(c) In the State of Maryland:
(i) The counties of:
(ii) The city of Baltimore.
(d) In the State of New Jersey:
(i) The counties of:
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Salem.
(ii) In Ocean County:
(i) The townships of:
Eagleswood, Lacey, Long Beach, Little Egg Harbor, Ocean, Stafford, Union.
(ii) The boroughs of:
§ 1004.3 Route disposition.

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

§ 1004.4 Plant.

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

§ 1004.5-1004.6 [Reserved]

§ 1004.7 Pool plant.

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

(a) A plant from which during the month a volume not less than 40 percent in the months of September through February, and 30 percent in the months of March through August, of its receipts described in paragraph (a)(1) or (2) of this section is disposed of as Class I milk (except filled milk) and a volume not less than 15 percent of such receipts is disposed of as route disposition (other than as filled milk) in the marketing area.

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

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

§§ 1004.8-1004.9 [Reserved]
of this section with respect to its total receipts of fluid milk products (other than filled milk) from dairy farmers, cooperative associations as handlers pursuant to §1004.9(c) and from other plants. However, a plant shall not qualify pursuant to this paragraph in any month in which a greater proportion of its qualifying shipments are made to a plant(s) regulated under another Federal order than to plants regulated under this order.

(1) The applicable percentage for the purpose of this paragraph shall be:
   (i) 50 percent for any month of September through February; and
   (ii) 40 percent for any month of March through August.

(2) [Reserved]

(c) [Reserved]

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

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

(2) A reserve processing plant operated by a federation of cooperative associations if, during the month, 30 percent or more of the producer milk of member producers of such cooperative is caused to be delivered to and physically received at pool plants pursuant to §1004.7(a) is not less than 25 percent of the total milk of member producers during the month.

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

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

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

(1) The automatic pool plant status for any plant identified in paragraph (e) of this section shall be cancelled if another plant is qualified as a pool plant on the basis of deliveries to the same plants through which such automatic pooling status was acquired by the plant. Cancellation of the plant's automatic pool plant status shall be effective on the first day of the month in which the other plant is qualified as a pool plant and shall continue until the
§ 1004.9 Handler.

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

(a) Any person in his capacity as the operator of:
   (1) A pool plant;
   (2) A partially regulated distributing plant;
   (3) An unregulated supply plant; or
   (4) An other order plant.

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

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

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

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

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

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

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

§ 1004.8 Nonpool plant.

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

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

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

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

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

§ 1004.9 Handler.

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

(a) Any person in his capacity as the operator of:
   (1) A pool plant;
   (2) A partially regulated distributing plant;
   (3) An unregulated supply plant; or
   (4) An other order plant.

(b) Any cooperative association or federation of cooperative associations with respect to the milk of any producer which it causes to be diverted in
§ 1004.10 Producer-handler.

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

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

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

(c) Such person furnishes proof satisfactory to the market administrator that the maintenance and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants), and the operation of the plant are each the personal enterprise of and at the personal risk of such person; and

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

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

§ 1004.11 Dairy farmer.

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

[56 FR 5329, Feb. 11, 1991]

§ 1004.12 Producer.

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

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

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

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

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

(1) During any month of March through August.

(2) Not more than 18 days’ production during any month of September through February unless all of the diversions of member and nonmember
milk, as the case may be, are pursuant to paragraph (d)(2)(i) or (ii) of this section, respectively, and they fall within the limits prescribed thereunder. If a handler diverting milk pursuant to this paragraph (d)(2) diverts milk of any dairy farmer in excess of the limits prescribed such dairy farmer shall be a producer only with respect to that milk physically received at a pool plant.

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

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

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

(f) This definition shall not include a:

1. Producer-handler as defined in any order (including this part) issued pursuant to the Act;
2. Dairy farmer for other markets;
3. Government agency which is a handler pursuant to §1004.9(e);
4. Dairy farmer with respect to milk reported as milk diverted to an other order if any portion of such dairy farmer’s milk so moved is assigned to Class I under the provisions of such other order;

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

§ 1004.13 Producer milk.

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

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

(b) Received at a pool plant pursuant to §1004.7(d): Provided. That such milk is received directly from the farm of one who is a member of the cooperative association operating the plant or is received directly from the farm of one who is a member of a cooperative association that is a member of the federation operating plant, or is received as milk diverted from a pool plant pursuant to §1004.7(a), (b), or (e).
§ 1004.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:
(a) Receipts in the form of fluid milk products and bulk products specified in §1004.40(b)(1) from any source other than producers, handlers described in §1004.9(c), or pool plants;
(b) Receipts in packaged form from other plants of products specified in §1004.40(b)(1);
(c) Products (other than fluid milk products, products specified in §1004.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and
(d) Receipts of any milk product (other than a fluid milk product or a product specified in §1004.40(b)(1)) for which the handler fails to establish a disposition.

§ 1004.15 Fluid milk product.

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

§ 1004.16 Fluid cream product.

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

§ 1004.17 Filled milk.

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

§ 1004.18 Exempt milk.

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

§ 1004.19 Federation.

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

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

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

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

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

§ 1004.21 [Reserved]

§ 1004.22 Commercial food processing establishment.

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

[58 FR 27780, May 11, 1993]

§ 1004.30 Reports of receipts and utilization.

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

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

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

(iii) Receipts of other source milk;

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

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

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

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

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

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

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

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

[56 FR 63348, Dec. 3, 1991]

§ 1004.31 [Reserved]

§ 1004.32 Other reports.

(a) Each pool handler shall report to the market administrator in detail and
§ 1004.40

on forms prescribed by the market administrator as follows:

(1) On or before the 25th day after the end of the month for each pool plant, his producer payroll for such month which shall show for each producer:
   (i) His name and address;
   (ii) The total pounds of milk received from such producer;
   (iii) The average butterfat content and average nonfat milk solids content of such milk; and
   (iv) The net amount of the handler’s payment, together with the price paid and the amount and nature of any deduction;

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

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

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

(d) On or before the 20th day after the end of the month, each handler pursuant to §1004.9(f) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, all transactions wherein milk was bought or dealt in, giving the following information:
   (1) The name and address of any cooperative association or producer for whom the handler by either purchase or direction caused milk of producers to be moved to a plant;
   (2) The total pounds of milk involved in the transaction, and the average butterfat and nonfat milk solids content of such milk; and
   (3) Such other information with respect to each transaction as the market administrator may prescribe.

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

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

CLASSIFICATION OF MILK

§ 1004.40 Classes of utilization.

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

(a) Class I milk. Class I milk shall be all skim milk and butterfat:
   (1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraph (b) and (c) of this section;
   (2) In packaged inventory of fluid milk products at the end of the month;
   (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:

(Continued on next page.)
(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 non-milk items, yogurt and any other semi-solid product resembling a Class II product;
(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;
(v) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;
(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and
(vii) Any product not otherwise specified in this section.

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

(1) Used to produce:
   (i) Cream cheese and other spreadable cheeses, and hard cheeses of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(i) of this section;
   (ii) Butter, plastic cream, anhydrous milkfat and butteroil;
   (iii) Any milk product in dry form, except nonfat dry milk;
   (iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

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

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

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

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

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

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

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

§1004.41 Shrinkage.

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

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the
§ 1004.42 Classification of transfers and diversions.

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

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

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

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to §1004.44(a)(12) or (13) or the corresponding steps of §1004.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or the 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 §1004.40.

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

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

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

(d) Transfers and diversions to other nonpool plants. Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool
§ 1004.42

7 CFR Ch. X (1−1−99 Edition)

plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant operated by a governmental agency shall be classified:

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

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

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

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

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

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated under any Federal milk order, to the extent possible, 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;

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

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

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

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

(viii) In determining the nonpool plant’s utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not
Agricultural Marketing Service, USDA

§ 1004.44 Classification of producer milk.

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

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

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

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

Agricultural Marketing Service, USDA

§ 1004.43 General classification rules.

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

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

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

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

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

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

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

(4) Subtract from the remaining pounds of skim milk in Class I the

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


§ 1004.44 Classification of producer milk.

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

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

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

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

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

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

(4) Subtract from the remaining pounds of skim milk in Class I the
§ 1004.44

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

pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

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

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

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

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

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

(ii) Receipts of fluid milk products from dairy farmers for other markets pursuant to §1004.11 and from unidentified sources;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from a cooperative association in its capacity as a handler pursuant to §1004.42(a); and
(15) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage".

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

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


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

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

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

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

(c) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to §1004.43(e) and §1004.44 on the basis of such report, (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

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


Class and Component Prices

§ 1004.50 Class and component prices.

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

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

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

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

<table>
<thead>
<tr>
<th>Month</th>
<th>Amount</th>
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</thead>
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<tr>
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</tr>
<tr>
<td>February</td>
<td>+0.04</td>
</tr>
<tr>
<td>March</td>
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<td>April</td>
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<tr>
<td>May</td>
<td>-0.10</td>
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<tr>
<td>June</td>
<td>-0.09</td>
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<tr>
<td>July</td>
<td>+0.05</td>
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<tr>
<td>August</td>
<td>+0.12</td>
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<tr>
<td>September</td>
<td>+0.08</td>
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<tr>
<td>October</td>
<td>+0.08</td>
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<tr>
<td>November</td>
<td>+0.08</td>
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<tr>
<td>December</td>
<td>+0.08</td>
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(d) Butterfat price. The butterfat price per pound shall be a figure computed as follows:


dollar.


cents.


cents.


cents.


cents.


cents.


cents.
§ 1004.51 Basic formula prices.

(1) Compute a butterfat differential per one percent butterfat, rounded to the nearest one-tenth cent, by multiplying the current month’s butter price by 1.38, and subtract from the result an amount determined by multiplying 0.028 by the preceding month’s average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the “base month” series, adjusted pursuant to §1004.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

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

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

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

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

(f) Skim milk price. The skim milk price per hundredweight shall be the Class III price for the month adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to §1004.50(d)(1) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

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

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

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

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

(iii) Multiply the dry buttermilk price by 0.42.

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

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

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

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

(1) Grade AA butter price. Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.
(2) Nonfat dry milk price. Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

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

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

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

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

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

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

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

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

[60 FR 18955, Apr. 14, 1995]

§ 1004.52 Location differentials to handlers.

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

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in an amount not in excess of that by which such Class I disposition exceeds 95 percent of the sum of receipts at such plant from producers, cooperative associations pursuant to §1004.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, and from dairy farmers for other markets pursuant to §1004.11. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply: Provided, That for the purposes of this paragraph, transfers from a pool plant to a second pool plant which are in turn transferred to a third pool plant shall be treated as though the transfer was
§ 1004.53 Announcement of class prices and component prices.

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

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III and Class III-A prices for the preceding month; and

(d) The prices for butterfat and skim milk computed pursuant to §1004.50(d) and (f).


§ 1004.54 Equivalent prices or indexes.

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

[56 FR 61349, Dec. 3, 1991]

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

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

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

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

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

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

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

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

(d) For the first month that this paragraph is effective, the value of the
§ 1004.60

hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b), as follows:

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

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

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

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

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

(f) The value of the product pounds, skim milk and butterfat assigned to Class I pursuant to § 1004.43(e) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(8) (i) through (iv), and the corresponding step of § 1004.44(b), excluding receipts of bulk fluid cream products from another order plant and bulk concentrated fluid milk products from pool plants, other order plants and unregulated supply plants, applicable at the location of the pool plant at the current month’s Class I-Class III price difference;

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

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

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

(j) The pounds of nonfat milk solids in skim milk in receipts allocated to Class II and Class III pursuant to § 1004.44(a)(14) and in producer milk.
§ 1004.61 Computation of weighted average differential price and producer nonfat milk solids price.

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

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

(1) Combine into one total:
   (i) The value computed pursuant to §1004.60 (a) through (h) for all handlers who made reports pursuant to §1004.44, computed by multiplying the skim milk pounds so assigned by the percentage of nonfat milk solids in the handler’s receipts of producer skim milk during the month for each report filed, separately, the result to be multiplied by the nonfat milk solids price for the month computed pursuant to §1004.50(e).

(2) Add or subtract as appropriate an amount per hundredweight that the Class III-A price is more or less, respectively, than the Class III price.

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

(b) [Reserved]

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

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

(2) Divide the total value calculated under paragraph (a)(1) of this section by the sum of the following for all handlers:
   (i) The total hundredweight of producer milk pursuant to §1004.13 represented by the value established pursuant to (1)(i) of this paragraph; and
   (ii) The total hundredweight for which a value is computed pursuant to §1004.60(h).

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

7 CFR Ch. X (1-1-99 Edition)
§ 1004.62 Computation of uniform price.

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

[56 FR 61351, Dec. 3, 1991]

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

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


§ 1004.70 Producer-settlement fund.

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

§ 1004.71 Payments to the producer-settlement fund.

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

(a) The net pool obligation computed pursuant to §1004.60 for such handler;
(b) The sum of:
(1) The value of milk received by such handler from producers and from cooperative association handlers pursuant to §1004.9(c) at the applicable price(s) pursuant to §1004.61 adjusted by applicable location differentials, less in the case of a cooperative association on milk for which it is a handler pursuant to §1004.9(c), the amount due from other handlers pursuant to §1004.74(d); and
(2) The value at the weighted average differential price, computed pursuant to §1004.61, adjusted by the applicable location differential on nonpool milk pursuant to §1004.75(b), with respect to other source milk for which a value was computed pursuant to §1004.60(h).


§ 1004.72 Payments from the producer-settlement fund.

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

(a) If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.
(b) If the 16th day after the end of the month is a Saturday, Sunday, or national holiday, the market administrator may delay payments pursuant to this section until the next day his office is open for public business.

[45 FR 23402, Apr. 7, 1980]

§ 1004.73 Value of producer milk.

The total value of milk received from producers during any month shall be the sum of the following calculations:
(a) The value of a producer’s milk shall be the sum of the following:
(1) The weighted average differential price subject to the appropriate plant location adjustment times the total hundredweight of milk received from the producer;
(2) The total nonfat milk solids contained in the producer milk received from the producer multiplied by the
§ 1004.74 Payments to producers and to cooperative associations.

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

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

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

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

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

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

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

(b) In the case of a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the second day prior to the date on which payments are due to each of its producer members furnish such producer or cooperative association with respect to each of its producer members from whom the handler received milk during the month, a written statement showing:

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

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

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

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

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

(c) In the case of milk received by a handler from a cooperative association in its capacity as the operator of a pool plant such handler shall on or before the second day prior to the date on which payments are due to such producer members as determined pursuant to paragraph (a) of this section;

§ 1004.72 Payments to producers and to cooperative associations.

(b) [Reserved]

Agricultural Marketing Service, USDA

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

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

(a) An amount computed as follows:

(i) The obligation that would have been computed pursuant to §1004.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant, a cooperative association as a handler pursuant to §1004.9(b), or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in §1004.60(h) and a credit in the amount specified in §1004.71(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in paragraph (a)(1)(ii) of this section; and

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

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

(b) An amount computed as follows:

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

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

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

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

(5) From the value of such milk at the Class I price, subtract its value at the uniform price computed pursuant to § 1004.62, and add for the quantity of labeled reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price less $1.00 (but not to be less than the Class III price) and the value of such milk at the Class III price (except that the Class I price and the uniform price shall be adjusted for the location of the nonpool plant and shall not be less than the Class III price). For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by $0.00. 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.

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

§ 1004.86 Deductions for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, making payments directly to producers for

§ 1004.85 Assessment for order administration.

As his pro rata share of the expense of administration, each handler shall pay to the market administrator on or before the 20th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to milk handled during the month as follows:

(a) Each handler (excluding a cooperative association in its capacity as a handler pursuant to §1004.9(c), and a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant) with respect to the handler’s receipts of producer milk (including such handler’s own-farm production, milk received from a cooperative association pursuant to §1004.9(c), and milk transferred in bulk from a pool plant owned and operated by a cooperative association) and receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I pursuant to §1004.60(f) and (h);

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

§ 1004.79 Direct-delivery differential.

For producer milk received at a plant located within 55 miles of the city hall in Philadelphia, Pa., the handler in making payments to producers and cooperative association handlers pursuant to §1004.9(c), in addition to any amounts required by other provisions of this part, shall pay 6 cents per hundredweight of milk so received.
milk (other than milk of his own production) pursuant to §1004.74(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 20th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify or establish the weights, samples and tests of milk of producers who are not receiving such service from a cooperative association; and

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

[56 FR 61352, Dec. 3, 1991]

PART 1005—MILK IN THE CAROLINA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1005.1 General provisions.

DEFINITIONS

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

HANDLER REPORTS

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

CLASSIFICATION OF MILK

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

CLASS PRICES

1005.50 Class prices.
1005.51 Basic formula price.
1005.52 [Reserved]
1005.53 Plant location adjustments for handlers.
1005.54 Announcement of class prices.
1005.55 Equivalent price.

UNIFORM PRICE

1005.60 Handler’s value of milk for computing uniform price.
1005.61 Computation of uniform price including weighted average price.
1005.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

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

MARKETWIDE SERVICE PAYMENTS

1005.80 Transportation credit balancing fund.
1005.81 Payments to the transportation credit balancing fund.
1005.82 Payments from the transportation credit balancing fund.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

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

Agricultural Marketing Service, USDA

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

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1005.1 General provisions.

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

DEFINITIONS

§ 1005.2 Carolina marketing area.

The Carolina marketing area, hereinafter called the marketing area, means all the territory within the boundaries of the following 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 (in the event such provision conflicts with a similar provision of an adjacent Federal milk order, the provisions of the adjacent Federal order shall have precedence).

(a) Northwestern Zone:


(b) Base Zone:


§ 1005.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except to a plant) either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1005.4 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 that 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.

§ 1005.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1005.6 Supply plant.

Supply plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.
§ 1005.7 Pool plant.

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

(a) A 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 is:

(1) Route disposition, except filled milk, in the marketing area not less than 15 percent of its total route disposition, except filled milk, during the month; and

(2) The total quantity of fluid milk products, except filled milk, disposed of in class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to §1005.13, subject to the following conditions:

(i) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total Class I requirement percentages specified in paragraph (a)(2) of this section if each plant in the unit meets the in-area route disposition requirement specified in paragraph (a)(1) of this section, and if such handler requests that the plants be so considered as a unit. If such a handler wishes to add or remove plants from consideration as a unit, such a request must be made before the first day of the month for which it is to be effective.

(ii) The applicable percentages in paragraph (a)(2) of this section may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite written data, views, and arguments.

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to pool plants pursuant to paragraph (a) of this section. Such shipments must equal not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to §1005.13 but excluding milk diverted to such plant) and handlers described in §1005.9(c). The operator of such plant may include milk diverted from such plant to plants described in paragraph (a) of this section as qualifying shipments in meeting up to one-half of the required shipments. The applicable shipping percentage of this paragraph may be increased or decreased up to 10 percentage points by the market administrator if the market administrator finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either at the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(c) A plant located in the State of North Carolina, South Carolina or Virginia that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent or more of the producer milk of members of such cooperative association, excluding such milk that is received at or diverted from pool plants described in paragraph (b) of this section but including milk delivered by such cooperative as a handler described in §1005.9(c), is delivered directly from their farms to pool plants described in paragraph (a) of this section or is transferred to such plants as a bulk fluid milk product from the plant of the cooperative association, subject to the following conditions:
§ 1005.9 Handler.

Handler means:
(a) Any person in his capacity as the operator of one or more pool plants;
(b) Any cooperative association with respect to milk of such producers diverted to nonpool plants for the account of such association pursuant to §1005.13, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this section;
(c) Any cooperative association with respect to milk excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section, that it receives for its account from the farm of a producer for delivery to a pool plant or 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 of 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

§ 1005.8 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 a producer-handler plant, a governmental agency plant or an other order 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 that is not a producer-handler plant, a governmental agency plant or an other order plant and from which fluid milk products are shipped to a pool 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.

§ 1005.9 Handler.

Handler means:
(a) Any person in his capacity as the operator of one or more pool plants;
(b) Any cooperative association with respect to milk of such producers diverted to nonpool plants for the account of such association pursuant to §1005.13, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this section;
(c) Any cooperative association with respect to milk excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section, that it receives for its account from the farm of a producer for delivery to a pool plant or 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 of 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

§ 1005.8 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 a producer-handler plant, a governmental agency plant or an other order 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 that is not a producer-handler plant, a governmental agency plant or an other order plant and from which fluid milk products are shipped to a pool 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.

§ 1005.9 Handler.

Handler means:
(a) Any person in his capacity as the operator of one or more pool plants;
(b) Any cooperative association with respect to milk of such producers diverted to nonpool plants for the account of such association pursuant to §1005.13, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this section;
(c) Any cooperative association with respect to milk excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section, that it receives for its account from the farm of a producer for delivery to a pool plant or 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 of 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

§ 1005.8 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 a producer-handler plant, a governmental agency plant or an other order 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 that is not a producer-handler plant, a governmental agency plant or an other order plant and from which fluid milk products are shipped to a pool 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.

§ 1005.9 Handler.

Handler means:
(a) Any person in his capacity as the operator of one or more pool plants;
(b) Any cooperative association with respect to milk of such producers diverted to nonpool plants for the account of such association pursuant to §1005.13, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this section;
(c) Any cooperative association with respect to milk excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section, that it receives for its account from the farm of a producer for delivery to a pool plant or 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 of 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 who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in §1005.7 (d)(3) or (d)(4); and

(g) Any person who operates an unregulated supply plant.

§ 1005.10 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, pool plants and other order plants;

(c) Whose receipts of fluid milk products from sources other than his own farm production, pool plants and other order plants do not exceed the lesser of 5 percent of Class I disposition or 5,000 pounds during the month;

(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.

§ 1005.11 [Reserved]

§ 1005.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption, which milk is:

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

(2) Received by a handler described in §1005.9(c); or

(3) Diverted from a pool plant in accordance with §1005.13.

(b) Producer shall not include:

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

(2) A governmental agency operating a plant exempt pursuant to §1005.8(e);

(3) Any person with respect to milk produced by such person which 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 §1005.44(a)(8)(iii) and the corresponding step of §1005.44(b); and

(4) Any person with respect to milk produced by such person which 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.

§ 1005.13 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, excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in §1005.9(c);

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in §1005.9(a) or (b) subject to the following conditions:

(1) A producer’s milk shall be eligible for diversion to a nonpool plant during any month in which such producer’s milk is physically received at a pool plant as follows:

(i) In any month of July through February, six days’ production;

(ii) In any month of March through June, two days’ production.

(2) During each of the months of July through November and January and February, the total quantity of milk diverted by a cooperative association shall not exceed one-fourth of the producer milk that such cooperative
caused that month to be delivered to or diverted from such pool plants;

(3) A handler described in § 1005.9(a) that is not a cooperative association may divert for its account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted shall not exceed one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler in each month of July through November and January and February;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (d)(3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk;

(5) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(6) The cooperative association shall designate the dairy farmer deliveries that are not producer milk pursuant to paragraph (d)(5) of this section. If the diverting handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk.

§ 1005.14 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 § 1005.40(b)(1) from any source other than producers, handlers described in § 1005.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1005.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1005.40(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 § 1005.40(b)(1)) for which the handler fails to establish a disposition.

§ 1005.15 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.

§ 1005.16 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.
§ 1005.17 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).

§ 1005.18 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 and be exercising full authority in the sale of milk of its members.

§ 1005.19 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 §§ 1005.13, 1005.41 and 1005.53.

§ 1005.30 Reports of receipts and utilization.

On or before the seventh 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 its 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 from the pool plant to other plants;

(2) Receipts of milk from handlers described in §1005.9(c);

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

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, for which a transportation credit is requested pursuant to §1005.82, including the date that such milk was received;

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

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

(8) Inventories at the beginning and end of the month of fluid milk products and products specified in §1005.40(b)(1); and

(9) 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 §1005.9(b) and (c) shall report:

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

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

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to
§ 1005.40 Classification of Milk

§ 1005.40 Classes of utilization.

Except as provided in §1005.42, all skim milk and butterfat required to be reported by a handler pursuant to §1005.30 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 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 I product;
§ 1005.41 Shrinkage

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1005.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to §1005.41(a) to the receipts specified in §1005.41(a)(2) and in shrinkage specified in §1005.41(b) and (c).

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

(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 §1005.9(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 subparagraph 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 subparagraph 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 handlers 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 handlers; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (b)(2), (b)(4), (b)(5), and (b)(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 §1005.9(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.

§1005.42 Classification of transfers and diversions.

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

(1) The skim milk or butterfat classified in each class shall be limited to the amount of milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to §1005.44(a)(12) and the corresponding step of §1005.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or diverter-plant received during the month other source milk to be allocated pursuant to §1005.44(a)(7) or the corresponding step of §1005.44(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 diverter-handler received during the month other source milk to be allocated pursuant to §1005.44(a)(11) or (a)(12) or the corresponding steps of §1005.44(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;
§ 1005.42 7 CFR Ch. X (1-1-99 Edition)

(a) 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 another 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 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), (b)(2), or (b)(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, 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 the 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 §1005.40.

(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 another 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 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), (b)(2), or (b)(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, 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 the 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 §1005.40.

(c) Transfers to producer-handlers and transfers and diversions to governmental agency 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 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:

(A) The transferee or producer-handler claims such classification in such handler's report of receipts and utilization filed pursuant to §1005.30 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(viii) In determining the nonpool plant’s utilization for purposes of this 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 priorities at the second plant that are set forth in this subparagraph.

(e) Transfers by a handler described in §1005.9(c) to pool plants. Skim milk and butterfat transferred in the form of bulk milk by a handler described in §1005.9(c) to another handler’s pool plant shall be classified pursuant to §1005.44 pro rata with producer milk received at the transferee-handler’s plant.


§1005.43 General classification rules.

In determining the classification of producer milk pursuant to §1005.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports
filed pursuant to §1005.30 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 §1005.9 (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 §§1005.40, 1005.41, and 1005.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in §1005.9 (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 of a handler pursuant to §1005.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such handler.

(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 §1005.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1005.44 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.

§1005.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in §1005.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in §1005.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in §1005.41(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 an other 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 Class III.
milk in products specified in §1005.40(b)(1) that were received in
classified 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 speci-
fied in §1005.40(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 ex-
cess of the pounds of skim milk re-
mainin in Class II. This paragraph
shall apply only if the pool plant was
subject to the provisions of this sub-
paragraph or comparable provisions of
another Federal milk order in the im-
mediately preceding month;

(6) Subtract from the remaining
pounds of skim milk in Class II the
pounds of skim milk in bulk con-
centrated 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 speci-
fied in §1005.40(b) (excluding the quan-
tity of such skim milk that was classi-
fied as Class III milk pursuant to
§1005.40(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 re-
mainin in each class, in series begin-
ning 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 prod-
uct) and, if paragraph (a)(5) of this sec-
tion applies, packaged inventory at the
beginning of the month of products
specified in §1005.40(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 unregu-
lated supply plant that were not sub-
tracted pursuant to paragraph (a)(2)(i)
of this section; and

(vi) Receipts of reconstituted skim
milk in filled milk from an other order
plant that is regulated under any Fed-
eral milk order providing for indi-
vidual-handler pooling, to the extent
that reconstituted skim milk is allo-
cated to Class I at the transferor-plant;

(8) Subtract in the order specified
below from the pounds of skim milk re-
mainin in Class II and Class III, in se-
quence beginning with Class III:

(i) The pounds of skim milk in re-
cipts of fluid milk products from an
unregulated supply plant that were not
subtracted pursuant to paragraphs
(a)(2)(i) and (a)(7)(v) of this section for
which the handler requests a classifica-
tion other than Class I, but not in ex-
cess of the pounds of skim milk re-
mainin in Class II and Class III com-
bined;

(ii) The pounds of skim milk in re-
cipts of fluid milk products from an
unregulated supply plant that were not
subtracted pursuant to paragraphs
(a)(2)(i), (a)(7)(v), and (a)(8)(i) of this
section which are in excess of the
pounds of skim milk determined pursu-
ant to paragraphs (a)(8)(ii)(A) through
(a)(8)(iii)(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 re-
mainin 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 re-
mainin in each class at this allocation
step at the handler’s other pool plants
shall be adjusted in the reverse direc-
tion 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
§ 1005.44  
7 CFR Ch. X (1-1-99 Edition)

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 §1005.9(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 §1005.40(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)(ii), (a)(7)(vi), and (a)(8)(i) and (a)(8)(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 subparagraph 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 (a)(8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii), (a)(12)(iii), and (a)(12)(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 § 1005.45(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 II 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 (a)(12)(ii) of this section result in a quantity of skim milk to be subtracted from Class II 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)(i) of this section, should the computations pursuant to paragraph (a)(12)(ii) or (a)(12)(iii) 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 § 1005.42(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 described in § 1005.9(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 § 1005.9(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.

§ 1005.45  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 § 1005.44(a)(12) and the corresponding step of §1005.44(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 §1005.43(d) and §1005.44 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 receipts are allocated pursuant to § 1005.43(d) and § 1005.44 on the basis of such report, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association that was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.


§ 1005.50  Class prices.

Subject to the provisions of §1005.53, 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 $3.08.

(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.


§ 1005.51  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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1005.74 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;
Agricultural Marketing Service, USDA § 1005.53

(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-nonnat’s 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-nonnat 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 18956, Apr. 14, 1995]

§ 1005.52 [Reserved]

§ 1005.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in §1005.9(c) which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price specified in §1005.50(a) shall be adjusted by the amount stated in paragraphs (a)(1) through (a)(6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in §1005.2, the adjustment shall be as follows:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Adjustment per hundredweight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northwestern</td>
<td>Minus 15 cents.</td>
</tr>
<tr>
<td>Base</td>
<td>No adjustment.</td>
</tr>
<tr>
<td>Southeastern</td>
<td>Plus 15 cents.</td>
</tr>
</tbody>
</table>

(2) For a plant located within the Tennessee Valley Federal order marketing area (part 1011), except Kentucky and West Virginia counties, the adjustment shall be a minus 31 cents;
(3) For a plant located within the State of Florida, the adjustment shall be a plus 50 cents;
§ 1005.53

(4) For a plant located outside the areas specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section and south of a line extending through the southern boundary of the State of Tennessee and east of the Mississippi River, the adjustment shall be the adjustment applicable at Anderson, North Augusta, or Hardeeville, South Carolina, whichever city is nearest;

(5) For a plant located outside the area specified in paragraph (a)(2) of this section and in the State of Virginia, the adjustment shall be the adjustment applicable at Reidsville, Roanoke Rapids, or Elizabeth City, North Carolina, whichever city is nearest;

(6) For a plant located within the Middle Atlantic Federal Order Marketing Area (Part 1004), the adjustment shall be computed by subtracting the base zone Class I price specified in § 1005.50(a) from the Class I price applicable at such plant under the Middle Atlantic Federal Order; and

(7) For a plant located outside the areas specified in paragraphs (a)(1) through (a)(6) of this section, the adjustment shall be a minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenwood, South Carolina, or Charlotte or Greensboro, North Carolina.

(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 transferor-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for the transferor-plant.

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1005.44(a)(12) and 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) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in §1005.9(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-plant 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 the Class I prices applicable at the transferee-plant and transferor-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 §1005.42(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 location adjustment rate for such plant. If the aggregate of this computation for all plants having the same location adjustment rate 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 (b)(4) of this section.

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

§ 1005.54 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.

§ 1005.55 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.

§ 1005.60 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 for each handler described in § 1005.9(a) with respect to each of its pool plants and for each handler described in § 1005.9 (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 § 1005.9(c) that were classified in each class pursuant to §§1005.43(a) and 1005.44(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 §1005.44(a)(14) and the corresponding step of §1005.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1005.74, 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 §1005.44(a)(9) and the corresponding step of §1005.44(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 §1005.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1005.44(a)(7) (i) through (iv) and the corresponding step of §1005.44(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 §1005.44(a)(7)(i) through (iv) and the corresponding step of §1005.44(b), excluding receipts of bulk fluid milk products from an other order plant and bulk concentrated fluid milk products from pool plants, other order plants and unregulated supply plants;

(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 §1005.43(d) and §1005.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1005.44(a)(11) and the corresponding steps of §1005.44(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 reconstituted milk made from receipts of nonfluid milk...
§ 1005.61 Computation of uniform price (including weighted average price).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to §1005.60 for all handlers who filed the reports prescribed in §1005.30 for the month and who made the payments pursuant to §1005.71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to §1005.75;

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

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to §1005.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price.

(b) [Reserved]


§ 1005.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all payments made by handlers pursuant to §§1005.71, 1005.76, and 1005.77, and out of which he shall make all payments pursuant to §§1005.72 and 1005.77. Provided, That any payments due any handler shall be offset by any payments due from such handler.

§ 1005.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:
§ 1005.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 25th day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price, as adjusted pursuant to §§1005.74 and 1005.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to §1005.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: Provided, That if by such date such handler has not received full payment from the market administrator pursuant to §1005.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to the paragraph next following after the receipt of the balance due from the market administrator;

(b) Each handler shall make payment to the cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect...
such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk as follows:

(1) On or before two days prior to the last day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 13th day after the end of each month for milk received during such month.

c) Each handler pursuant to §1005.9(a) who receives milk from a cooperative association as a handler pursuant to §1005.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before two days prior to the last day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 13th day of the following month for milk received during the month, not less than the uniform price as adjusted pursuant to §1005.74 and 1005.75, and less any payments made pursuant to paragraph (c)(1) of this section.

d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) [Reserved]

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

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

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

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


§ 1005.74 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 §1005.51 (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.


§ 1005.75 Plant location adjustments for producers and on nonpool milk.

(a) In making the payments required pursuant to §1005.73, the uniform price pursuant to §1005.61 for the month shall be adjusted by the amounts set forth in §1005.53 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 §1005.71, the weighted average price shall be adjusted by the amount set forth in §1005.53 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.

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 §§1005.30(b) and 1005.31(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, handlers pursuant to §1005.9(b), 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 another 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 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 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 §1005.60 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, a handler described in §1005.9(b), or another 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 or as classified pursuant to §1005.42 with respect to receipts from a handler described in §1005.9(b);

   ii. Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or another order plant shall be classified at the partially regulated distributing plant in
§ 1005.76

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 §1005.60 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 §1005.60 for such handler shall include, in lieu of the value of other source milk specified in §1005.60(f), the value of such other source milk specified in §1005.71(a)(2)(i), a value of milk determined pursuant to §1005.60 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 §1005.7(b) subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§1005.30(b) and 1005.31(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 §1005.60 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 §1005.74, 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 §1005.74, 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 §1005.43(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.

§ 1005.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to §1005.71 or to the transportation credit balancing fund pursuant to §1005.81, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to §1005.72 or §1005.82, the market administrator shall make payment to such handler within 15 days or, in the case of the transportation credit balancing fund, as soon as funds become available. If a handler is due additional payment for a month in which payments to handlers were prorated pursuant to §1005.82(a), the additional payment pursuant to this section shall be multiplied by the final proration percentage computed in §1005.82(a)(2).

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by §1005.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1005.78 Charges on overdue accounts.

Any unpaid obligations of a handler pursuant to §§1005.71, 1005.73, 1005.76, 1005.77, 1005.81, 1005.85 or 1005.86 shall be increased one and one-fourth 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;

(b) For the purposes 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; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

§ 1005.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to §1005.81 and out of which shall be made the payments due handlers pursuant to §1005.82. Payments due a handler shall be offset against payments due from the handler.

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler operating a pool plant and each handler specified in §1005.9(b) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to §1005.44 by $0.065 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior J une-J anuary period. In the event that during any month of the J une-J anuary period the fund balance is insufficient.
§ 1005.82 Payments from the transportation credit balancing fund.

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

1. On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to §1005.30(a)(5), bulk milk transferred from another order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to §1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

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

3. Transportation credits paid pursuant to paragraph (a) (1) and (2) of this section shall be subject to final verification by the market administrator pursuant to §1005.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

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

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

(c) Transportation credits shall apply to the following milk:
§ 1005.82

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, and allocated to Class I milk pursuant to §1005.44(a)(12); and

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

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to §1005.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in §1005.44;

(ii) The dairy farmer was not a “producer” under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1007, 1011, or 1046, or within the Kentucky counties of Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(d) Transportation credits shall be computed as follows:

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

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

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

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the other order’s Class I price applicable at the shipping plant’s location from the Class I price applicable at the receiving plant as specified in §1005.53;

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

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) introductory text of this section.

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

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer’s farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;
§ 1005.85 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 15th 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 §1005.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in §1005.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants; and receipts of nonfluid milk products assigned to Class I pursuant to §1005.43(d) and other source milk allocated to Class I pursuant to §1005.44(a)(7) and (a)(11) and the corresponding steps of §1005.44(b), except such other source milk that is included in the computations pursuant to §1005.60(d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat specified in §1005.76(a)(2).


§ 1005.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to §1005.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make 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 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1006—MILK IN UPPER FLORIDA MARKETING AREA

GENERAL PROVISIONS

Sec. 1006.1 General provisions.
Agricultural Marketing Service, USDA

§ 1006.5

DEFINITIONS
1006.2 Upper Florida marketing area.
1006.3 Route disposition.
1006.4 [Reserved]
1006.5 Distributing plant.
1006.6 Supply plant.
1006.7 Pool plant.
1006.8 Nonpool plant.
1006.9 Handler.
1006.10 Producer-handler.
1006.11 [Reserved]
1006.12 Producer.
1006.13 Producer milk.
1006.14 Other source milk.
1006.15 Fluid milk product.
1006.16 Fluid cream product.
1006.17 Filled milk.
1006.18 Cooperative association.
1006.19 [Reserved]
1006.20 Commercial food processing establishment.

HANDLER REPORTS
1006.30 Reports of receipts and utilization.
1006.31 Payroll reports.
1006.32 Other reports.

CLASSIFICATION OF MILK
1006.40 Classes of utilization.
1006.41 Shrinkage.
1006.42 Classification of transfers and diversions.
1006.43 General classification rules.
1006.44 Classification of producer milk.
1006.45 Market administrator’s reports and announcements concerning classification.

CLASS PRICES
1006.50 Class prices.
1006.51 Basic formula price.
1006.52 Plant location adjustments for handlers.
1006.53 Announcement of class prices.
1006.54 Equivalent price.

UNIFORM PRICE
1006.60 Handler’s value of milk for computing the uniform price.
1006.61 Computation of uniform price.
1006.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK
1006.70 Producer-settlement fund.
1006.71 Payments to the producer-settlement fund.
1006.72 Payments from the producer-settlement fund.
1006.73 Payments to producers and to cooperative associations.
1006.74 Butterfat differential.
1006.75 Plant location adjustments for producers and on nonpool milk.

1006.76 Payments by handler operating a partially regulated distributing plant.
1006.77 Adjustment of accounts.
1006.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION
1006.85 Assessment for order administration.
1006.86 Deduction for marketing services.


SOURCE: 37 FR 17725, Aug. 30, 1972, unless otherwise noted.

GENERAL PROVISIONS
§ 1006.1 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
§ 1006.2 Upper Florida marketing area.
The Upper Florida marketing area, hereinafter called the “marketing area,” means all the territory geographically within the boundaries of the following counties, all in the State of Florida, including all waterfront facilities connected therewith and all territory wholly or partly therein occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

§ 1006.3 Route disposition.
Route disposition means a delivery (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor, or vending machine) of a fluid milk product classified as Class I milk.

§ 1006.4 [Reserved]

§ 1006.5 Distributing plant.
Distributing plant means a plant:
§ 1006.6 Supply plant.

Supply plant means a plant from which a fluid milk product acceptable to a duly constituted health authority or filled milk is shipped during the month to a pool plant.

§ 1006.7 Pool plant.

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

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to §1006.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that are physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to §1006.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of §1006.7(a).

(c) A plant, other than a distributing plant, that is located in the marketing area and is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by a cooperative association and 50 percent or more of the producer milk of members of the cooperative association is received at pool distributing plants 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 is approved by a duly constituted health authority for the disposition of Grade A milk in the marketing area; and
2. The plant does not qualify as a pool plant under paragraph (b) of this section or under the provisions of another Federal order applicable to a supply plant.

(d) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;
(2) An exempt distributing plant;
(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: Provided, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and
(4) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

[54 FR 6383, Feb. 10, 1989]

Effective Date Note: At 62 FR 36651, July 9, 1997, in §1006.7, the words “50 percent or more of the” in the introductory text of paragraph (c) and paragraph (c)(2) were suspended indefinitely, effective Sept. 1, 1997.

§ 1006.8 Nonpool plant.

Nonpool plant means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling 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) Exempt distributing plant means a distributing plant operated by a governmental agency.

(d) Partially regulated distributing plant means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant or an exempt distributing plant.

(e) Unregulated supply plant means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler or an exempt distributing plant.

§ 1006.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(c) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

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

(e) A producer-handler; or

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1006.10 Producer-handler.

Producer-handler means any person who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the requirements set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is at his sole risk and under his complete and exclusive management and control; and

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which there is route disposition during the month in the marketing area pursuant to the following requirements:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) Fluid milk products (other than whole milk) from pool plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

§ 1006.11 [Reserved]

§ 1006.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1006.13 from a pool plant to a nonpool plant.

(b) The term “producer” shall not include:

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

(2) The operator of an exempt distributing plant; or
§ 1006.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler described in §1006.9(c): Provided, That if the milk received at a pool plant from a handler described in §1006.9(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant’s purchases are based shall be producer milk received by the handler described in §1006.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: Provided, That any delivery during the current month from such producer to another order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b)(4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.


§ 1006.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk fluid cream products from any source except:

(1) Producer milk;

(2) Such products from pool plants; and

(3) Such products in inventory at the beginning of the month;

(b) Receipts of packaged fluid cream products and eggnog from other plants;

(c) Products, other than fluid milk products and fluid cream products, from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;
Agricultural Marketing Service, USDA

§ 1006.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler (except a handler described in §1006.9(e), or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received or at which filled milk is processed or packaged, reporting in detail and on forms prescribed by the market administrator;
§ 1006.31 Payroll reports.

(a) Each handler described in §1006.9(a), (b), and (c) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 20th day after the end of the month his producer payroll for such month which shall show for each producer:

(1) His identity;
(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;
(3) The average butterfat content of such milk; and
(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to §1006.76(b) shall report to the market administrator on or before the 20th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering Grade A milk shall be reported in lieu of payments to producers.

§ 1006.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler described in §1006.9(c) shall report to the market administrator, in detail and on forms prescribed by the market administrator on or before the 7th day after the end of the month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

CLASSIFICATION OF MILK

§ 1006.40 Classes of utilization.

Except as provided in §1006.42, all skim milk and butterfat required to be reported by a handler pursuant to §1006.30 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, 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 or grated 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;

(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 §1006.15 and the fluid cream product definition pursuant to §1006.16; and

(7) In shrinkage assigned pursuant to §1006.41(a) to the receipts specified in
§ 1006.41
§ 1006.41(a)(2) and in shrinkage specified in § 1006.41(b) and (c).
[58 FR 27786, May 11, 1993]

§ 1006.41 Shrinkage.
For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1006.30, the market administrator shall determine the following:
(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:
(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and
(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.
(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:
(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1006.9(c));
(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1006.9(c), 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, the applicable percentage under this paragraph shall be two 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 diverted purchases such milk on the basis of weights determined from its measurement on the farm, 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 classification is requested by the operator 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 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 quantities 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 § 1006.9 (b) and (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, the applicable percentage under this paragraph for the cooperative association shall be zero.
[54 FR 6384, Feb. 10, 1989]

§ 1006.42 Classification of transfers and diversions.
(a) Transfers to pool plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:
(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transference-plant after the computations pursuant to §1006.44(a)(12) and the corresponding
step of § 1006.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to §1006.44(a)(7) or the corresponding step of §1006.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1006.44(a)(11) or (a)(12) or the corresponding steps of §1006.44(b), the skim milk or butterfat so transferred, 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.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of fluid milk products 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), (b)(2), or (b)(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 §1006.40.

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

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

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

(A) The transferor-handler or diverter-handler claims such classification in its report of receipts and utilization filed pursuant to §1006.30 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in paragraph (d)(2) of this section.

[58 FR 27787, May 11, 1993]
§ 1006.43 General classification rules.

In determining the classification of producer milk pursuant to § 1006.44, the following rules shall apply:

(a) Each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to § 1006.30 and compute the total pounds of skim milk and butterfat, respectively, in each class at each pool plant.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be a quantity equivalent to the non-fat milk solids contained in such product plus all the water originally associated with such solids.

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1006.9(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 § 1006.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1006.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1006.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1006.9(a) for each of the handler’s pool plants separately and of each handler described in §§ 1006.9(b) and (c) by allocating the handler’s receipts of skim milk and butterfat to such handler’s 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 § 1006.41(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 an other 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 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 § 1006.40(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 § 1006.40(b)(3) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(5) or comparable provisions.
§ 1006.44

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 §1006.40(b), (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1006.40(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 §1006.40(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 an exempt distributing 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; and

(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.

(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 (a)(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), (a)(7)(v), and (a)(8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the 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 (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler) of producer milk, 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
Agricultural Marketing Service, USDA § 1006.44

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 unconcentrated 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 §1006.40(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), (a)(7)(v), and (a)(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 paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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 (a)(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 prorata 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
§ 1006.45 Market administrator’s reports and announcements concerning classification.

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

(a) Whenever required for purposes of allocating receipts from other order plants pursuant to §1006.44(a)(12) and the corresponding step of §1006.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively.
in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(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 §1006.43(d) and §1006.44 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 of 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 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.


§ 1006.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1006.74 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:
§ 1006.52

(a) The Class I price for producer milk and other source milk at a plant located outside the State of Florida and more than 70 miles from the nearer of the City Halls of Jacksonville or Tallahassee, Florida, or within the State of Florida shall be adjusted at the rates set forth in the following schedule:

<table>
<thead>
<tr>
<th>Location of plant</th>
<th>Rate per cwt.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside the State of Florida:</td>
<td></td>
</tr>
<tr>
<td>In excess of 70 but not more than 85 miles.</td>
<td>Subtract 15 cents.</td>
</tr>
<tr>
<td>For each additional 10 miles or fraction thereof.</td>
<td>Subtract 2.0 cents.</td>
</tr>
<tr>
<td>Inside the State of Florida:</td>
<td></td>
</tr>
<tr>
<td>South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of Part 1013.</td>
<td>Add 30 cents.</td>
</tr>
<tr>
<td>In the defined marketing area of Part 1013.</td>
<td>Add 60 cents.</td>
</tr>
<tr>
<td>The remaining area within the State of Florida.</td>
<td>No adjustment.</td>
</tr>
</tbody>
</table>

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made in sequence according to the location adjustment applicable at each plant, beginning with the plant nearest the City Hall in Jacksonville, Orlando or Tallahassee, Fla.

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to
other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.


§ 1006.53 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 price for the preceding month.

[60 FR 6608, Feb. 2, 1995]

§ 1006.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price that is required.

UNIFORM PRICE

§ 1006.60 Handler's value of milk for computing the 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 the handler's pool plants and of each handler described in §1006.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to §1006.44(a) 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 §1006.44(a)(14) and the corresponding step of §1006.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1006.74, 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 §1006.44(a)(9) and the corresponding step of §1006.44(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 §1006.44(a)(7)(ii) through (iv) and the corresponding step of §1006.44(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 §1006.44(a)(7)(v) and (vi) and the corresponding step of §1006.44(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 §1006.43(d) and §1006.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1006.44(a)(11) and the corresponding steps of §1006.44(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 reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the
§ 1006.61 Computation of uniform price.

For each month, the market administrator shall compute a uniform price for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to §1006.60 for all handlers who filed the reports pursuant to §1006.30 for the month, except those in default of payments required pursuant to §1006.71 for the preceding month;

(b) [Reserved]

(c) Add an amount equal to the total value of the minus location adjustments computed pursuant to §1006.75(a);

(d) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to §1006.75(a);

(e) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(f) 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 §1006.60(f); and

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

§ 1006.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 11th day after the end of each month the uniform price for such month.

§ 1006.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all payments into such fund pursuant to §§1006.71 and 1006.76 and out of which he shall make all payments from such fund pursuant to §1006.72. Provided, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1006.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a)(1) of this section exceed the amounts specified in paragraph (a)(2) of this section:

(1) The net pool obligation pursuant to §1006.60 for such handler; and

(2) The sum of:

(i) The value of such handler’s producer milk at the uniform price, as adjusted pursuant to §1006.75; and

(ii) The value at the uniform price applicable at the location of the plant(s) from which received (not to be less than the value at the Class II
Agricultural Marketing Service, USDA § 1006.73

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the 20th day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than 85 percent of the uniform price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer;

(2) On or before the 5th day of the following month to each producer who had not discontinued shipping milk to such handler before the last day of the month, not less than 85 percent of the uniform price for the preceding month per hundredweight of milk received from the 16th through the last day of the month, less proper deductions authorized in writing by such producer; and

(3) On or before the 15th day of each month to each producer for milk received during the preceding month, not less than the uniform price per hundredweight, adjusted pursuant to §§ 1006.74, 1006.75, and 1006.86, subject to the following:

(i) Minus payments made pursuant to paragraphs (a)(1) and (2) of this section;

(ii) Less proper deductions authorized in writing by such producer; and

(iii) If by such date such handler has not received full payment from the market administrator pursuant to § 1006.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the second day prior to the
§ 1006.74 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 §1006.51 (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 18957, Apr. 14, 1995]

§ 1006.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced or increased according to the location of the pool plant at the rates set forth in §1006.52; and

(b) For purposes of computations pursuant to §§1006.71 and 1006.72, the uniform price shall be adjusted at the rates set forth in §1006.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.


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

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler’s election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§1006.30 and 1006.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to §1006.60 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant; and

(ii) Transfers from such nonpool plant to a pool plant or an other order plant shall be classified in the class to which allocated at the pool plant or other order plant.

§ 1006.77 7 CFR Ch. X (1-1-99 Edition)
plants and other order plants shall be valued at the uniform price of the respective order, except that reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be valued at the Class II price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk;

(iii) Such handler’s obligation shall include any charges computed pursuant to §1006.60(f) and any credits computed pursuant to §1006.71(a)(2)(ii) with respect to receipts of Class I milk from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(iv) of this section;

(iv) If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to §1006.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of §1006.7(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amounts of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant;

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in §1006.74, for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant as follows:

(i) Any Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) Receipts from a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation pursuant to any other order;

(3) Deduct from any remainder the pounds of reconstituted milk made from nonfluid milk products, and milk or skim milk contained in receipts from producer-handlers and exempt plants defined in any order, which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;

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

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location, and add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (b)(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
§ 1006.77 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in monies due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1006.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §1006.71, 1006.73, 1006.76, 1006.77, 1006.85 or 1006.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, 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 charges previously computed pursuant to this section;

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

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

[54 FR 6384, Feb. 10, 1989]

§ 1006.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler’s own production);

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk

§ 1006.86 Order assessment fund.

Any monies made payable pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

[54 FR 6384, Feb. 10, 1989]
products assigned to Class I use pursuant to §1006.43(d) and other source milk allocated to Class I pursuant to §1006.44(a)(7) and (a)(11) and the corresponding steps of §1006.44(b), except such other source milk that is excluded from the computations pursuant to §1006.60(d) and (f); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in §1006.76(b)(2)(ii).


§1006.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 4 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall 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 producers for whom a cooperative association is performing, as determined by the Secretary, the services set for in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.

1007.1 General provisions.

1007.2 Southeast marketing area.

1007.3 Route disposition.

1007.4 Plant.

1007.5 Distributing plant.

1007.6 Supply plant.

1007.7 Pool plant.

1007.8 Nonpool plant.

1007.9 Handler.

1007.10 Producer-handler.

1007.11 [Reserved]

1007.12 Producer.

1007.13 Producer milk.

1007.14 Other source milk.

1007.15 Fluid milk product.

1007.16 Fluid cream product.

1007.17 Filled milk.

1007.18 Cooperative association.

1007.19 Commercial food processing establishment.

HANDLER REPORTS

1007.30 Reports of receipts and utilization.

1007.31 Payroll reports.

1007.32 Other reports.

CLASSIFICATION OF MILK

1007.40 Classes of utilization.

1007.41 Shrinkage.

1007.42 Classification of transfers and diversions.

1007.43 General classification rules.

1007.44 Classification of producer milk.

1007.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1007.50 Class prices.

1007.51 Basic formula price.

1007.52 Plant location adjustments for handlers.

1007.53 Announcement of class prices.

1007.54 Equivalent price.

UNIFORM PRICES

1007.60 Handler’s value of milk for computing the uniform price.

1007.61 Computation of uniform price including weighted average price.

1007.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1007.70 Producer-settlement fund.
§ 1007.1 General provisions.

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

DEFINITIONS

§ 1007.2 Southeast marketing area.

The Southeast marketing area, hereinafter called the marketing area, means all territory within the bounds of the following Alabama, Florida, Georgia, Mississippi, Tennessee, and Arkansas counties and Louisiana parishes, 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 or parishes:

ZONE 1
Arkansas Counties
Baxter, Clay, Fulton, Greene, Izard, Lawrence, Randolph, and Sharp.

Tennessee Counties
Cheatham, Clay, Davidson, Dickson, Fentress, Henry, Houston, Jackson, Lake, Macon, Montgomery, Obion, Overton, Pickett, Robertson, Smith, Stewart, Sumner, Trousdale, Weakley, and Wilson.

ZONE 2
Arkansas Counties
Newton, Searcy, and Stone.

Tennessee Counties

ZONE 3
Arkansas Counties
Cleburne, Craighead, Independence, Jackson, Johnson, Mississippi, Poinsett, Pope, and Van Buren.

Tennessee Counties
Lauderdale, Tipton, and Haywood.

ZONE 4
Arkansas Counties
Conway, Crittenden, Cross, Faulkner, Garland, Lee, Lonoke, Monroe, Montgomery, Perry, Polk, Prairie, Pulaski, Saline, St. Francis, White, Woodruff, and Yell.

Tennessee Counties
Fayette, Franklin, Giles, Hardeman, Hardin, Lawrence, Lincoln, McNairy, Moore, Shelby, and Wayne.

ZONE 5
Alabama Counties
Colbert, Dekalb, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marshall, and Morgan.

Arkansas Counties
Arkansas, Clark, Grant, Hot Spring, Howard, Jefferson, Phillips, Pike, and Sevier.

Georgia Counties
Gilmer, Towns, and Union.
Mississippi Counties
Alcorn, Benton, Coahoma, DeSoto, Itawamba, Lafayette, Lee, Marshall, Panola, Pontotoc, Prentiss, Quitman, Tate, Tippah, Tishomingo, Tunica, and Union.

ZONE 6
Alabama Counties
Blount, Cherokee, Cullman, Etowah, Fayette, Lamar, Marion, Walker, and Winston.

Arkansas Counties
Bradley, Calhoun, Cleveland, Dallas, Desha, Drew, Hempstead, Lincoln, Little River, Nevada, and Ouachita.

Georgia Counties
Bartow, Cherokee, Dawson, Floyd, Gordon, Habersham, Lumpkin, Pickens, Rabun, and White.

Mississippi Counties
Bolivar, Calhoun, Chickasaw, Grenada, Monroe, Sunflower, Tallahatchie, and Yalobusha.

ZONE 7
Alabama Counties
Bibb, Calhoun, Clay, Cleburne, Jefferson, Pickens, Randolph, Shelby, St. Clair, Talladega, and Tuscaloosa.

Arkansas Counties
Ashley, Chicot, Columbia, Lafayette, Miller, and Union.

Georgia Counties

Mississippi Counties
Attala, Carroll, Choctaw, Clay, Holmes, Humphreys, LeFlore, Lowndes, Montgomery, Noxubee, Okolona, Webster, and Winston.

ZONE 8
Alabama Counties
Chambers, Chilton, Coosa, Greene, Hale, Lee, Perry, Sumter (north of U.S. 80), and Tallapoosa.

Georgia Counties

Louisiana Parishes

ZONE 9
Alabama Counties
Autauga, Bullock, Dallas, Elmore, Lowndes, Macon, Marengo, Montgomery, Russell, Sumter (south of U.S. 80), and Wilcox.

Georgia Counties
Bleckley, Bulloch, Candler, Chattooga, Crisp, Dodge, Dooly, Effingham, Emanuel, Evans, Houston, Jenkins, Johnson, Laurens, Macon, Marion, Montgomery, Peach, Pulaski, Schley, Screven, Stewart, Sumter, Tattnall, Telfair, Toombs, Treutlen, Webster, Wheeler, and Wilcox.

Louisiana Parishes

ZONE 10
Alabama Counties

Georgia Counties

Mississippi Counties
Caldwell, De Soto, Franklin, Madison, Natchitoches (north of State Highway 6 and U.S. 84), Red River, Tensas, and Winn.

Mississippi Counties
Claiborne, Clarke, Copiah, Hinds, Jasper, Lauderdale, Newton, Rankin, Scott, Simpson, Smith, and Warren.

ZONE 10

Louisiana Parishes

Mississippi Counties
Attala, Carroll, Choctaw, Clay, Holmes, Humphreys, LeFlore, Lowndes, Montgomery, Noxubee, Okoloba, Washington, Webster, and Winston.
§ 1007.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk. Packaged fluid milk products that are transferred to a distributing plant from a plant with route disposition in the marketing area and which are classified as Class I under §1007.40(a) shall be considered as route disposition from the transferor plant, rather than the transferee plant, for the single purpose of qualifying it as a pool plant under §1007.7(a).

§ 1007.4 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 that 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.

§ 1007.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1007.6 Supply plant.

Supply plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1007.7 Pool plant.

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

(a) A distributing plant from which:

(1) Total route disposition, except filled milk, is equal to 50 percent or more of the total quantity of Grade A fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to §1007.13; and
(2) Route disposition, except filled milk, in the marketing area is at least the lesser of a daily average of 1,500 pounds or 10 percent of the total quantity of fluid milk products, except filled milk, physically received or diverted therefrom pursuant to §1007.13.

(b) A supply plant from which during each of the months of July through November 60 percent (40 percent during each of the months of December through June) of the total quantity of Grade A milk that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to §1007.13 but excluding milk diverted to such plant) and handlers described in §1007.9(c) is transferred to pool distributing plants.

(c) A plant located within the Southeast 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 during the month producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant. Such deliveries, in excess of receipts by transfer from pool distributing plants, must equal not less than 60 percent of the total producer milk of such cooperative association in each of the months of July through November, and 40 percent of such milk in each of the months of December through June. The plant's pool plant status shall be subject to the following conditions:

1. The plant does not qualify as a pool plant under paragraphs (a) or (b) 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 to handle Grade A milk.

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

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

1. At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;
2. Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and
3. A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable percentages in paragraphs (a) through (c) of this section may be increased or decreased up to 10 percentage points by the market administrator if, following a written request for such a revision, the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision by conducting an investigation and conferring with the Director of the Dairy Division. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing seven days before the effective date.

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

1. A producer-handler plant;
2. An exempt plant as defined in §1007.8(e);
3. A plant qualified pursuant to paragraph (a) of this section which is not located within the Southeast marketing area, meets the pooling requirements of another Federal order, and has had greater sales in such other Federal order marketing area for three
§ 1007.8 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 producer-handler plant, or an exempt plant, 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 supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt plant.

(e) Exempt plant means a plant:

(1) 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; or

(2) Which has monthly route disposition of 100,000 pounds or less during the month. Such plant will be exempt from the pricing and pooling provisions of this order, but the handler will be required to file periodic reports as prescribed by the market administrator to enable determination of the exempt status of such handler.

§ 1007.9 Handler.

Handler means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative with respect to producer milk which it causes to be diverted pursuant to §1007.13 for the account of such cooperative association;

(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 of 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 who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in §1007.8(a);

(g) Any person who operates an unregulated supply plant; and

(h) Any person who operates an exempt plant.

§ 1007.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 100,000 pounds per month;

(b) Receives no Class I milk from sources other than his/her own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk; and

(d) Provides proof satisfactory to the market administrator that the care
and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his/her personal enterprise and personal risk.

§ 1007.11 [Reserved]

§ 1007.12 Producer.

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

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

(2) Received by a handler described in § 1007.9(c); or

(3) Diverted from a pool plant in accordance with § 1007.13.

(b) Producer shall not include:

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

(2) Any person with respect to milk produced by such person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant pursuant to § 1007.13;

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order plant designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1007.44(a)(8)(iii) and the corresponding step of § 1007.44(b); or

(4) Any person with respect to milk produced by such person which 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.

§ 1007.13 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 § 1007.9(c); or

(c) Diverted from a pool plant to the pool of another handler. Milk so diverted shall be deemed to have been received at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or cooperative association to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

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

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

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through November, or 50 percent during the months of December through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through November, or 50 percent during the months of December through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(d)) during the month;

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farm delivery that will not be producer milk pursuant to paragraphs (d)(3) and (4) of this section. If the handler fails to make such designation, no milk diverted by such handler shall be producer milk;

(6) To the extent that it would result in nonpool status for the plant from which diverted, milk diverted for the
§ 1007.14 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 §1007.40(b)(1) from any source other than producers, a handler described in §1007.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1007.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1007.40(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 §1007.40(b)(1)) for which the handler fails to establish a disposition.

§ 1007.15 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.

§ 1007.16 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.

§ 1007.17 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).

§ 1007.18 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 be engaged in making collective sales of, or marketing, milk or milk products for its members.

§ 1007.19 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 that it 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 §§ 1007.13, 1007.41, and 1007.52.

Handler Reports

§ 1007.30 Reports of receipts and utilization.
On or before the 5th day after the end of the month (if postmarked), or not later than the 7th day if the report is delivered in person to the office of the market administrator, each handler shall report for such month to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:
(a) Each handler, with respect to each of its 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 §1007.9(c);
(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;
(4) Receipts of other source milk;
(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046, for which a transportation credit is requested pursuant to §1007.82, including the date that such milk was received;
(6) Receipts of producer milk described in §1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;
(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the quantity of any reconstituted skim milk in route disposition in the marketing area.
(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 §1007.9(b) and (c) shall report:
(1) The quantities of skim milk and butterfat contained in receipts of milk from producers;
(2) The utilization or disposition of all such receipts; and
(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to §1007.82, all of the information required
§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in detail prescribed by the market administrator, showing for each producer:

1. Such producer’s name and address;
2. The total pounds of milk received from such producer, showing separately the pounds of milk received from the producer on each delivery day;
3. The average butterfat content of such milk;
4. The price per hundredweight, the gross amount due, the amount and nature of any deduction, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1007.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9(a), (b), and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to §1007.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§1007.30 and 1007.31, each handler shall report such information as the market administrator deems necessary to verify or establish each handler’s obligation under the order.


Classification of Milk

§ 1007.40 Classes of utilization.

Except as provided in §1007.42, all skim milk and butterfat required to be reported pursuant to §1007.30 shall be classified as follows:

(a) 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 shall be all skim milk and butterfat:

1. Disposed 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 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 processing establishment 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, 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 shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheese 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 §1007.15 and the fluid cream product definition pursuant to §1007.16;

(7) In shrinkage assigned pursuant to §1007.41(a) to the receipts specified in §1007.41(a)(2) and in shrinkage specified in §1007.41(b) and (c).

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

§ 1007.41 Shrinkage.

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1007.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such 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 §1007.9(c), except that if the operator of the plant to which the milk is delivered purchased such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 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 purchased such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to pool plants;

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

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other 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 amount 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 §1007.9 (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.

§ 1007.42 Classification of transfers and diversions.

(a) Transfers and diversions to pool plants. Skim milk or butterfat transferred or diverted in the form of fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification 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 after the computations pursuant to §1007.44(a)(12) and the corresponding step of §1007.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products.

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to §1007.44(a)(7) or the corresponding step of §1007.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-plant received during the month other source milk to be allocated pursuant to §1007.44(a)(11) or (12) or the corresponding steps of §1007.44(b), the skim milk or butterfat so transferred, 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.
(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of 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 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 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 the 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 shall be in accordance with the provisions of §1007.40.

(c) Transfers and diversions to producer-handlers and to exempt plants. Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under another Federal order or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product;

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

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

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

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of 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 (d)(2)(viii) of this section:

(A) The transferor-handler or diverter-handler claims such classification in such handler's report of receipts and utilization filed pursuant §1007.30 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 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 plants from pool plants;
(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plants 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 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 classified 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(viii) In determining the nonpool plant’s utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant’s utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

(e) Transfers by a handler described in §1007.9(c) to pool plants. Skim milk and butterfat transferred in the form of bulk milk by a handler described in §1007.9(c) to another handler’s pool plant shall be classified pursuant to §1007.44 pro rata with producer milk received at the transferee-handler’s plant.

§1007.43 General classification rules.

In determining the classification of producer milk pursuant to §1007.44, the following rules shall apply:
(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1007.30 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 §1007.9 (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 §§1007.40, 1007.41, and 1007.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in §1007.9 (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 the 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;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1007.9 (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 the utilization of such receipts by such handler as follows:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in §1007.41(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 products specified in §1007.40(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;

(4) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in §1007.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk in products that were in inventory at the

§ 1007.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in §1007.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in §1007.9(c), by allocating the handler’s receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in §1007.41(b);

(2) Subtract from the total pounds of skim milk in Class II the pounds of skim milk in products specified in §1007.40(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;

(3) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products that were in inventory at the

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§ 1007.44

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 §1007.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1007.40(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 or a fluid cream product) that is used to produce, or added to, any product specified in §1007.40(b)(1) that were not subtracted pursuant to paragraphs (a)(4), (a)(5), and (a)(6) of this section;

(ii) 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 which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased 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 fluid milk products from an exempt distributing plant as defined under any Federal milk order and from an exempt distributing 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; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is fully 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;
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 § 1007.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(i), (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), (a)(7)(v), (a)(8)(i), and (a)(8)(ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(1) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III 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 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 prorated to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated
§ 1007.45 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 §1007.44(a)(12) and the corresponding step of §1007.44(b), estimate and publicly announce the 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 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;

(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 §1007.9(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.

§ 1007.45 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 §1007.44(a)(12) and the corresponding step of §1007.44(b), estimate and publicly announce the 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 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...
utilization (to the nearest whole percentage) in each class during the
month of skim milk and butterfat, respectively, in producer milk of all han-
dlers. Such estimate shall be based upon the most current available data
and shall be final for such purpose.

(b) Report to the market adminis-
trator of the other order, as soon as
possible after the report of receipts and
utilization for the month is received
from a handler who has received fluid
milk products or bulk fluid cream
products from an other order plant, the
class to which such receipts are allo-
cated pursuant to §§ 1007.43(d) and
1007.44 on the basis of such report (in-
cluding any reclassification of inven-
tories 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 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 nec-
essary, any changes in such allocation
arising from the verification of such re-
port.

(d) On or before the 12th day after the
end of each month, report to each coop-
orative association which so requests,
the percentage of producer milk deliv-
ered by members of such association
that was used in each class by each
handler receiving such milk. For the
purpose of this report the milk so re-
ceived shall be prorated to each class
in accordance with the total utilization
of producer milk by such handler.

CLASS PRICES

§ 1007.50 Class prices.

Subject to the provisions of § 1007.52,
the class prices for the month per hun-
dredweight of milk containing 3.5%
butterfat shall be as follows:

(a) The Class I price shall be the basic
formula price for the second preceding
month plus $3.08.

(b) The Class II price shall be the
basic formula price for the second pre-
ceding month plus $.30.

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

(d) 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 com-
puted by subtracting from 9 an amount
calculated by dividing 0.4 by such non-
fat dry milk price, plus the butterfat
differential times 35 and rounded to the
nearest cent.

[60 FR 29437, June 2, 1995, as amended by 61
FR 20125, May 6, 1996]

§ 1007.51 Basic formula price.

The basic formula price shall be the
preceding month’s average pay price
for manufacturing grade milk in Min-
nesota and Wisconsin using the “base
month” series, as reported by the De-
partment, adjusted to a 3.5 percent but-
terfat basis using the butterfat dif-
ferential for the preceding month com-
puted pursuant to § 1007.74 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 hundred-
weight 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 fac-
tors, for the preceding month and sepa-
rately for the current month as fol-
lows:

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

(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.

207
§ 1007.52

(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 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 Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(2) 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 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.

§ 1007.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in §1007.9(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 §1007.50(a) shall be adjusted by the amount stated in paragraphs (a)(1) through (6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in §1007.2, the adjustment (cents per hundredweight) shall be as follows:

Zone 1 ......................... Minus 53.
Zone 2 ......................... Minus 48.
Zone 3 ......................... Minus 38.
Zone 4 ......................... Minus 31.
Zone 5 ......................... Minus 25.
Zone 6 ......................... Minus 10.
Zone 7 ......................... No adjustment.
Zone 8 ......................... Plus 10.
Zone 9 ......................... Plus 20.
Zone 10 .......................... Plus 32.
Zone 11 .......................... Plus 50.
Zone 12 .......................... Plus 57.

(2) For a plant located in that portion of the Tennessee Valley marketing area that is within the State of Georgia, the adjustment shall be minus 25 cents.

(3) For a plant located in the Missouri counties of Dunklin or Pemiscot, the adjustment shall be minus 53 cents.

(4) For a plant located in the Texas counties of Bowie or Cass, the adjustment shall be zero.

(5) For a plant located within another Federal order marketing area, other than in those counties specified in paragraphs (a) (2), (3), and (4) of this
section, the adjustment shall be determined by subtracting the Class I differential price in Zone 7 of this order from the Class I differential price, adjusted for the plant's location, under such other Federal order.

(6) For a plant located outside the areas described in paragraphs (a) (1) through (5) of this section, the adjustment shall be computed by multiplying 2.5 cents per 10 miles, or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator), from the nearer of Shreveport, Louisiana; Little Rock, Arkansas; Memphis, Tennessee; Jackson, Tennessee; Nashville, Tennessee; or Atlanta, Georgia, and subtracting that figure from the location adjustment applicable at Shreveport, Little Rock, Memphis, Jackson, Nashville, or Atlanta, as the case may be.

(b) For fluid milk products transferred in bulk form 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 at 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 §1007.44(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) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in §1007.9(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 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 applicable at the transferor-plant and the 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 §1007.42(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 adjustment rate determined pursuant to paragraph (b)(3) of this section. If the aggregate of this computation for all plants having the same adjustment 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 in 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 market administrator shall determine and publicly announce the zone location of each plant of each handler. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

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

§1007.53 Announcement of class prices.

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

§ 1007.54 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.

§ 1007.60 Handler's value of milk for computing the 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 the handler's pool plants and of each handler described in §1007.9 (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 §1007.9(c) that were classified in each class pursuant to §§1007.43(a) and 1007.44(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 §1007.44(a)(14) and the corresponding step of §1007.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1007.74, 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 and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to §1007.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1007.44(a)(7) (i) through (iv) and the corresponding step of §1007.44(b), excluding receipts of bulk fluid cream products from any other order plant and bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants;

(d) 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 §1007.44(a)(7) (v) and (vi) and the corresponding step of §1007.44(b);

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the nearest unregulated supply plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1007.44(a)(7)(v) and (vi) and the corresponding step of §1007.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plant 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 §1007.43(d) and §1007.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1007.44(a)(11) and the corresponding step of §1007.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) 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 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 §1007.44(a)(9) and the corresponding step of §1007.44(b);

(h) 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 §1007.76 (a)(5) or (c); and
(i) 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.

§ 1007.61 Computation of uniform price (including weighted average price).
(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month per hundredweight of milk of 3.5 percent butterfat content as follows:
(1) Combine into one total the values computed pursuant to §1007.60 for all handlers who filed the reports prescribed in §1007.30 for the month and who made payments pursuant to §1007.71 for the preceding month;
(2) Add not less than one-half the unobligated balance in the producer-settlement fund;
(3) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to §1007.75;
(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:
(i) The total hundredweight of producer milk;
(ii) The total hundredweight for which a value is computed pursuant to §1007.60(f); and
(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price.

§ 1007.62 Announcement of uniform price and butterfat differential.
The market administrator shall announce publicly on or before:
(a) The fifth day after the end of each month the butterfat differential for such month; and
(b) The 11th day after the end of the month the uniform price pursuant to §1007.61 for such month.

 § 1007.70 Producer-settlement fund.
The market administrator shall establish and maintain a separate fund known as the producer-settlement fund into which the market administrator shall deposit all payments made by handlers pursuant to §§1007.71, 1007.76, and 1007.77, and out of which the market administrator shall make all payments pursuant to §§1007.72 and 1007.77. Payments due any handler shall be offset by any payments due from such handler.

§ 1007.71 Payments to the producer-settlement fund.
(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:
(1) The total value of milk of the handler for such month as determined pursuant to §1007.60.
(2) The sum of:
(i) The value at the uniform price as adjusted pursuant to §1007.75, of such handler's receipts of producer milk and milk received from handlers pursuant to §1007.9(c); and
(ii) 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 is computed pursuant to §1007.60(f).
§ 1007.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(a)(2) exceeds the amount computed pursuant to § 1007.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the 26th day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 23rd day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer. If the producer had discontinued shipping milk to such handler before the 25th day of any month, the applicable rate for making payments to such producer shall be the Class III price for the preceding month; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price, as adjusted pursuant to §§ 1007.74 and 1007.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1007.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer.

(3) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the 15th day of such month, such handler may reduce payments pursuant to this paragraph to producers on a pro rata basis but not by more than the amount of the underpayment. Such payments shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) On or before the day prior to the dates specified in paragraph (a) (1) and (2) of this section, each handler shall make payment to the cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraph (a) (1) and (2) of this section.

[60 FR 29437, June 2, 1995, as amended at 61 FR 69018, Dec. 31, 1996]
(c) If a handler has not received full payment from the market administrator pursuant to §1007.72 by the 15th day of such month, such handler may reduce payments pursuant to paragraph (b) of this section to such cooperative association on a pro rata basis, prorating such underpayment to the volume of milk received from such cooperative association in proportion to the total milk received from producers by the handler, but not by more than the amount of the underpayment. Such payment shall be completed in the following manner:

(1) If the handler receives full payment from the market administrator by the 15th day of the month, the handler shall make payment to the cooperative association of the full value of the underpayment on the 15th day of the month;

(2) If the handler has not received full payment from the market administrator by the 15th day of the month, the handler shall make payment to the cooperative association of the full value of the underpayment on or before the date for making such payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(d) Each handler pursuant to §1007.9(a) who receives milk from a cooperative association as a handler pursuant to §1007.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the 25th day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 14th day of the following month, not less than the uniform price as adjusted pursuant to §§1007.74 and 1007.75, and less any payments made pursuant to paragraph (d)(1) of this section.

(e) If a handler has not received full payment from the market administrator pursuant to §1007.72 by the 14th day of such month, such handler may reduce payments pursuant to paragraph (d) of this section to such cooperative association and complete such payments for milk received from such cooperative association in its capacity as a handler pursuant to §1007.9(c), in the manner prescribed in paragraph (c) (1) and (2) of this section.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a handler described in §1007.9(c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) [Reserved]

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

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

(6) The net amount of payment to such producer or cooperative association.

[60 FR 29437, June 2, 1995, as amended at 61 FR 69018, Dec. 31, 1996]
§ 1007.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price shall be adjusted according to the location of the plant at which the milk was physically received at the rates set forth in §1007.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in section §1007.52(a) 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.

[60 FR 29437, June 2, 1995, as amended at 61 FR 69018, Dec. 31, 1996]

§ 1007.76 Payments by a 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 §§1007.30(b) and 1007.31(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 an 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 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 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 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
§1007.60 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 computed 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 in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to §1007.60 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 price class of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to §1007.60 for such handler shall include, in lieu of the value of other source milk specified in §1007.60(f) less the value of such other source milk specified in §1007.71(a)(2)(ii), a value of milk determined pursuant to §1007.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant during the month equivalent to the requirements of §1007.7(b), subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§1007.30(b) and 1007.31(b) similar reports for each such nonpool supply plant;

(B) The operator of such nonpool 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 §1007.60 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 the partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in §1007.74, for milk received at the plant during the month that would have been producer milk had the plant 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 §1007.74, 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 §1007.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the
§ 1007.77
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 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.

§ 1007.77 Adjustment of accounts.
Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1007.78 Charges on overdue accounts.
Any unpaid obligation due the market administrator from a handler pursuant to §§ 1007.71, 1007.76, 1007.77, 1007.78, 1007.81, 1007.85, and 1007.86 shall be increased 1.5 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. The late charges shall be added to the respective accounts to which due. For the purpose of this section, any obligation that was determined at a date later than 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.


MARKETWIDE SERVICE PAYMENTS

§ 1007.80 Transportation credit balancing fund.
The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to §1007.81 and out of which shall be made the payments due handlers pursuant to §1007.82. Payments due a handler shall be offset against payments due from the handler.

[61 FR 41492, Aug. 9, 1996]

§ 1007.81 Payments to the transportation credit balancing fund.
(a) On or before the 12th day after the end of the month, each handler operating a pool plant and each handler specified in § 1007.9(b) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to §1007.44 by $0.07 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June-January period. In the event that during any month of the June-January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.

§ 1007.82 Payments from the transportation credit balancing fund.

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

(1) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to §1007.30(a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to §1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to §1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will re-calculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of any payment adjustments based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a) (1) and (2) of this section shall be subject to final verification by the market administrator pursuant to §1007.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to §1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

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

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

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046, allocated to Class I milk pursuant to §1007.44(a)(12); and

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

(i) The quantity of such milk that shall be eligible for the transportation
credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to §1007.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in §1007.44;

(ii) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1011, or 1046, or within the Kentucky counties of Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(d) Transportation credits shall be computed as follows:

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

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

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

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the other order’s Class I price applicable at the shipping plant’s location from the Class I price applicable at the receiving plant as specified in §1007.52;

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

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) introductory text of this section.

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

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer’s farm from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point determined pursuant to paragraph (d)(3)(i) of this section is not in a Federal order marketing area, subtract the marketwide estimated Class I utilization of all handlers for the month from the Class I price applicable at the distribution plant receiving the milk. If the marketwide estimated Class I utilization of all handlers for the month is not available, subtract the lower of:

(A) The estimated Class I utilization of all handlers for the month pursuant to §1007.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in §1007.44;
point is not in any Federal order marketing area, determine the Class I price at the origination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

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

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


**Administrative Assessment and Marketing Service Deduction**

§ 1007.85 Assessment for order administration.

As each handler’s pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 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 § 1007.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1007.9(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 § 1007.43(d) and other source milk allocated to Class I pursuant to § 1007.44(a)(7) and (11) and the corresponding steps of § 1007.44(b), except such other source milk that is excluded from the computations pursuant to § 1007.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1007.76(a)(2).

§ 1007.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section each handler, in making payments to producers for milk (other than milk of such handler’s own production) pursuant to § 1007.73, shall deduct 7 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator not later than the 15th day after the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator;

(b) In the case of producers for whom a cooperative association that the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made 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 15th day after the end of the month, pay such deductions to the cooperative association rendering such services accompanied by a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA


**Subpart—Order Regulating Handling**

**General Provisions**

§ 1011.1 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.

[41 FR 36796, Sept. 1, 1976]
PART 1012—MILK IN TAMPA BAY MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec. 1012.1 General provisions.

DEFINITIONS

1012.2 Tampa Bay marketing area.
1012.3 Route disposition.
1012.4 [Reserved]
1012.5 Distributing plant.
1012.6 Supply plant.
1012.7 Pool plant.
1012.8 Nonpool plant.
1012.9 Handler.
1012.10 Producer-handler.
1012.11 [Reserved]
1012.12 Producer.
1012.13 Producer milk.
1012.14 Other source milk.
1012.15 Fluid milk product.
1012.16 Fluid cream product.
1012.17 Filled milk.
1012.18 Cooperative association.
1012.19 [Reserved]
1012.20 Commercial food processing establishment.

HANDLER REPORTS

1012.30 Reports of receipts and utilization.
1012.31 Payroll reports.
1012.32 Other reports.

CLASSIFICATION OF MILK

1012.40 Classes of utilization.
1012.41 Shrinkage.
1012.42 Classification of transfers and diversions.
1012.43 General classification rules.
1012.44 Classification of producer milk.
1012.45 Market administrator’s reports and announcements concerning classification.

CLASS PRICES

1012.50 Class prices.
1012.51 Basic formula price.
1012.52 Plant location adjustments for handlers.
1012.53 Announcement of class prices.
1012.54 Equivalent price.

UNIFORM PRICE

1012.60 Handler’s value of milk for computing the uniform price.
1012.61 Computation of uniform price.
1012.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1012.70 Producer-settlement fund.

1012.71 Payments to the producer-settlement fund.
1012.72 Payments from the producer-settlement fund.
1012.73 Payments to producers and to cooperative associations.
1012.74 Butterfat differential.
1012.75 Plant location adjustments for producers and nonpool milk.
1012.76 Payments by handler operating a partially regulated distributing plant.
1012.77 Adjustment of accounts.
1012.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1012.85 Assessment for order administration.
1012.86 Deduction for marketing services.


SOURCE: 37 FR 17732, Aug. 30, 1972, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1012.1 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

§ 1012.2 Tampa Bay marketing area.

The Tampa Bay marketing area, hereinafter called the “marketing area”, means all the territory geographically within the boundaries of the following counties, all in the State of Florida, including all waterfront facilities connected therewith and all territory wholly or partly therein occupied by Government (Municipal, State, or Federal) reservations, installations, institutions, or other similar establishments.


§ 1012.3 Route disposition.

Route disposition means a delivery either direct or through any distribution facility other than a plant (including disposition from a plant store, vendor,
Agricultural Marketing Service, USDA § 1012.9

or vending machine) of a fluid milk product classified as Class I milk.

§ 1012.4 [Reserved]

§ 1012.5 Distributing plant.

Distributing plant means a plant that is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which there is route disposition of any fluid milk product during the month in the marketing area.

§ 1012.6 Supply plant.

Supply plant means a plant from which a fluid milk product that is acceptable to the appropriate health authority for distribution in the marketing area as Grade A or filled milk is shipped during the month to a pool plant.

§ 1012.7 Pool plant.

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

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to §1012.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to §1012.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of §1012.7(a).

(c) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area:

Provided, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

[54 FR 6384, Feb. 10, 1989]

§ 1012.8 Nonpool plant.

Nonpool plant means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling 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 neither an other order plant nor a producer-handler plant and from which fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area as route disposition during the month.

(d) Unregulated supply plant means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant.

§ 1012.9 Handler.

Handler means:
§ 1012.10 Producer-handler.

Producer-handler means any person who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the requirements set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is at his sole risk and under his complete and exclusive management and control; and

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which there is route disposition during the month in the marketing area pursuant to the following requirements:

(1) The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

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

(e) A producer-handler; or

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1012.11 [Reserved]

§ 1012.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1012.13 from a pool plant to a nonpool plant.

(b) The term “producer” shall not include:

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

(2) 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 milk under the provisions of such other order.

[41 FR 43157, Sept. 30, 1976]

§ 1012.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler described in § 1012.9(c); Provided, That if the milk received at a pool plant from a handler described in § 1012.9(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant’s purchases are based shall be producer milk received by the handler described in § 1012.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:
(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;
(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: Provided, That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;
(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;
(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:
   (i) 40 percent in March-June,
   (ii) 25 percent in December-February, and
   (iii) 20 percent in July-November;
(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:
   (i) 40 percent in March-June,
   (ii) 25 percent in December-February, and
   (iii) 20 percent in July-November;
(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b)(4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

Effectiveness Note: At 57 FR 61780, Dec. 29, 1992, §1012.13 was amended by suspending paragraph (b)(2) indefinitely, effective Dec. 1, 1992.

§1012.14 Other source milk.

Other source milk means the skim milk and butterfat contained in or represented by:
(a) Receipts of fluid milk products and bulk fluid cream products from any source except:
   (1) Producer milk;
   (2) Such products from pool plants; and
   (3) Such products in inventory at the beginning of the month;
(b) Receipts of packaged fluid cream products and eggnog from other plants;
(c) Products, other than fluid milk products and fluid cream products, from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and
(d) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.

§1012.15 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...
§ 1012.16 

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 27797, May 11, 1993]

§ 1012.17 

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).

§ 1012.18 

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 be engaged in making collective sales of or marketing milk or milk products for its members.

§ 1012.19 [Reserved]

§ 1012.20 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 §§1012.13, 1012.41 and 1012.52.

[58 FR 27797, May 11, 1993]

§ 1012.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler (except a handler described in §1012.9 (e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received or at which filled milk is processed or packaged, reporting in detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk (including such handler’s own production) or, in the case of handlers described in §1012.9(d), milk received from dairy farmers;

(2) Fluid milk products and bulk fluid cream products received from pool plants of other handlers;

(3) Other source milk;

(4) Milk diverted to nonpool plants pursuant to §1012.13; and

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

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing:
(1) The respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area, showing separately the in-area disposition of filled milk; and

(2) For a handler described in §1012.9(d), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area as route disposition; and

(c) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe.


§ 1012.31 Payroll reports.

(a) Each handler described in §1012.9(a), (b), and (c) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 20th day after the end of the month his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk;

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to §1012.76(b) shall report to the market administrator on or before the 20th day after the end of the month his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

§ 1012.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler described in §1012.9(c) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 7th day after the end of the month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

Classification of Milk

§ 1012.40 Classes of utilization.

Except as provided in §1012.42, all skim milk and butterfat required to be reported by a handler pursuant to §1012.30 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 fluid milk products in inventory at the end of the month; and

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

(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;

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

(v) 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;

(2) 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;

(3) 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;

(4) 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 §1012.15 and the fluid cream product definition pursuant to §1012.16; and

(5) 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 §1012.15 and the fluid cream product definition pursuant to §1012.16; and

(7) In shrinkage assigned pursuant to §1012.41(a) to the receipts specified in §1012.41(a)(2) and in shrinkage specified in §1012.41(b) and (c).

[58 FR 27797, May 11, 1993]

§ 1012.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1012.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in §1012.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §1012.9(c), 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, 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 diverted purchases such milk on the basis of weights determined from its measurement on the farm, 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 classification is requested by the operator 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 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 quantities 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 §1012.9 (b) and (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, the applicable percentage under this paragraph for the cooperative association shall be zero.

[54 FR 6385, Feb. 10, 1989]
(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), (b)(2), or (b)(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 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 divertor-handler claims such classification in its report of receipts and utilization filed pursuant to §1012.30 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(viii) In determining the nonpool plant’s utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant’s utilization using the same assignment priorities at the second plant that are set forth in paragraph (d)(2) of this section.

[58 FR 27798, May 11, 1993]

§ 1012.43 General classification rules.

In determining the classification of producer milk pursuant to §1012.44, the following rules shall apply:

(a) Each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to §1012.30 and compute the total pounds of skim milk and butterfat, respectively, in each class at each pool plant.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be a quantity equivalent to the non-fat milk solids contained in such product plus all the water originally associated with such solids.
§ 1012.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1012.9(a) for each of the handler's pool plants separately and of each handler described in §1012.9(b) and (c) by allocating the handler's receipts of skim milk and butterfat to such handler's 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 §1012.41(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 products specified in §1012.40(b)(1) that were 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 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 §1012.40(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 bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(5) 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 §1012.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1012.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II; and

(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 §1012.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (a)(5), and (a)(6) of this section;

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

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

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

(vi) 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; and

(vii) 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.

(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 (a)(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), (a)(7)(v), and (a)(8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(7)(i)(A) through (C) of this section. Should the pounds of skim milk to be subtracted 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 the allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, 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 unconcentrated 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 §1012.40(b)(1) in inventory at the beginning of the
§ 1012.44  7 CFR Ch. X (1-1-99 Edition)

(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), (a)(7)(v), and (a)(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 paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, 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;

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler’s other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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 (a)(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 prorata 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 § 1012.45(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

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Agricultural Marketing Service, USDA

§ 1012.45 Market administrator’s reports and announcements concerning classification.

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

(a) Whenever required for purposes of allocating receipts from other order plants pursuant to §1012.44(a)(12) and the corresponding step of §1012.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(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 §1012.43(d) and §1012.44 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.

§ 1012.45 Market administrator’s reports and announcements concerning classification.

(a) Whenever required for purposes of allocating receipts from other order plants pursuant to §1012.44(a)(12) and the corresponding step of §1012.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(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 §1012.43(d) and §1012.44 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.
§ 1012.50

by the receiving handler, and as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.


CLASS PRICES

§ 1012.50 Class prices.

Subject to the provisions of §1012.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.88.

(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.


§ 1012.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1012.74 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 amount by which the gross value per hundredweight of
Agricultural Marketing Service, USDA § 1012.54

milk used to manufacture butter-non-fat 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.

§ 1012.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk and other source milk at a plant located outside the State of Florida or within the State of Florida but outside the defined marketing area shall be adjusted at the rates set forth in the following schedule:

<table>
<thead>
<tr>
<th>Location of plant</th>
<th>Rate per cwt.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inside the State of Florida:</td>
<td></td>
</tr>
<tr>
<td>In the defined marketing area of Part 1013.</td>
<td>Add 30 cents.</td>
</tr>
<tr>
<td>South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of Part 1013.</td>
<td>No adjustment.</td>
</tr>
<tr>
<td>The remaining area within the State of Florida.</td>
<td>Minus 30 cents.</td>
</tr>
</tbody>
</table>

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made in sequence according to the location adjustment applicable at each plant, beginning with the plant nearest the Tampa City Hall.

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.


§ 1012.53 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 price for the preceding month.

[60 FR 6608, Feb. 2, 1995]

§ 1012.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price that is required.
§ 1012.60 Handler's value of milk for computing the 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 the handler's pool plants and of each handler described in §1012.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to §1012.44(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 §1012.44(a)(14) and the corresponding step of §1012.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1012.74, 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 §1012.44(a)(9) and the corresponding step of §1012.44(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 contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to §1012.43(d);

(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 §1012.44(a)(7) (v) and (vi) and the corresponding step of §1012.44(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 §1012.43(d) and §1012.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1012.44(a)(11) and the corresponding steps of §1012.44(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 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 §1012.43(d);

(h) 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 §1012.76(b)(5) or (c); and

(i) 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...
Agricultural Marketing Service, USDA § 1012.71

unconcentrated fluid milk products received at the plant during the prior month.

[58 FR 27801, May 11, 1993]

§ 1012.61 Computation of uniform price.

For each month, the market administrator shall compute a uniform price for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to §1012.60 for all handlers who filed the reports pursuant to §1012.30 for the month, except those in default of payments required pursuant to §1012.71 for the preceding month;

(b) [Reserved]

(c) Add an amount equal to the total value of the minus location adjustments computed pursuant to §1012.75;

(d) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to §1012.75;

(e) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(f) 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 §1012.60(f);

(g) Subtract not less than four cents nor more than five cents per hundredweight.


§ 1012.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 11th day after the end of each month the uniform price for such month.

[42 FR 46914, Sept. 19, 1977]

Payments For Milk

§ 1012.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§1012.71 and 1012.76 and out of which he shall make all payments from such fund pursuant to §1012.72. Provided, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1012.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a)(1) of this section exceed the amounts specified in paragraph (b)(2) of this section:

(1) The net pool obligation pursuant to §1012.60 for such handler; and

(2) The sum of:

(i) The value of such handler's producer milk at the uniform price, as adjusted pursuant to §1012.75; and

(ii) The value at the uniform price applicable at the location of the plant(s) from which received (not to be less than the value at the Class II price) of other source milk for which a value is computed pursuant to §1012.60(f).

(b) Each handler who operates an other order plant that is regulated under an order providing for individual-handler pooling shall pay to the market administrator for the producer-settlement fund, on or before the 25th day after the end of the month, an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each marketing area; and

(2) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (b)(1) of this section to Class I disposition in this marketing area at the Class I price under this part applicable at the location of the other order...
§ 1012.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1012.71(a)(2) exceeds the amount computed pursuant to §1012.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1012.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the 20th day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than 85 percent of the uniform price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer;

(2) On or before the 5th day of the following month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than 85 percent of the uniform price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer; and

(3) On or before the 15th day of each month to each producer for milk received during the preceding month, not less than the uniform price per hundredweight, adjusted pursuant to §§1012.74, 1012.75, and 1012.86, subject to the following:

(i) Minus payments made pursuant to paragraphs (a)(1) and (2) of this section;

(ii) Less proper deductions authorized in writing by such producer; and

(iii) If by such date such handler has not received full payment from the market administrator pursuant to §1012.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the second day prior to the date on which payments are due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion, through audit.
of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1012.74 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 §1012.51 (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 18959, Apr. 14, 1995]

§ 1012.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in §1012.52; and

(b) For purposes of computations pursuant to §§1012.71 and 1012.72, the uniform price shall be adjusted at the rates set forth in §1012.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.


§ 1012.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler’s election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§1012.30 and 1012.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

1) The obligation that would have been computed pursuant to §1012.60 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant; and

(ii) Transfers from such nonpool plant to a pool plant or an other order plant shall be classified in the class to which allocated at the pool plant or other order plant. Class I milk transferred from such nonpool plant to pool plants and other order plants shall be valued at the uniform price of the respective order, except that reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be valued at the Class II price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk;

(iii) Such handler’s obligation shall include any charges computed pursuant to §1012.60(f) and any credits computed pursuant to §1012.71(a)(2)(ii) with respect to receipts of Class I milk from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in (a)(1)(iv) of this section;
(iv) If the operator of the partially regulated distributing plant so requests and provides with his report pursuant to §1012.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipment to such plant during the month equivalent to the requirements of §1012.7(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in §1012.74, for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant as follows:

(i) Any Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) Receipts from a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation pursuant to any other 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 and milk or skim milk contained in receipts from producer-handlers and exempt plants defined in any order disposed of as route disposition in the marketing area;

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

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location, and add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (b)(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 another order 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.

(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 §1012.43(d). Payments
Agricultural Marketing Service, USDA

§ 1012.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 4

§ 1012.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler’s own production);

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1012.43(d) and other source milk allocated to Class I pursuant to §1012.44(a)(7) and (a)(11) and the corresponding steps of §1012.44(b), except such other source milk that is excluded from the computations pursuant to §1012.60(d) and (f); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in §1012.76(b)(2)(ii).

§ 1012.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 4
cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall 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 products for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1013—MILK IN SOUTHEASTERN FLORIDA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1013.1 General provisions.

DEFINITIONS

1013.2 Southeastern Florida marketing area.
1013.3 Route disposition.
1013.4 [Reserved]
1013.5 Distributing plant.
1013.6 Supply plant.
1013.7 Pool plant.
1013.8 Nonpool plant.
1013.9 Handler.
1013.10 Producer-handler.
1013.11 [Reserved]
1013.12 Producer.
1013.13 Producer milk.
1013.14 Other source milk.
1013.15 Fluid milk product.
1013.16 Fluid cream product.
1013.17 Filled milk.
1013.18 Cooperative association.
1013.19 [Reserved]
Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1013.1 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

§ 1013.2 Southeastern Florida marketing area.

The Southeastern Florida marketing area, hereinafter called the “marketing area,” means all the territory geographically within the boundaries of the following counties, all in the State of Florida, including all Government reservations and incorporated municipalities within this territory:

Broward, Dade, Glades, Hendry, Indian River, Martin, Monroe, Okeechobee, Palm Beach, St. Lucie.

§ 1013.3 Route disposition.

Route disposition means any delivery to retail or wholesale outlets (including delivery by a vendor, or a sale from or through a plant store, or by vending machine) of any product in a form designated as Class I milk pursuant to §1013.40(a), but does not include delivery to a milk or filled milk receiving or processing plant.

§ 1013.4 [Reserved]

§ 1013.5 Distributing plant.

Distributing plant means a plant approved by a duly constituted health authority for the processing or packaging of Grade A milk which has route disposition of fluid milk products in the marketing area during the month.

§ 1013.6 Supply plant.

Supply plant means a plant from which a fluid milk product acceptable to a duly constituted health authority is shipped during the month to a pool plant.

§ 1013.7 Pool plant.

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

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to §1013.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to §1013.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of §1013.7(a).

(c) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater proportion of its route disposition than as route disposition in this marketing area is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: Provided, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

[54 FR 6386, Feb. 10, 1989]
§ 1013.8 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 neither an other order plant nor a producer-handler plant, from which skim milk and butterfat in the form of products designated as Class I milk pursuant to §1013.40(a) in consumer-type packages or dispenser units are distributed as route disposition in the marketing area during the month.

(d) Unregulated supply plant means a nonpool plant that is neither an other order plant nor a producer-handler plant from which skim milk and butterfat in the form of products designated as Class I milk pursuant to §1013.40(a) are moved to a pool plant during the month.

§ 1013.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

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

(d) A producer-handler; or

(e) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1013.10 Producer-handler.

Producer-handler means any person who meets all the conditions of paragraphs (a), (b), and (c) of this section:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the requirements set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is at his sole risk and under his complete and exclusive management and control; and

(2) Each farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which there is route disposition during the month in the marketing area pursuant to the following requirements:

(1) No fluid milk products are received at such plant or by him at any other location, except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) Fluid milk products (other than whole milk) from pool plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive, or otherwise handle fluid milk products for any other person; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

(d) Sections 1013.50 through 1013.86 shall not apply to a producer-handler.
§ 1013.11 [Reserved]

§ 1013.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1013.13 from a pool plant to a nonpool plant.

(b) The term "producer" shall not include:

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

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

[54 FR 6386, Feb. 10, 1989]

§ 1013.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler pursuant to § 1013.9(c); provided, That if the milk received at a pool plant from a handler described in § 1013.9(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1013.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: Provided, That any delivery during the current month from such producer to another order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b)(4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.


§ 1013.14 Other source milk.

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

(a) Receipts of fluid milk products and bulk fluid cream products from any source except:
   (1) Producer milk;
   (2) Such products from pool plants; and
   (3) Such products in inventory at the beginning of the month;
(b) Receipts of packaged fluid cream products and eggnog from other plants;
(c) Products, other than fluid milk products and fluid cream products, from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and
(d) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.


§ 1013.15 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 27802, May 11, 1993]

§ 1013.16 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 27803, May 11, 1993]

§ 1013.17 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).

[58 FR 27803, May 11, 1993]

§ 1013.18 Cooperative association.

Cooperative association means any cooperative 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 19, 1922, as amended, known as the “Capper-Volstead Act”; (b) to have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members; and (c) to have its entire activities under the control of its members.

[Reserved]

§ 1013.19 [Reserved]

§ 1013.20 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 §§1013.13, 1013.41 and 1013.52.
[58 FR 27803, May 11, 1993]

§ 1013.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler, except a handler pursuant to §1013.9 (e) or (f), shall report to the market administrator for such month, and for each accounting period in each month, with respect to each plant at which milk is received or at which filled milk is processed or packaged in detail and on forms prescribed by the market administrator, as follows:
(a) The quantities of skim milk and butterfat contained in or represented by receipts of:
(1) Producer milk (or in the case of handlers described in §1013.9(d) Grade A milk received from dairy farmers);
(2) Fluid milk products and bulk fluid cream products received from pool plants;
(3) Other source milk;
(4) Milk diverted to nonpool plants pursuant to §1013.13; and
(5) Inventories of fluid milk products and fluid cream products at the beginning and end of the month or accounting period;
(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including a separate statement showing:
(1) The respective amounts of skim milk and butterfat disposed of as route disposition entirely outside the marketing area, showing separately the in-area and outside area route disposition of filled milk; and
(2) For a handler described in §1013.9(d), the amount of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;
(c) Such other information with respect to receipts and utilization as the market administrator may request; and
(d) Each handler who submits reports on the basis of accounting periods of less than a month, as described in §1013.44(d), shall submit a summary report of the same information for the entire month.

§ 1013.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in §1013.9 (a), (b), or (c) shall report to the market administrator, in detail and on forms prescribed by the market administrator, his producer payroll for that month, which shall show for each producer:
(1) His name and address;
(2) The total pounds of milk received from such producer;
(3) The days for which milk was received from such producer;
(4) The average butterfat content of such milk; and
(5) The net amount of the handler’s payment with respect to such milk to the producer or cooperative association, together with the price paid and the amount and nature of any deductions.
(b) Each handler making payments pursuant to §1013.76(a) shall report the information required pursuant to paragraph (a) of this section. In such reports receipts of Grade A milk from dairy farmers shall be reported in lieu of those in producer milk, and payments to dairy farmers delivering such milk shall be reported in lieu of payments to producers.

§ 1013.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.
(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.
(c) Each handler described in §1013.9(c) shall report to the market administrator in detail and on forms
§ 1013.40

prescribed by the market administrator on or before the 7th day after the end of the month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

(d) Each handler described in §1013.9 (a), (b), or (c) shall report to the market administrator:

(1) On or before the first day other source milk as defined in §1013.14(a) is received at his pool plants, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(2) Such other information with respect to his receipts and utilization of butterfat and skim milk and at such times as the market administrator shall prescribe.

CLASSIFICATION OF MILK

§ 1013.40 Classes of utilization.

Except as provided in §1013.42, all skim milk and butterfat required to be reported by a handler pursuant to §1013.30 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)(3) 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 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;

(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 §1013.15 and the fluid cream product definition pursuant to §1013.16; and

(7) In shrinkage assigned pursuant to §1013.41(a) to the receipts specified in §1013.41(a)(2) and in shrinkage specified in §1013.41(b) and (c).

[58 FR 27803, May 11, 1993]

§1013.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1013.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in §1013.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §1013.9(c), 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, the applicable percentage under this paragraph shall be two 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 diverted purchases such milk on the basis of weights determined from its measurement on the farm, 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 classification is requested by the operator 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 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 quantities 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 §1013.9(b) and (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, the applicable percentage under this paragraph for the cooperative association shall be zero.

[54 FR 6387, Feb. 10, 1989]

§1013.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:
(1) The skim milk and 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 after the computations pursuant to §1013.44(a)(12) and the corresponding step of §1013.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;
(2) If the transferor-handler received during the month other source milk to be allocated pursuant to §1013.44(a)(11) or (a)(12) or the corresponding steps of §1013.44(b), the skim milk or butterfat so transferred, 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.
(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), (b)(2), or (b)(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 §1013.40.

(c) Transfers to producer-handlers. Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order 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 or a producer-handler 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 a bulk fluid milk product or a bulk fluid cream product, unless the following conditions are met:

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

(A) The transferor-handler or diverter-handler claims such classification in its report of receipts and utilization filed pursuant to §1013.30 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
§ 1013.43 General classification rules.

In determining the classification of producer milk pursuant to §1013.44, the following rules shall apply:

(a) Each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to §1013.30(a) and compute the total pounds of skim milk, butterfat, respectively, in Class I milk, Class II milk, and Class III milk at each pool plant.

(b) The skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1013.9(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 §1013.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1013.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.


§ 1013.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1013.9(a) for each of the handler's pool plants separately and of each handler described in §1013.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to such handler's 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 §1013.41(b); and

(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
(i) 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 other 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 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 §1013.40(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 §1013.40(b)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(5) 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 §1013.40(b)(1) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1013.40(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 §1013.40(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;

(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; and

(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.

(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 (a)(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), (a)(7)(v), and (a)(8)(i) of this

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section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount.

(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, 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 unconcentrated fluid milk products from an other order plant that are in excess of bulk unconcentrated 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 §1013.40(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)(ii), (a)(7)(v), and (a)(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 paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such
case, the pounds of skim milk remaining in each class at this allocation step at the handler’s other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler’s other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(i2) Subtract in the manner specified below from the pounds of skim milk remaining in Class II and Class III combined 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 (a)(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 prorata 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 §1013.45(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;

(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;
§ 1013.45

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 §1013.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as overage;

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

[b FR 27805, May 11, 1993]

§ 1013.50 Class prices.

Subject to the provisions of §1013.52, the Class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $4.18.

(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.


§ 1013.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1013.74 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 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.

§1013.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk and other source milk at a plant


**§ 1013.53 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 price for the preceding month.

[60 FR 6608, Feb. 2, 1995]

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<table>
<thead>
<tr>
<th>Location of plant</th>
<th>Rate per cwt.</th>
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<tr>
<td>Outside the State of Florida:</td>
<td>Subtract 2.0 cents.</td>
</tr>
<tr>
<td>South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of this order.</td>
<td>Subtract 30 cents.</td>
</tr>
<tr>
<td>The remaining area within the State of Florida.</td>
<td>Subtract 60 cents.</td>
</tr>
</tbody>
</table>

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**§ 1013.54 Equivalent price.**

If, for any reason, a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

**UNIFORM PRICE**

**§ 1013.60 Handler’s value of milk for computing the 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 the handler’s pool plants and of each handler described in §1013.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to §1013.44(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 §1013.44(a)(14) and the corresponding step of §1013.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1013.74, 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 §1013.44(a)(9) and the corresponding step of §1013.44(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 §1013.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1013.44(a)(7) (i) through (iv) and the corresponding step of §1013.44(b), excluding receipts of bulk fluid cream products from an

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§ 1013.62 Computation of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 11th day after the end of each month the uniform price for such month.

[42 FR 46915, Sept. 19, 1977]
§ 1013.70  Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all payments made by handlers pursuant to §§1013.71, 1013.76, and 1013.77 and out of which he shall make all payments pursuant to §§1013.72 and 1013.77: Provided, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1013.71  Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a)(1) of this section exceed the amounts specified in paragraph (a)(2) of this section: Provided, That the requirement as to date of payment pursuant to this section shall be considered to have been met if the payment is made by mail postmarked not later than the required payment date:
(1) The net pool obligation computed pursuant to §1013.60 for such handler; and
(2) The sum of:
   (i) The value of each handler’s producer milk at the uniform price, as adjusted pursuant to §1013.75; and
   (ii) The value at the uniform price applicable at the location of the plant(s) from which received (not to be less than the value at the Class II price) of other source milk for which a value is computed pursuant to §1013.60(f).

(b) Each handler operating a plant specified in §1013.7(c)(4), if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:
(1) Determine the quantity of reconstituted skim milk in filled milk disposed of from such plant as route disposition in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and
(2) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (b)(1) of this section to Class I disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class II price), and subtract its value at the Class II price.


§ 1013.72  Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1013.71(a)(2) exceeds the amount computed pursuant to §1013.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1013.73  Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received as follows:
(1) On or before the 20th day of each month to each producer who did not discontinue shipping milk to such handler before the 15th day of the month, an amount equal to not less than the uniform price for the preceding month less 10 percent, multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;
(2) On or before the fifth day of the following month to each producer who did not discontinue shipping milk to such handler before the last day of the
§ 1013.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of

...
§ 1013.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler’s election) calculated pursuant to paragraph (a) or (b) of this section.

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to §1013.60 at such plant shall be determined as though such plant were a pool plant, subject to the following modifications:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant;

(ii) Transfers from such nonpool plant to a pool plant or an other order plant shall be classified in the class to which allocated at the pool plant or other order plant. Class I milk transferred from such nonpool plant to pool plants and other order plants shall be valued at the uniform price of the respective order, except that reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be valued at the Class II price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk;

(iii) Such handler’s obligation shall include any charges computed pursuant to §1013.60(f) and any credits computed pursuant to §1013.71(a)(2)(ii) with respect to receipts of Class I milk from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk (including that in filled milk), and milk or skim milk from producer-handlers and exempt plants defined in any order shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(iv) of this section;

(iv) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§1013.30 and 1013.31(b) similar reports for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month, subject to the requirements of §1013.7(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant;

(2) From this obligation, there will be deducted the sum of:

(i) The gross payments made by such handler, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in §1013.74, for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of...
as route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant as follows:

(i) Any Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) Receipts from a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation pursuant to any other order;

(3) Deduct from any remainder the pounds of reconstituted milk that are made from nonfluid milk products and milk or skim milk contained in receipts from producer-handlers and exempt plants defined in any other order, which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;

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

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location, and add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (b)(3) of this section by the difference between the Class I price applicable under the other order 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. 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.

(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 §1013.43(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.

\[37 \text{ FR } 17739, \text{ Aug. } 30, \text{ 1972, as amended at } 42 \text{ FR } 46915, \text{ Sept. } 19, \text{ 1977; } 58 \text{ FR } 27608, \text{ May } 11, \text{ 1993}\]

§1013.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such
§ 1013.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §1013.71, 1013.73, 1013.76, 1013.77, 1013.85, or 1013.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, 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 charges previously computed pursuant to this section;

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

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

[54 FR 6388, Feb. 10, 1989]

§ 1013.85 Assessment for order administration.

(a) 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 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(1) Producer milk (including such handler’s own production);

(2) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1013.43(d) and other source milk allocated to Class I pursuant to §1013.44(a)(6), (a)(7), and (a)(11) and the corresponding steps of §1013.44(b), except such other source milk that is excluded from the computations pursuant to §1013.60(d) and (f); and

(3) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk:

(i) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(ii) Specified in §1013.76(b)(2)(i).

(b) With respect to payments pursuant to paragraph (a) of this section, if a handler uses more than one accounting period in a month, the rate of payment per hundredweight for such handler shall be the rate for monthly accounting periods multiplied by the number of accounting periods in the month, or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting periods.


§ 1013.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk pursuant to §1013.73, shall deduct 4 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association pursuant to paragraph (b) of this section; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to producers.
as may be authorized by the membership agreement or marketing contract between the cooperative association and its members. On or before the 15th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deduction was computed for each producer.

PART 1030—MILK IN CHICAGO REGIONAL MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1030.1 General provisions.
1030.2 Chicago Regional marketing area.
1030.3 Route disposition.
1030.4 Plant.
1030.5 Distributing plant.
1030.6 Supply plant.
1030.7 Pool plant.
1030.8 Nonpool plant.
1030.9 Handler.
1030.10 Producer-handler.
1030.11 [Reserved]
1030.12 Producer.
1030.13 Producer milk.
1030.14 Other source milk.
1030.15 Fluid milk product.
1030.16 Fluid cream product.
1030.17 Filled milk.
1030.18 Cooperative association.
1030.19 Exempt milk.
1030.20 [Reserved]
1030.21 Commercial food processing establishment.

HANDLER REPORTS

1030.30 Reports of receipts and utilization.
1030.31 Payroll reports.
1030.32 Other reports.

CLASSIFICATION OF MILK

1030.40 Classes of utilization.
1030.41 Shrinkage.
1030.42 Classification of transfers and diversions.
1030.43 General classification rules.
1030.44 Classification of producer milk.
1030.45 Market administrator’s reports and announcements concerning classification.

CLASS PRICES

1030.50 Class and component prices.
1030.51 Basic formula price.
1030.52 Plant location adjustments for handlers.
1030.53 Announcement of class and component prices.
1030.54 Equivalent price.
1030.55 Transfer credits on Class I milk.

PRODUCER PRICE DIFFERENTIAL

1030.60 Handler’s value of milk.
1030.61 Producer price differential.
1030.62 Announcement of producer prices.

PAYMENTS FOR MILK

1030.70 Producer-settlement fund.
1030.71 Payments to the producer-settlement fund.
1030.72 Payments from the producer-settlement fund.
1030.73 Payments to producers and to cooperative associations.
1030.74 Butterfat differential.
1030.75 Plant location adjustments for producers and on nonpool milk.
1030.76 Payments by handler operating a partially regulated distributing plant.
1030.77 Adjustment of accounts.
1030.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1030.85 Assessment for order administration.
1030.86 Deduction for marketing services.


SOURCE: 39 FR 15405, May 3, 1974, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1030.1 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

§ 1030.2 Chicago Regional marketing area.

Chicago Regional marketing area, hereinafter called the “marketing area,” means the territory within the boundaries of the following places, including piers, docks, and wharves and territory wholly or partly within such boundaries occupied by government (municipal, State, or Federal) reservations,
§ 1030.3
installations, institutions or other similar establishments:
(a) In the State of Illinois:
(1) The counties of:
Boone, Carroll, Cook, De Kalb, Du Page, Jo Daviess (except the city of East Dubuque), Kane, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, Winnebago.
(2) In Whiteside County:
(i) The townships of:
Caloma, Hahnaman, Hopkins, Hume, Jordan, Montmorency, Sterling, Tampico.
(2) In the State of Wisconsin:
(1) The counties of:
(2) In Door County the city of Sturgeon Bay;
(3) In Marathon County:
(i) The towns of:
(ii) The villages of:
Brokaw, Elderon, Hatley, Marathon, Rothschild.
(iii) The cities of:
Mosinee, Schofield, Wausau.
(4) In Wood County:
(i) The towns of:
Cranmoor, Grand Rapids, Port Edwards, Rudolph, Saratoga, Seneca.
(ii) The villages of:
Biron, Port Edwards.
(iii) The cities of:
Nekoosa, Wisconsin Rapids.

§ 1030.4 Route disposition.
Route disposition means a delivery (including disposition from a retail plant store) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a milk plant. Disposition of a plant through a vendor or through a distribution point shall be considered a route delivery at the location of the wholesale or retail outlet to which delivery is made.

§ 1030.5 Distributing plant.
Distributing plant means a plant from which there is route disposition in the marketing area, either directly or through another plant, of a Grade A fluid milk product that is processed or packaged in such plant during the month.

§ 1030.6 Supply plant.
Supply plant means a plant at which Grade A milk is physically unloaded into the plant or a tank truck in the plant and is either processed and/or shipped during the month to another milk processing plant, except that any plant located on the premises of a pool distributing plant pursuant to §1030.7(a) shall not be considered a supply plant unless it is located in a building that is entirely separate from the distributing plant.

§ 1030.7 Pool plant.
Except as provided in paragraph (d) of this section, pool plant means:
(a) A distributing plant or unit described in paragraph (a)(4) of this section from which during the month the disposition of fluid milk products specified in paragraph (a)(2) of this section is not less than 10 percent of the receipts specified in paragraph (a)(1) of
this section and from which the disposition of fluid milk products specified in paragraph (a)(3) of this section as a percent of the receipts specified in paragraph (a)(1) of this section is not less than 45 percent in each of the months of September, October, November, and December, 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted to nonpool plants and to pool supply plants pursuant to §1030.13, but excluding producer milk diverted to other pool distributing plants, receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to §1030.44(a)(8)(i)(a) and (ii) and the corresponding step of §1030.44(b).

(2) Packaged fluid milk products, except filled milk, disposed of as either route disposition in the marketing area or moved to other plants from which it is disposed of as route disposition in the marketing area. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Packaged fluid milk products, except filled milk, disposed of as either route disposition or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(4) A unit consisting of at least one distributing plant and one or more additional plants of a handler at which milk is processed and packaged or manufactured shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the State of Wisconsin or that portion of the marketing area within the State of Illinois, and if, prior to the first day of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the market administrator.

(b) A supply plant or unit of supply plants described in paragraph (b)(6) of this section from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped and received and physically unloaded into plants described in paragraph (b)(2) of this section as a percent of the Grade A milk received at the plant(s) from dairy farmers (except dairy farmers described in §1030.12(b)) and handlers described in §1030.9(c), including producer milk diverted pursuant to §1030.13, but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, is not less than 3 percent for the months of January through August, and 5 percent for the months of September through December for individual plants and 6 percent and 10 percent, respectively, for any unit of plants, subject to the following conditions:

(1) A plant that was a pool plant pursuant to this paragraph during each of the months of August through January shall be a pool plant for each of the following months of February through July.

(2) Qualifying shipments pursuant to this paragraph may be made to the following plants, except as provided in paragraph (b)(2)(v) of this section:

(i) Pool plants described in paragraph (a) of this section;

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk which receives a Class I classification at the transferee plant;

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants, shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II or Class III utilization; and

(v) Whenever the authority provided in paragraph (b)(5) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(2)(i) of this section shall count as qualifying shipments for the purpose of meeting the increased requirements.
§ 1030.7

The operator of a supply plant may include as qualifying shipments deliveries to pool distributing plants directly from farms of producers pursuant to § 1030.13(d).

(4) The quantity of condensed skim milk and fluid milk products moved (including milk diverted) from supply plants to each pool plant described in paragraph (a) or (c) of this section that shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro rata to supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quantity of fluid milk products and condensed skim milk received from supply plants the following:

(i) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(A) Transfers or diversions classified pursuant to § 1030.40(b)(3); and

(B) Transfers or diversions on New Year’s Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quantity of producer milk diverted pursuant to § 1030.13(d) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(ii) If milk is diverted from the pool distributing plant on the date of the receipts from the supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days’ production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(5) The shipping requirements of this paragraph may be increased or decreased if found necessary to obtain needed shipments or to prevent uneconomic shipments as follows, subject in either case to the conditions specified in paragraph (b)(5)(iii) of this section:

(i) The market administrator may, for a period of up to three months, increase or decrease the shipping requirements of this paragraph by up to two percentage points;

(ii) The Director of the Dairy Division may increase the shipping requirements of this paragraph by up to five percentage points or decrease them by up to ten percentage points;

(iii) Before making a finding that a change is necessary for the purposes set forth in this section, the market administrator or the Director of the Dairy Division shall investigate the need for revision, either on such person’s own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that revision is being considered and inviting data, views, and arguments. If a plant that would not otherwise qualify as a pool plant during the month does qualify as a pool plant because of a reduction in shipping requirements pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool status with the market administrator on or before the first day of the following month. If an increase is required in any month of February through July, the increase shall also apply to any supply plant that has pool status for the month pursuant to paragraph (b)(1) of this section.

(6) Two or more plants shall be considered a unit for the purpose of meeting the requirements of this paragraph if the following conditions are met:

(i) The plants are located within the State of Wisconsin or within that portion of the State of Illinois within the marketing area;

(ii) The plants included in the unit are owned or fully leased and operated by the handler establishing the unit and such plants were pool plants during the month prior to being included in a unit. Two or more handlers may
establish a unit of designated plants by certifying to the market administrator a marketing agreement specifying the plants to be considered as a unit, and specifying which handler will be responsible for qualification of the unit. With regard to any leased plants included in a unit, the handler that leases a plant(s) and is a party to a marketing agreement with respect to plants included in a unit, shall satisfy the market administrator that such handler:
(A) Is responsible pursuant to §1030.73 for payments to producers whose milk is delivered to the leased plant or diverted therefrom by the handler;
(B) Controls and operates the leased plant; and
(C) Maintains in its books and records the accounts of the leased plant(s), including, but not limited to, records reflecting the receipt, sale, collection of proceeds, the gross value of the payrolls for all producer milk pooled by the handler operating the leased plant, and employee payroll or independent contractor records reflecting the handler’s financial responsibility for operation of the plant.

(iii) The handler or handlers establishing the unit submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a unit for the period of August through July of the following year. In the months of February through July, a unit shall not include any plant that was not a pool plant each month of the preceding period of August through January. Each plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator shall be beyond the control
of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

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

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b) or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1030.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant of another handler pursuant to §1030.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association;

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

(e) A producer-handler;

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant; or

(g) Any person in his capacity as a broker negotiating a purchase or sale of fluid milk products or fluid cream products from or to a person described in paragraph (a) or (d) of this section.

§ 1030.10 Producer-handler.

Producer-handler means any person who operates a dairy farm and a distributing plant and who has route disposition in the marketing area of only fluid milk products of such person's own production or fluid milk products received from pool plants: Provided, That such person provides proof satisfactory to the market administrator that the care and management of all
dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1030.11 [Reserved]

§ 1030.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is received at a pool plant or diverted pursuant to § 1030.13.

(b) "Producer" shall not include:

(1) A dairy farmer who is a government and has nonproducer status for the month pursuant to § 1030.19;

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

(3) Any person with respect to milk produced by him which is diverted to 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 § 1030.44(a)(8)(ii) and the corresponding step of § 1030.44(b);

(4) Any person with respect to milk produced by him which 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; and

(5) A dairy farmer with respect to milk produced by him that is received at a handler’s pool plant during the months of January through July if any milk from the same farm operated by such dairy farmer was a receipt of producer milk in any “payback” month during the preceding year under another order that provided for a seasonal incentive payment plan whereby funds previously withheld in the computation of the uniform price to producers were paid back to producers through the uniform price computation in subsequent months of the year.


§ 1030.13 Producer milk.

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

(a) Received at a pool plant directly from producers by being physically unloaded into processing facilities, a storage tank, or another tank truck, as further provided below:

(1) Any shrinkage of milk received from producers’ farms which was not unloaded in a pool plant shall also be producer milk under this paragraph; and

(2) In the event that part of a load of milk is first received at another plant(s) and the remaining part is then unloaded in the pool plant, the quantity of milk so received at each such plant shall be prorated over the total quantity of milk picked up at each producer’s farm.

(b) Received at a pool plant from a handler described in § 1030.9(c).

(c) Received by a handler described in § 1030.9(c) to the extent of the shrinkage of skim milk and butterfat received from producers’ farms which was not received in a pool plant pursuant to paragraph (b) of this section. In applying §§ 1030.52 and 1030.75, such skim milk and butterfat shall be deemed to have been received at the location of the pool plant to which delivery is normally made.

(d) Diverted by the operator of a pool plant, or by a handler described in § 1030.9(b), to another pool plant or to a nonpool plant (that is not a producer-handler plant), subject to the following conditions:

(1) During each of the months of August through January, milk from a dairy farmer shall not be eligible for diversion unless at least one day’s production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion unless at least one day’s production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

(3) The quantity of each producer’s milk to be considered as diverted milk when a portion of a tank load of milk,
picked up at the farms of two or more producers, is unloaded at another plant, shall be determined by prorating the total quantity unloaded at such other plant over the total quantity of milk picked up at each producer's farm.

(4) To the extent that milk diverted by a cooperative association as a handler described in §1030.9(b) during any month would result in a plant failing to qualify as a pool plant under §1030.7, such diverted milk shall not be producer milk.

(5) Diverted milk shall be priced at the location of the plant to which diverted, except that, in the case of a distributing plant, if during the month not more than 4 days' production of a producer is diverted from such plant or if the diverted milk is part of a tank truck load of milk that exceeds the milk storage capacity of such distributing plant, such milk shall be priced at the location of the plant from which diverted.


§ 1030.14 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 §1030.40(b)(1) from any source other than producers, handlers described in §1030.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1030.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1030.40(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 §1030.40(b)(1)) for which the handler fails to establish a disposition.

§ 1030.15 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]

§ 1030.16 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]

§ 1030.17 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).

§ 1030.18 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 is engaged in making collective sales of or marketing milk or milk products for its members.

§ 1030.19 Exempt milk.

Exempt milk means milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer if:

(a) The dairy farmer is a government which is not engaged in the route disposition of any of the returned products; and

(b) The dairy farmer has, by written notice to the market administrator and the receiving handler, elected non-producer status for a period of not less than 12 months beginning with the month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

§ 1030.20 [Reserved]

§ 1030.21 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 §§1030.13, 1030.41 and 1030.52.

[58 FR 27808, May 11, 1993]
§ 1030.31  Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in §1030.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information specified in §1030.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1030.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1030.32  Other reports.

(a) Each handler described in §1030.9(a), (b), and (g) shall report to the market administrator on or before the 10th day after the end of the month in detail and on forms prescribed by the market administrator as follows:

(1) Each handler described in §1030.9(g) shall report the quantities of skim milk and butterfat in fluid milk products and fluid cream products moved for his account from each pool plant and received at each pool plant or partially regulated distributing plant during the month; and

(2) Each handler pursuant to §1030.9(a) and (b) shall report for each load of milk diverted for his account:

(i) The quantity of each producer’s milk so diverted;

(ii) The date(s) of pickup of each producer’s milk; and

(iii) The name and location of the plants to which and from which milk was diverted; and

(3) Each handler who, during the month, received milk from a dairy farmer from whom he had not received milk during the previous calendar month, shall report the name and address of the dairy farmer and the plant to which each such person previously delivered milk. Each handler who discontinues receiving milk from a producer during the month shall report each such producer’s name, address, and the plant to which such person transferred.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1030.30 and 1030.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler’s obligation under the order.

[42 FR 38582, July 29, 1977]

CLASSIFICATION OF MILK

§ 1030.40  Classes of utilization.

Except as provided in §1030.42, all skim milk and butterfat required to be reported by a handler pursuant to §1030.30 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 I 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;
Agricultural Marketing Service, USDA

§ 1030.40

(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 mixes containing nonmilk items, yogurt and any other semi-solid product resembling a Class II product;
   (iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and
   (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, 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 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 § 1030.15 and the fluid cream product definition pursuant to § 1030.16; and

(7) In shrinkage assigned pursuant to § 1030.41(a) to the receipts specified in § 1030.41(a)(2) and in shrinkage specified in § 1030.41(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.


§ 1030.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1030.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant (or at all of a handler’s supply plants and/or reserve supply plants combined or at all of a handler’s distributing plants combined if such reports are filed pursuant to §1030.30) 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, excluding that received in the form of a packaged fluid milk product;

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in §1030.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §1030.9(c); and

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in milk diverted from such plant 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 subparagraph shall be 2 percent;

(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 §1030.9(b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk.


§ 1030.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Skim milk or butterfat transferred or diverted in
Agricultural Marketing Service, USDA § 1030.42

the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant (or to the pool plant of another handler if a combined report is filed pursuant to §1030.30 by the transferor-handler) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. 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 §1030.44(a)(12) and the corresponding step of §1030.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products.

(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 paragraph, classification under this paragraph shall be in accordance with the provisions of §1030.40.

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

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

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

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

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and
§ 1030.42

(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 divertor-handler claims such classification in his report of receipts and utilization filed pursuant to §1030.30 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 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(viii) In determining the nonpool plant’s utilization for purposes of this 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 priorities at the second plant that are set forth in this subparagraph.

§ 1030.43 General classification rules.

In determining the classification of producer milk pursuant to §1030.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1030.30 and shall compute separately for each pool plant (or plants, if applicable) and for each cooperative association with respect to milk for which it is the handler pursuant to §1030.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1030.40, 1030.41, and 1030.42.

(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 §1030.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative.

(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 §1030.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1030.44 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.

§ 1030.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1030.9 (a), (b), and (c) by allocating the handler’s receipts of skim milk and butterfat to his utilization pursuant to paragraphs (a) through (c) of this section. For this purpose only, a handler described in §1030.9 (a) who operates more than one pool plant may elect to have his receipts allocated for each of his pool plants separately or for all of his pool plants combined, except that, if he has receipts that would be allocated pursuant to paragraph (a) (11) or (12) of this section or the corresponding steps of paragraph (b) of this section, his total receipts shall be allocated for all of his pool plants combined.

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

(i) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in §1030.41(b);

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

(A) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(B) Receipts of exempt milk;

(iii) 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 an other 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 §1030.40(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 §1030.40(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 §1030.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1030.40(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 sequence 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 §1030.40(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 an exempt distributing 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;
   (vii) Receipts of fluid milk products (other than exempt milk) from a government which has elected nonproducer status for the month pursuant to §1030.19; and
   (viii) Receipts of fluid milk products from persons described in §1030.12(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, but not in excess of such quantities, the pounds of skim milk in each of the following:
   (i) 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:
      (A) For which the handler requests a classification other than Class I; or
      (B) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler) by 1.25 and subtracting the sum of the
§ 1030.45 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 §1030.44(a)(12) and
§ 1030.50 Class and component prices.

Subject to the provisions of §1030.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) Class I price. The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.40.

(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.

(e) Class I differential price. The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) Class II differential price. The Class II differential price shall be the difference between the current month's Class II and Class III prices (this price may be negative).

(g) Class III-A differential price. The Class III-A differential price shall be the difference between the current month's Class III and Class III-A prices (this price may be negative).

(h) Skim milk price. The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.
(k) Other solids price. Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) Somatic cell adjustment. (1) The somatic cell adjustment rate per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section; and

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.


§ 1030.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1030.74 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.
§ 1030.52

(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 18960, Apr. 14, 1995]

§ 1030.52  Plant location adjustments for handlers.

A location adjustment for each handler shall be computed by the market administrator as follows:

(a) The market administrator shall determine the location adjustment rate for each plant at which milk is to be priced under this part pursuant to the following schedule, except that in no event shall the adjustment result in a price less than the Class III price for the month:

(b) For the purpose of this section and §§1030.55 and 1030.75, the distances to be computed shall be on the basis of the shortest highway mileage as determined by the market administrator—with fractions rounded up to the next whole mile.

(1) The market administrator shall notify each handler of the zone or mileage determination from the city hall in Chicago for each plant and for each handler’s pool distributing plant the mileage to each transferor pool plant.

(2) Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

(c) A handler who operates a pool distributing plant (or plants) shall receive a location adjustment computed as follows:

(1) Determine the aggregate quantity of Class I milk, excluding beginning inventory of packaged fluid milk products, at such plant (or all pool plants of such handler for which the handler’s total receipts are allocated for all such handler’s pool plants combined pursuant to §§1030.43(d) and 1030.44 after eliminating duplication for transfer between such plants);
(2) Subtract the receipts of exempt milk and the quantity of packaged fluid milk products received at the handler's pool plant(s) from the pool plants of other handlers (or other pool plants, if applicable) and from nonpool plants if assigned to Class I milk;
(3) Subtract the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to pool plants of other handlers (or other pool plants, if applicable) and to nonpool plants that are classified as Class I;
(4) Subtract the Class I milk packaged by pool supply plants and disposed of as route disposition or to other plants;
(5) Subtract the quantity of bulk fluid milk products received at the handler's pool plant(s) from other order plants and unregulated supply plants that are assigned to Class I pursuant to §§1030.43(d) and 1030.44;
(6) Assign the remaining quantity pro rata to receipts during the month from each source as specified in paragraphs (c)(6)(i) and (ii) of this section:
   (i) Receipts at the handler's pool distributing plant(s) of producer milk, except that if the quantity prorated to any distributing plant exceeds the Class I disposition from such plant, such quantity shall be reduced to the amount of such Class I disposition and the quantity of milk represented in such reduction shall be prorated to receipts of producer milk at other distributing plants of the handler (limited in each instance to the amount of Class I disposition at each such plant) and receipts of bulk fluid milk products at such distributing plants from other pool plants; and
   (ii) Receipts of bulk fluid milk products at such distributing plants from each other pool plant according to the quantity of such receipts from each such source;
(7) If receipts during the month at such distributing plants of producer milk, milk diverted from other pool plants, and bulk fluid milk products from other pool plants are less than the quantity to be assigned pursuant to paragraph (c)(6) of this section, prorate the amount of such excess in the same manner over such receipts in the next prior month in which there were receipts in excess of those assigned in that month pursuant to this paragraph (c)(7) of this section;
(8) Multiply by the location adjustment rates applicable at the transferor plants, the quantity assigned to receipts of producer milk and milk diverted from other pool plants at such distributing plant pursuant to paragraphs (c) (6)(i) and (7) of this section;
(9) Multiply by the location adjustment rates applicable at the transferor plants, the lesser of:
   (i) 110 percent of the quantities assigned to receipts from each other pool plant pursuant to paragraph (c)(6)(ii) of this section; or
   (ii) Receipts specified in paragraph (c)(6)(ii) of this section;
(10) Multiply by the location adjustment rates applicable at the transferor plants, the quantities assigned pursuant to paragraph (c)(7) of this section to receipts from other pool plants in prior months;
(11) Multiply the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to nonpool plants and classified as Class I by the location adjustment rate applicable at the shipping plant;
(12) Multiply the quantity of Class I milk packaged by pool supply plants and disposed of as route disposition or to other plants by the location adjustment rates applicable at the pool supply plants from which disposition is made; and
(13) Add together the minus amounts obtained pursuant to paragraphs (c)(8), (9), (10), (11), and (12) of this section.
(d) A handler (other than one described in paragraph (c) of this section) who operates a pool supply plant shall receive a location adjustment credit on receipts at such plant of producer milk and milk diverted from other pool plants that is classified as Class I but is not shipped as a bulk fluid milk product to a pool distributing plant.
(e) The Class I price applicable to other source milk shall be reduced at the rates set forth in paragraph (a) of this section.
§ 1030.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;
(b) The Class II price for the following month;
(c) The Class III price for the preceding month;
(d) The Class III-A price for the preceding month;
(e) The skim milk price for the preceding month;
(f) The butterfat price for the preceding month;
(g) The protein price for the preceding month;
(h) The other solids price for the preceding month;
(i) The somatic cell adjustment rate for the preceding month; and
(j) The butterfat differential for the preceding month.

[60 FR 57150, Nov. 14, 1995]

§ 1030.54 Equivalent price.

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

§ 1030.55 Transfer credits on Class I milk.

(a) For each handler who operates a pool distributing plant (or plants) a transportation credit on milk received from each other pool plant shall be computed by the market administrator as follows, except that paragraph (a)(2) of this section shall not apply when the Class I milk price adjusted for location pursuant to §1030.52(a) is higher at the transferor plant than at the transferee plant:

(1) Multiply the number of hundredweights of the quantities of milk subject to the computations pursuant to §1030.52(c) (9) and (10) times the product of 0.28 cents times the number of miles between the transferor plant and the transferee plant; and

(2) Subtract an amount computed by multiplying the absolute value difference between the location adjustment rates specified in §1030.52(a) applicable at the transferee and transferor plants times the hundredweights of milk used in the computation in paragraph (a)(1) of this section. If the amount computed pursuant to this paragraph is greater than the amount computed in paragraph (a)(1) of this section the transportation credit will be zero.

(b) For each handler who transfers milk from a pool plant to a pool distributing plant (or plants) an assembly credit shall be computed by the market administrator at the rate of 8 cents per hundredweight of such handler's transfers of milk included in the computations pursuant to §1030.52(c)(9) and (10).

[52 FR 39612, Oct. 23, 1987; 52 FR 42760, Nov. 6, 1987]

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in §1030.9 (a), (b), and (c), as follows:

(a) Calculate the following values:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to §1030.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to §1030.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the pounds of skim milk in Class I as determined pursuant to §1030.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to §1030.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to §1030.44(a) by the average...
other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to §1030.30(a)(1) by the percentage of the total producer milk allocated pursuant to §1030.44(c) that is allocated to Class II and Class III; and

(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III-A by the Class III-A differential price for the month;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to §1030.44(a)(14) and the corresponding step of §1030.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1030.74, 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 §1030.44(a)(9) and the corresponding step of §1030.44(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 §1030.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1030.44(a)(7)(i) through (iv), (vii), and (viii) and the corresponding step of §1030.44(b), excluding receipts of bulk fluid milk products from an other order plant and bulk concentrated fluid milk products from 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 §1030.43(d);

(e) 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 §1030.76(a)(5) or (c); and

(f) 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.
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.

§ 1030.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to §1030.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total for all handlers:
   (1) The values computed pursuant to §1030.60 (a)(1), (a)(2), (a)(7), and (b) through (k) for all handlers; and
   (2) Add values computed pursuant to §1030.60 (a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment;
   (b) Add an amount equal to the total value of the minus location adjustments computed pursuant to §1030.75(a);
   (c) Add an amount representing not less than one-half the unobligated balance in the producer-settlement fund;
   (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 §1030.60(f); and
   (e) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

§ 1030.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;
(b) The protein price;
(c) The other solids price;
(d) The butterfat price;
(e) The somatic cell adjustment rate;
(f) The average butterfat, protein and other solids content of producer milk; and
(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

§ 1030.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement" fund into which he shall deposit all payments received pursuant to paragraph (a) of this section and out of which he shall make all payments required pursuant to paragraph (b) of this section.

(a) Payments made by handlers pursuant to §§1030.71, 1030.76, 1030.77 and 1030.78.
(b) Payments due handlers pursuant to §§1030.72 and 1030.77. Provided, That payments due any handler shall be offset by payments due from such handler pursuant to §§1030.71, 1030.76, 1030.77, 1030.78, 1030.85 and 1030.86.

§ 1030.71 Payments to the producer-settlement fund.

(a) On or before the 18th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount
§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk received from such producer and for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 3rd day after the end of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month, less proper deductions authorized in writing by such producer;

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to §§ 1030.75 and 1030.86;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(b) At the location of the other order plant and the Class III price.

§ 1030.73 7 CFR Ch. X (1-1-99 Edition)

(v) The hundredweight of milk received times the somatic cell adjustment for the month;
(vi) Less any payment made pursuant to paragraph (a) of this section; and
(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer; and

(3) If by such date the handler has not received full payment from the market administrator pursuant to §1030.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to paragraph (a) of this section next following receipt of the balance due from the market administrator.

(b) Payments required in paragraph (a) of this section shall be made by a handler to a cooperative association qualified under §1030.18, or its duly authorized agent, for producer milk if the cooperative association is authorized to collect such payments for such producers and has presented the handler with a written request for such payments. Payments to the cooperative association pursuant to this paragraph shall be subject to the condition that the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by the handler because of any improper claim on the part of the cooperative association. The amount of payment shall be equal to the sum of the individual payments otherwise payable for such producer milk and shall be paid by the handler as follows:

(1) On or before the 1st day after the end of each month for producer milk received during the first fifteen days of the month; and
(2) On or before the 16th day after the end of each month for milk received during such month.

(c) Each handler shall pay a cooperative association for milk received by the handler from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first fifteen days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and
(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;
(ii) The hundredweight of Class II milk received times the Class II differential price for the month;
(iii) The hundredweight of Class III-A milk received times the Class III-A differential price for the month;
(iv) The pounds of butterfat received times the butterfat price for the month;
(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;
(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;
(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and
(viii) Less any payment made pursuant to paragraph (c)(2) of this section.

(d) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described under §1030.9(c) as follows:

(1) For milk received during the first fifteen days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and
(2) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:
§ 1030.76 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 §§1030.30(b) and 1030.31(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) The hundredweight of milk received times the producer price differential as adjusted pursuant to §1030.75;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (d)(1) of this section; and

(vii) Less proper authorized deductions.

(b) The producer price differential for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in §1030.52(a).

(c) The producer price differential applicable to other source milk shall be adjusted at the rates set forth in §1030.52(a), except that the adjusted producer differential price shall not be less than zero.

[60 FR 57152, Nov. 14, 1995]

§ 1030.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in §1030.52(a).

(b) The producer price differential applicable to other source milk shall be adjusted at the rates set forth in §1030.52(a), except that the adjusted producer differential price shall not be less than zero.

[60 FR 57152, Nov. 14, 1995]

§ 1030.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, 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 §1030.51(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 57152, Nov. 14, 1995]
§ 1030.76

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 amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant; 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 handling of milk at the transferee-plant, with such statistical 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 III price of the respective order; and

(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 §1030.60 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 §1030.60 shall be priced at the statistical 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 statistical 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 III 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 §1030.60 for such handler shall include, in lieu of the value of other source milk specified in §1030.60(f) less the value of such other source milk specified in §1030.71(a)(2)(iv), a value of milk determined pursuant to §1030.60 for each
Agricultural Marketing Service, USDA

§ 1030.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1030.71, § 1030.76, § 1030.77, § 1030.85 or § 1030.86, shall be increased three-fourths of one percent on the 7th day after the due date each month.

(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;
§ 1030.85

(b) For the purpose of this section, any unpaid obligation that is determined at a date later than prescribed by the order because of a handler’s failure to submit a report to the market administrator shall be considered to have been due when it would have been due if such report had been submitted at the proper time; and

(c) Payment of any interest obligation computed pursuant to this section in an amount less than $10 shall be delayed until the accumulated interest obligation of such handler equals or exceeds $10.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1030.85 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 18th day after the end of each month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler’s own farm production and including for a handler described in §1030.9(c) producer milk described in §1030.13(d));

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I pursuant to §1030.44(a)(7) and (a)(11) and the corresponding steps of §1030.44(b), except such other source milk that is excluded from the computations pursuant to §1030.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to §1030.76(a)(2).


§ 1030.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to §1030.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler’s own farm production) during the month, and shall pay such deductions to the market administrator not later than the 18th day after the end of the month. Such monies shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of member producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section such deductions as are authorized by such producers and, on or before the 18th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1032—MILK IN SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1032.1 General provisions.

DEFINITIONS

1032.2 Southern Illinois—Eastern Missouri marketing area.
1032.3 Route disposition.
1032.4 [Reserved]
1032.5 Distributing plant.
1032.6 Supply plant.
1032.7 Pool plant.
1032.8 Nonpool plant.
1032.9 Handler.
1032.10 Producer-handler.
1032.11 [Reserved]
1032.12 Producer.
1032.13 Producer milk.
1032.14 Other source milk.
1032.15 Fluid milk product.
1032.16 Fluid cream product.
1032.17 Filled milk.
1032.18 Cooperative association.
1032.19 Commercial food processing establishment.
Agricultural Marketing Service, USDA § 1032.2

HANDLER REPORTS
1032.30 Reports of receipts and utilization.
1032.31 Payroll reports.
1032.32 Other reports.

CLASSIFICATION OF MILK
1032.40 Classes of utilization.
1032.41 Shrinkage.
1032.42 Classification of transfers and diversions.
1032.43 General classification rules.
1032.44 Classification of producer milk.
1032.45 Market administrator’s reports and announcements concerning classification.

CLASS PRICES
1032.50 Class prices.
1032.51 Basic formula price.
1032.52 Plant location adjustments for handlers.
1032.53 Announcement of class prices.
1032.54 Equivalent price.

UNIFORM PRICE
1032.60 Handler’s value of milk for computing uniform price.
1032.61 Computation of uniform price (including weighted average price).
1032.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK
1032.70 Producer-settlement fund.
1032.71 Payments to the producer-settlement fund.
1032.72 Payments from the producer-settlement fund.
1032.73 Payments to producers and to cooperative associations.
1032.74 Butterfat differential.
1032.75 Plant location adjustments for producers and on nonpool milk.
1032.76 Payments by handler operating a partially regulated distributing plant.
1032.77 Adjustment of accounts.
1032.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION
1032.85 Assessment for order administration.
1032.86 Deduction for marketing services.

SOURCE: 39 FR 15417, May 3, 1974, unless otherwise noted.
§ 1032.3  

IN THE STATE OF MISSOURI

Bollinger  St. Francois
Cape Girardeau  St. Louis (City)
Crawford  St. Louis
Franklin  Ste. Genevieve
Jefferson  Warren
Perry  Washington
St. Charles

[53 FR 10058, Mar. 29, 1988]

§ 1032.3  Route disposition.

Route disposition means any delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility of a fluid milk product classified as Class I milk.

[53 FR 10058, Mar. 29, 1988]

§ 1032.4  [Reserved]

§ 1032.5  Distributing plant.

Distributing plant means any plant at which fluid milk products are processed and packaged and from which there is route disposition of Grade A fluid milk products in the marketing area during the month.

§ 1032.6  Supply plant.

Supply plant means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are transferred to a distributing plant.


§ 1032.7  Pool plant.

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

(a) A distributing plant from which:

(1) Route disposition, except filled milk, in the marketing area during the month is at least the lesser of a daily average of 7,000 pounds or 10 percent of the total quantity of bulk fluid milk products physically received at such plant and diverted therefrom pursuant to §1032.13; and

(2) Total route disposition, except filled milk, is at least 50 percent of the total quantity of bulk fluid milk products physically received at such plant and diverted therefrom pursuant to §1032.13 during the months of August through February and 40 percent during the other months.

(b) A supply plant from which during December at least 40 percent, and at least 50 percent in all other months, of the total receipts of milk from dairy farmers (including producer milk diverted from such plant pursuant to §1032.13 but excluding milk diverted to such plant) and handlers described in §1032.9(c) is transferred to and physically received at plants described in paragraph (a) of this section, except that the minimum qualifying percentage shall be 25 percent for a plant(s) operated by a cooperative association that delivered producer milk during each of the immediately preceding months of September through August and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered to and physically received at plants described in paragraph (a) of this section.

(c) Any supply plant which qualified pursuant to paragraph (b) of this section in each of the immediately preceding months of September through January shall be a pool plant for the months of February through August unless the operator of such plant notifies the market administrator in writing before the first day of any such month of his intention to withdraw such plant as a pool plant, in which case such plant shall thereafter be a nonpool plant until it again meets the shipping requirements set forth in paragraph (b) of this section.

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

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area covered by the other order than in this marketing area: Provided, That such a distributing plant which was a
pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such plant's total route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its maintaining pool status under this order on the basis of the proviso of this paragraph;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the Southern Illinois-Eastern marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater such route disposition in the marketing area of the Southern Illinois-Eastern order; and

(4) Any plant qualified pursuant to paragraph (c) of this section for any portion of the period of February through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1032.8 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 neither an other order plant nor a producer-handler plant, 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 that is neither an order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

§ 1032.9 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 its members diverted for its account pursuant to § 1032.13;

(c) Any cooperative association with respect to the milk of its members which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to such cooperative association. The cooperative association, prior to the first day of the month of delivery, shall notify in writing the market administrator and the handler to whose plant the milk is delivered, that it will be the handler for the milk. For purposes of location adjustments to producers, milk so delivered shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant to which it is delivered;

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

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1032.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1032.10 Producer-handler.
Producer-handler means a person who:

(a) Operates a distributing plant and processes milk from his own farm production and who disposes of all or a portion of such milk as route disposition in the marketing area but who receives no milk from other dairy farmers or fluid milk products from nonpool plants: Provided, That the skim milk and butterfat disposed of in the form of fluid milk products designated as Class I milk pursuant to § 1032.40(a) does not
§ 1032.11 [Reserved]

§ 1032.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is received at a pool plant or diverted as producer milk pursuant to §1032.13.

(b) “Producer” shall not include:

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

(2) Any person with respect to milk produced by him which 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 §1032.44(a)(8)(iii) and the corresponding step of §1032.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other plant if any portion of such person’s milk so moved is assigned to Class I under the provisions of such other order.

§ 1032.13 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 a producer or a handler described in §1032.9(c);

(b) Received by a handler described in §1032.9(c) in excess of the quantity delivered to a pool plant(s);

(c) Diverted from a pool plant for the account of the handler described in §1032.9(a) or (b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion during the months of August through April unless such producer’s milk is delivered to and physically received at a pool plant at least once during each such month;

(2) The total amount of milk diverted by a cooperative association during each of the months of September through November and January through April, shall not exceed 35 percent of the producer milk that such cooperative caused to be delivered to and diverted from pool plants in each such month and 45 percent of such producer milk deliveries and diversions by the cooperative in each of the months of August and December;

(3) The operator of a pool plant (other than a cooperative association) may divert any milk that is not under the control of a cooperative association that is diverting milk during the month pursuant to (d)(2) of this section. The total amount of milk diverted during each of the months of September through November and January through April shall not exceed 35 percent of such plant operator’s producer milk received at and diverted from such pool plant and 45 percent of such plant operator’s producer milk receipts and diversions in each of the months of August and December;

(4) The quantity of milk diverted in excess of the applicable percentage limit prescribed in paragraph (d) (2) or (3) of this section shall not be producer milk. In such event, the handler diverting such milk may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, milk diverted on the last day of the month, then the next-to-last day of the month, and so on, shall be excluded until such exclusions cover the excess quantity;

(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 be a nonpool plant shall not be producer milk. In such event, the diverting handler may designate the dairy
Agricultural Marketing Service, USDA

§ 1032.19 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

§ 1032.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines:

(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 be engaged in making collective sales, or marketing milk or its products for its members.

§ 1032.17 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).

§ 1032.16 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.

§ 1032.15 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

§ 1032.14 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 § 1032.40(b)(1) from any source other than producers, handlers described in § 1032.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1032.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1032.40(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 § 1032.40(b)(1)) for which the handler fails to establish a disposition.

§ 1032.13 Skim milk.

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.

[53 FR 10059, Mar. 29, 1988]
§ 1032.30 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 §1032.9(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 §1032.40(b)(1); and

(c) Each handler described in §1032.9(b) and (c) shall report:

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

(2) The utilization or disposition of all such receipts.

(b) 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.

§ 1032.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in §1032.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1032.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1032.32 Other reports.

In addition to the reports required pursuant to §§1032.30 and 1032.31, 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

§ 1032.40 Classes of utilization.

Except as provided in §1032.42, all skim milk and butterfat required to be reported by a handler pursuant to §1032.30 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 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, dried curd cottage cheese, ricotta 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) Egg nog, 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;

(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.
§ 1032.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1032.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1032.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1032.9(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 (b)(2) 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

(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 § 1032.9(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.
§ 1032.42 Classification of transfers and diversions.

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

1. The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to §1032.44(a)(12) and the corresponding step of §1032.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

2. If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1032.44(a)(7) or the corresponding step of §1032.44(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 §1032.44(a)(11) or (12) or the corresponding steps of §1032.44(b), the skim milk or butterfat so transferred or diverted shall be classified in accordance with the provisions of §1032.40.

(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 §1032.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:
§ 1032.42

(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 §1032.41(b); 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(viii) In determining the nonpool plant's utilization for purposes of this 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 priorities at the second plant that are set forth in this subparagraph.

§ 1032.43 General classification rules.

In determining the classification of producer milk pursuant to §1032.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1032.30 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 §1032.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1032.40, 1032.41, and 1032.42;

(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 §1032.9(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 §1032.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1032.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.


§ 1032.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1032.9(a) for each of his pool plants separately and of each handler described in §1032.9(b) and (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 shrinkage specified in §1032.41(b);

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

(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.

§ 1032.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1032.9(a) for each of his pool plants separately and of each handler described in §1032.9(b) and (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 shrinkage specified in §1032.41(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.
§ 1032.44

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

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 an other 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 §1032.40(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 §1032.40(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 §1032.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1032.40(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 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 §1032.40(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;

(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; and

(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;

(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)(2)(ii), (7)(v), and (8)(i) 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 of fluid milk products from unregulated supply 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 I and 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 §1032.40(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 or 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)(ii), (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
§ 1032.44 7 CFR Ch. X (1-1-99 Edition)

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 provision 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 §1032.45(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 paragraphs (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 paragraphs (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 §1032.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";
Agricultural Marketing Service, USDA

§ 1032.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1032.74 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
§ 1032.52 Plant location adjustments for handlers.

(a) For producer milk received at a plant which is classified as Class I milk, the price specified in §1032.50(a) shall be adjusted for the location of such plant by the following amount:

(1) For a plant located within one of the zones designed in §1032.2, the adjustment shall be as follows:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Adjustment per hundredweight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Zone</td>
<td>No adjustment</td>
</tr>
<tr>
<td>Northern Zone</td>
<td>Minus 17 cents</td>
</tr>
<tr>
<td>Southern Zone</td>
<td>Plus 9 cents</td>
</tr>
</tbody>
</table>

(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 18961, Apr. 14, 1995]
(2) For a plant located outside the marketing area but in any of the following territory the adjustment shall be as follows:

(i) Minus 17 cents. In counties of Adams, Brown, Cass, Pike, Schuyler and Scott in the State of Illinois or in the counties of Fountain, Parke, Vermillion and Warren in the State of Indiana.

(ii) No adjustment. In the State of Missouri south and east of Interstate Highway 44.

(iii) No location adjustment shall apply at a plant located in the State of Missouri south and east of Interstate Highway 44 that was not in an area described in paragraph (a)(2)(i) of this section.

(3) For a plant located outside the marketing area and the area described in paragraph (a)(2) of this section, the adjustment shall be minus 20 cents for any such plant located 100 miles or more from the city or village limit of Alton, Robinson, or Vandalia, Illinois, whichever is nearest, and minus an additional 2.0 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(4) In determining location adjustments pursuant to this section, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator from the latest Mileage Guide as published by the Household Goods Carrier’s Bureau.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 110 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in §1032.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to receipts of fluid milk products from pool plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

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

§1032.60 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 §1032.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to §1032.44 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 §1032.44(a)(14) and the corresponding step of §1032.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1032.74, 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.
§ 1032.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers at plants located in the “base zone” as follows:

(a) Combine into one total the values computed pursuant to §1032.60 for all handlers who filed the reports prescribed by §1032.30 for the month and who made the payments pursuant to §§1032.71 and 1032.73 for the preceding month;

(b) Add an amount equal to the value of the net location and zone adjustments (reductions minus increases) applicable to the uniform price pursuant to §1032.75;

(c) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(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 §1032.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the “weighted average price,” and the “uniform price” for milk received from producers.


§ 1032.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1032.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund,” which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1032.71, 1032.76, and 1032.77 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1032.72 and 1032.77:

Provided, That any payments due to any handler shall be offset by any payments due from such handler.

[39 FR 15417, May 3, 1985, as amended at 50 FR 46628, Nov. 12, 1985]

§ 1032.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to §1032.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to §1032.75, of such handler’s receipts of producer milk;

and

(ii) 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 is computed pursuant to §1032.60(f).

(b) 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 (b)(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.

§ 1032.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1032.71(a)(2) exceeds the amount computed pursuant to §1032.71(a)(1). The market administrator shall offset any payment due to any handler against any payments due from such handler.

§ 1032.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, each handler shall make payment for milk received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month an amount equal to not less than the Class III price for the preceding month
multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph:

(2) On or before the 20th day of the following month to each producer, an amount equal to not less than the uniform price, as adjusted pursuant to §§1032.74 and 1032.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to §1032.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer: Provided, That, if by such date, such handler has not received full payment from the market administrator pursuant to §1032.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) Payments required in paragraph (a) of this section shall be made to a cooperative association, qualified under §1032.18 or its duly authorized agent, which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing. Such handler shall, on or before the 18th day of the following month pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the amount due such producer-members as determined pursuant to paragraph (a) of this section, less any deductions authorized in writing by such association: Provided, That the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) On or before the 18th day after the end of each month, each handler shall pay to each cooperative association for milk the handler receives at his pool plant from a pool plant(s) operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in §1032.74, that are applicable at the location of the handler’s pool plant;

(d) On or before the 18th day of the following month, each handler, in his capacity as the operator of a pool plant, who receives milk for which a cooperative association is the handler pursuant to §1032.9(c) shall pay such cooperative association for such milk at the uniform price as adjusted pursuant to §§1032.74 and 1032.75;

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act, and

(f) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association for each such producer on forms approved by the market administrator as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day after the end of the month, the total pounds of milk received from each producer, together with the butterfat content of such milk, and the amount or rate and nature of any deductions authorized by the cooperative association.

§ 1032.74 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
Agricultural Marketing Service, USDA

§ 1032.76 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 §§1032.30(b) and 1032.31(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 fluid milk products received at 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 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 a 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 (but not to 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 pricing a plurality of the 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

§ 1032.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in §1032.52(a); and

(b) The weighted average price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted weighted average price shall not be less than the Class III price.

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 §1032.60 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 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 pursuant to §1032.60 for such partially regulated distributing plant during the month equivalent to the requirements of §1032.7(b) and (c), subject to the following conditions:

(a) If the operator of the partially regulated distributing plant submits with his reports filed pursuant to §§1032.30(b) and 1032.31(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 §1032.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant.

(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 §1032.74, 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 §1032.74, 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 an other order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply
§ 1032.86 Deduction for marketing services.

(a) Deduction for marketing services. Except as set forth in paragraph (b) of this section, each handler in making payments to producers pursuant to § 1032.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler’s own production) during the month, and shall pay such deductions to the market administrator on or before the 20th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them with market information. Such services shall be performed in
whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Producers cooperative association. In the case of producers for whom a cooperative association is actually performing as determined by the Secretary, the services set forth in paragraph (a) of this section each handler, in lieu of the deduction specified in paragraph (a) of this section, shall make such marketing service deductions as are authorized by producer-members, and pay the money so deducted to the cooperative association on or before the 20th day after the end of the month.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

GENERAL PROVISIONS

Sec.

1033.1 General provisions.

DEFINITIONS

1033.2 Ohio Valley marketing area.
1033.3 Route disposition.
1033.4 Plant.
1033.5 Distributing plant.
1033.6 Supply plant.
1033.7 Pool plant.
1033.8 Nonpool plant.
1033.9 Handler.
1033.10 Producer-handler.
1033.12 Producer.
1033.13 Producer milk.
1033.14 Other source milk.
1033.15 Fluid milk product.
1033.16 Fluid cream product.
1033.17 Filled milk.
1033.19 Cooperative association.
1033.20 [Reserved]
1033.21 Commercial food processing establishment.

HANDLER REPORTS

1033.30 Reports of receipts and utilization.
1033.31 Payroll reports.
1033.32 Other reports.

CLASSIFICATION OF MILK

1033.40 Classes of utilization.
1033.41 Shrinkage.
1033.42 Classification of transfers and diversions.
1033.43 General classification rules.
1033.44 Classification of producer milk.
1033.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1033.50 Class and component prices.
1033.51 Basic formula price.
1033.52 Plant location adjustments for handlers.
1033.53 Announcement of class and component prices.
1033.54 Use of equivalent prices.

DIFFERENTIAL POOL AND HANDLER OBLIGATIONS

1033.60 Computation of handlers' obligations to pool.
1033.61 Computation of weighted average differential value.
1033.62 Computation of producer protein price.
1033.63 Uniform price.
1033.64 Announcement of weighted average differential price, producer protein price, and uniform price.
1033.65 Value of producer milk.
1033.66 Computation of somatic cell adjustment.

PAYMENTS FOR MILK

1033.70 Producer-settlement fund.
1033.71 Payments to the market administrator.
1033.72 Payments to producers and to cooperative associations.
1033.73 Butterfat differential.
1033.74 Plant location adjustments for producers and on nonpool milk.
1033.75 Payments by handler operating a partially regulated distributing plant.
1033.76 Correction of errors.
1033.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1033.85 Assessment for order administration.
1033.86 Deduction for marketing services.


SOURCE: 40 FR 27464, June 30, 1975, unless otherwise noted.

GENERAL PROVISIONS

§ 1033.1 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

§ 1033.2 Ohio Valley marketing area.

The Ohio Valley marketing area hereinafter called the "marketing area", means all the territory, by designated
zones, within the boundaries of the following geographical units, including all waterfront facilities connected therewith and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within the listed geographical units:

(a) “Zone 1” shall include the following territory:

**Ohio Counties**
Fulton, Hancock, Henry, Lucas, Putnam, Sandusky (Woodville and Madison Townships only), Seneca, Wood.

**Michigan Counties**
Lenawee (Blissfield, Deerfield, Ogden, Palmyra, and Riga Townships only).

(b) “Zone 2” shall include the following territory:

**Ohio Counties**
Allen, Auglaize, Crawford, Darke, Hardin, Logan, Marion, Mercer, Morrow, Richland, Shelby, Union, Van Wert (city of Delphos only), Wyandot.

(c) “Zone 3” shall include the following territory:

**Ohio Counties**
Butler, Champaign, Clark, Clinton, Coshocton (except Adams Township), Delaware, Fairfield, Fayette, Franklin, Greene, Guernsey (except Oxford, Londonderry, and Millwood Townships), Hocking, Knox, Licking, Madison, Miami, Montgomery, Morgan, Muskingum, Noble, Perry, Pickaway, Preble, Warren.

(d) “Zone 4” shall include the following territory:

**Ohio Counties**

**Kentucky Counties**
Boone, Boyd, Bracken, Campbell, Grant, Greenup, Harrison, Kenton, Lewis, Mason, Pendleton, Robertson.

**Indiana Counties**
Dearborn, Ohio.


§ 1033.4 Plant.

(a) Except as provided in paragraph (b) of this section, plant means the land and buildings, together with their surroundings, facilities, and equipment, constituting a single operating unit or establishment which contains stationary holding facilities and which is operated for the bulk handling or processing of milk or milk products (including filled milk).

(b) The term “plant” shall not include distribution points (separate facilities used primarily for the transfer to vehicles of packaged fluid milk.
§ 1033.5 Distributing plant.  
Distributing plant means a plant in which fluid milk products approved by a duly constituted health authority for fluid consumption, or filled milk, are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1033.6 Supply plant.
Supply plant means a plant from which a fluid milk product approved by a duly constituted health authority for fluid consumption, or filled milk, is delivered to a pool plant during the month.

§ 1033.7 Pool plant.
Pool plant means a plant described in paragraph (a), (b), or (c) of this section that is not a producer-handler plant or a plant that is subject to another Federal order as set forth in paragraph (d) of this section.

(a) A distributing plant with:
(1) Route disposition in the marketing area during each month of not less than 15 percent of its total route disposition; and
(2) Route disposition of not less than 40 percent during each of the months of March through August, of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

(i) In making the percentage computations in paragraphs (a)(1) and (2) of this section, a plant's route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products priced as Class I milk under this or any other Federal order;

(ii) A distributing plant (except a plant that met the route disposition percentage on a unit basis under paragraph (a)(2)(iii) of this section) that does not meet the minimum route disposition percentage specified in paragraph (a)(2) of this section to qualify for pool status in the current month shall be deemed to have met such qualifying percentage in such month, if the plant met the applicable percentage in each of the three immediately preceding months; and

(iii) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total route disposition percentage specified in paragraph (a)(2) of this section if such handler requests that the plants be so considered and each plant in the unit meets the in-area route disposition percentage specified in paragraph (a)(1) of this section.

(b) A supply plant from which 35 percent or more during the months of January through November, and 30 percent in December, of the receipts at such plant from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in §1033.9(c) is delivered by transfer or diversion as fluid milk products except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries;

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants;
(3) A supply plant that does not meet the minimum delivery requirement specified in paragraph (b) of this section to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the three immediately preceding months; and

(4) A supply plant that qualified as a pool plant in each of the immediately preceding months of September through February on the basis of its deliveries to pool distributing plants shall be a pool plant for each of the following months of March through August, unless the plant operator files a written request with the market administrator asking that such plant not be a pool plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s).

(c) A plant operated by a cooperative association if, during the month, 35 percent or more of the producer milk of members of the association is delivered to a pool distributing plant(s) either directly from the farm or by transfer from such association’s plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 35-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted health authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the similar provisions of another Federal order applicable to a distributing plant or a supply plant.

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

(1) A producer-handler plant;

(2) A plant subject to the classification and pricing provisions of another order issued pursuant to the Act, unless the plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section during the current month and the immediately preceding month and a greater volume of fluid milk products, except filled milk, is disposed of in each such month from such plant as route disposition in the Ohio Valley marketing area than is disposed of from such plant as route disposition in the marketing area regulated pursuant to the other order and to plants qualified as fully regulated plants under such other order on the basis of route disposition in the marketing area;

(3) A plant qualified pursuant to §1033.7(a) which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

§ 1033.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of such 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 distributing plant that is not an other order plant or a producer-handler plant.

(d) Unregulated supply plant means a supply plant that is not an other order plant or a producer-handler plant.
§ 1033.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the producer milk which is diverted to nonpool plants for the account of such association pursuant to § 1033.13, excluding producer milk diverted by the association as the operator of a pool plant pursuant to paragraph (a) of this section;

(c) A cooperative association with respect to producer milk which is delivered for its account from the farm to a pool plant in a tank truck owned and operated by, or under contract to such cooperative association. Milk delivered pursuant to this paragraph shall not include producer milk diverted to another pool plant by the association as the operator of a pool plant pursuant to paragraph (a) of this section. Milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by such cooperative association at the location of the pool plant to which such milk was delivered;

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

(e) Any person defined in § 1033.10; and

(f) Any person in his capacity as the operator of an other order plant described in § 1033.7(d).

[40 FR 27464, June 30, 1975, as amended at 58 FR 27814, May 11, 1993]

§ 1033.10 Producer-handler.

Producer-handler means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production, pool plants, and other order plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products;

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

[40 FR 27464, June 30, 1975. Redesignated at 58 FR 27814, May 11, 1993]

§ 1033.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk approved by a duly constituted health authority for fluid consumption, whose milk is:

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

(2) Received at a pool plant from a handler described in § 1033.9(c); or

(3) Diverted from a pool plant in accordance with § 1033.13.

(b) "Producer" shall not include:

(1) Any person defined as a producer-handler under a Federal milk order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such dairy farmer which is diverted to a pool plant from another 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 § 1033.44(a)(8)(ii) and the corresponding step of § 1033.44(b); or

(3) Any person with respect to milk produced by such dairy farmer which is reported as diverted to another order plant if any portion of such person’s milk so moved is assigned to Class I under the provisions of such other order.


§ 1033.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk from producers which is:

(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;

(b) Received at a pool plant from a handler described in § 1033.9(c) under the conditions set forth therein;

(c) Received by a handler described in § 1033.9(c) from producers in excess of the quantity delivery to pool plants;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or
Agricultural Marketing Service, USDA § 1033.15

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1033.9(b), subject to the following conditions:

(1) During each of the months of September through November not less than one day’s production of the producer must be physically received at a pool plant;

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from pool plants during the month; and

(4) Any milk diverted in excess of the limit set forth in paragraph (e)(2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that for the months of March through August the uniform price applicable to milk of producers located within the State of Ohio or the Michigan counties of Hillsdale, Lenawee, Monroe, Jackson and Washtenaw that is diverted to a plant located outside the marketing area and outside the State of Ohio shall not be adjusted downward below the uniform price for the month applicable at the location of the producer’s farm. Provided, that 65 percent or more of such producer’s milk is delivered to a plant or plants at which the same or a higher uniform price is applicable during the preceding months of September through February.

§ 1033.14 Other source milk.

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

(a) Fluid milk products and bulk cream from any source except producer milk, fluid milk products and bulk cream from pool plants, and fluid milk products and bulk cream in inventory at the beginning of the month;

(b) Products, other than fluid milk products and Class II products listed in § 1033.40(b)(1) and (4), from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.

§ 1033.15 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
§ 1033.16

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.

§ 1033.17

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).

§ 1033.19

Cooperative association.

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

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, known as the “Capper-Volstead Act” (7 U.S.C. 291, 292);

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

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

§ 1033.20 [Reserved]

§ 1033.21 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 §§ 1033.13, 1033.41 and 1033.52.

§ 1033.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, reports of receipts and utilization for such month shall be made to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler operating a pool plant shall report for each of his pool plants:

(1) Receipts of skim milk and butterfat contained in or represented by:

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, the butterfat and milk protein contained in the milk, and the somatic cell count of the milk;

(ii) Fluid milk products and bulk cream from other pool plants;

(iii) Other source milk, with the identity of each source; and

(iv) Products listed in §1033.40(b)(1) from other plants;

(2) Inventories of fluid milk products and products listed in §1033.40(b)(1) at the beginning and the end of the
Agricultural Marketing Service, USDA § 1033.31

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:
   (i) Total route disposition and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and
   (ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein, and somatic cell count, as the market administrator may prescribe;

(b) Each cooperative association shall report:
   (1) The quantities of skim milk, butterfat and milk protein contained in milk from producers for which it is the handler pursuant to §1033.9 (b) or (c), showing:
      (i) The quantity of milk delivered to each plant; and
      (ii) For each producer the pounds of milk, butterfat and milk protein tests, and the somatic cell count;

   (2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in §1033.13(b); and

   (3) Such other information with respect to its receipts and utilization of skim milk, butterfat and milk protein, and somatic cell count as the market administrator may prescribe;

   (c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of bottling grade milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing the amount of reconstituted skim milk in route disposition in the marketing area.

§ 1033.31 Payroll reports.

(a) On or before the 20th day after the end of the month, each handler who elects to pay producers pursuant to §1033.72(d) 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 identity of the handler and the producer and the month to which the payment applies;
   (2) The total pounds of milk and, with respect to final payments, the average butterfat and protein content and somatic cell count 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;

(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 payments pursuant to § 1033.76(a) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, his payroll for such month for dairy farmers from whom he received bottling grade milk. Such payroll shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) On or before the 22nd day after the end of the month, each cooperative association with respect to the milk of producers shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat and milk protein content thereof, the somatic cell count of the milk, and the rate and net amount of

§ 1033.32  Other reports.

(a) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an order plant shall report total receipts and disposition or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

(c) On or before the 26th day of the month, each handler who receives milk from a producer and does not make payment to such producer shall report the following information:

(1) The identity of each such 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 by the producer, to be made from the partial payment for such milk;

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

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

(d) On or before the 26th day of the month, each handler who receives milk from a producer and makes payment to such producer shall report the following information:

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

(2) The total deductions authorized by such producers to be made from the partial payments for such milk;

(3) The total pounds of milk received from a handler described in §1033.9(c); and

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

(e) On or before the 6th day after the end of the month, each handler who receives milk from a producer and does not make payment to such producer shall report to the market administrator the following information with respect to the receipts of milk by such handler during such month:

(1) The identity of each producer from whom milk was received;

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

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

(4) The total pounds of skim milk, butterfat and milk protein, and the somatic cell count of milk received from a handler described in §1033.9(c); and

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

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

(g) In addition to the reports required pursuant to paragraphs (a) through (f) of this section and §§1033.30 and 1033.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler’s obligation under the order.

§ 1033.40 Classes of utilization.

Except as provided in §1033.42, all skim milk and butterfat required to be reported by a handler pursuant to §1033.30 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, 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
§ 1033.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1033.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in §1033.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §1033.9(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 (b)(2) 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), (b)(2), (b)(4), (b)(5), and (b)(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 §1033.9 (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, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.


§ 1033.42 Classification of transfers and diversions.

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

(1) The skim milk and 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 §1033.44(a)(12) and the corresponding step of §1033.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1033.44(a)(7) or the corresponding step of §1033.44(b), the skim milk or butterfat so transferred 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 §1033.44(a)(1) or (12) or the corresponding steps of §1033.44(b), the skim milk or butterfat so transferred, 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.
§ 1033.42 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 § 1033.40.

(c) Transfers to producer-handlers. Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order 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 or a producer-handler 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 transferee or handler claims such classification in its report of receipts and utilization filed pursuant to § 1033.30 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;

(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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in paragraph (d)(2) of this section.

58 FR 27816, May 11, 1993

§ 1033.43 General classification rules.

In determining the classification of producer milk pursuant to §1033.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1033.30 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 §1033.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1033.40, 1033.41, and 1033.42;

(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;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1033.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association;

(d) Bulk fluid milk products transferred or diverted from a pool plant operated by a cooperative association to another pool plant shall be classified in accordance with the rules set forth in §1033.42(a) and the value thereof shall be used to compute the receiving handler's pool obligation for such milk pursuant to §1033.60(a), (b), (h), (i) and (j);

(e) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under §1033.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1033.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

(f) 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.

§ 1033.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1033.9(a) for each of its pool plants separately and of each handler described in §1033.9(b) and (c) by allocating the handler’s receipts of skim milk and butterfat to its 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 §1033.41(b);
   (2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:
      (i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and
      (ii) 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 remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products specified in §1033.40(b)(1) that were received 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;
   (4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in §1033.40(b)(1) that was not subtracted pursuant to paragraphs (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in §1033.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (a)(5), and (a)(6) of this section;
   (5) 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 or a fluid cream product) that is used to produce, or added to, any product specified in §1033.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1033.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II;
      (ii) Receipts of fluid milk products (except filled milk) and bulk cream for which bottling grade certification is not established;
      (iii) Receipts of fluid milk products and bulk cream from unidentified sources;
      (iv) Receipts of fluid milk products and bulk cream from a producer-handler, as defined under this or any other Federal order;
      (v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants that were not subtracted pursuant to paragraph (a)(2)(i) of this section; and
      (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.

(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) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (a)(7)(v) of this section for which the handler requests classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (a)(7)(v), and (a)(8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step (exclusive of transfers between pool plants of the same handler) at all pool plants of the handler;

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, 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 remaining at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) 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 §1033.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(ii), (5) and (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 paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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 (b)(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 §1033.43(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
§ 1033.50 Class and component prices.

Subject to the provisions of §1033.52, the class and component prices for the month of shall be as follows:

There is no content in the image that provides specific class and component prices for the month.
§ 1033.51

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.04.

(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) Butterfat price. The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to §1033.73 multiplied by 10.

(e) Milk protein price. The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) Skim milk price. The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to §1033.73 times 35, and rounding the result to the nearest whole cent.

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

§ 1033.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1033.73 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.

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Agricultural Marketing Service, USDA

§ 1033.52

(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 American cheese.

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 18961, Apr. 14, 1995]

§ 1033.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers that 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 § 1033.50(a) shall be adjusted on the basis of where the plant receiving the milk is located, as follows:

1. At a plant located in one of the zones set forth in § 1033.2, the adjustment shall be as follows:

   Adjustment per hundredweight
   

2. At a plant located outside the marketing area and 60 miles or less from the city hall of the nearest city listed herein, excluding plants located in the area specified in (a)(4) of this section, the adjustment shall be the adjustment applicable at Cincinnati, Coshocton, Dayton, Lima, Marietta, or Toledo, Ohio; Ashland or Maysville, Kentucky; or Beckley or Charleston, West Virginia; whichever city is nearest;

3. At a plant located outside the marketing area and more than 60 miles from the city hall of the nearest city listed in paragraph (a)(2) of this section, excluding plants located in the area specified in paragraph (a)(4) of this section, the adjustment shall be the adjustment applicable at the nearest city, less 11 cents and less an additional 1.5 cents for each 10 miles or...
§ 1033.53
fraction thereof in excess of 70 miles that such plant is located from the city hall of the nearest city listed above. However, at any such plant located in the Louisville-Lexington-Evansville marketing area under part 1046 of this chapter or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia, or Virginia, the adjustment shall be the adjustment applicable at Zone 4.
(4) At a plant located outside the marketing area in the Ohio counties of Defiance, Paulding Van Wert, (except the city of Delphos), or Williams, the adjustment shall be minus 24 cents, and
(5) For the purpose of computing location adjustments pursuant to this section, distances shall be measured by the shortest hard-surfaced distance as determined by the market administrator.
(b) For the purpose of determining the quantity of Class I producer milk on which a location adjustment shall apply under paragraph (a) of this section, the quantity of fluid milk products transferred as Class I milk from pool plants to a pool distributing plant at which the Class I price is greater than the Class I price at the transferor plant shall be assigned pro rata with the receipts of producer milk at the transferee plant to the Class I milk remaining at such transferee plant after the assignments pursuant to §1033.44(a)(1) through (a)(12) and the corresponding steps of §1033.44(b) plus the pounds of skim milk and butterfat in receipts of concentrated fluid milk products from other pool plants that are assigned to Class I use. The Class I utilization so assigned to the transferred fluid milk products then shall be allocated first to receipts from plants at which the Class I price is not less than the Class I price at the transferee plant, and then to receipts from plants with lower Class I prices, in sequence beginning with the plant having the highest Class I price.
(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section.

§ 1033.54 Use of equivalent prices.
If for any reason a price quotation or factor required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price or factor determined by the Secretary to be equivalent to the price or factor that is required.

DIFFERENTIAL POOL AND Handler obligations
§ 1033.60 Computation of handlers' obligations to pool.
The market administrator shall compute each month for each handler defined in §1033.9(a) with respect to each of such handler's pool plants, and for each handler defined in §1033.9(b) and (c), an obligation to the pool computed by adding the following values:
(a) The pounds of producer milk in Class I as determined pursuant to §1033.44, and the pounds of bulk fluid
milk products received from a pool plant operated by a cooperative association pursuant to §1033.43(d) in Class I, both multiplied by the difference between the Class I price (adjusted pursuant to §1033.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to §1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to §1033.43(d) in Class II, both multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to §1033.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class I pursuant to §1033.44(a)(14) by multiplying the skim milk pounds so assigned by the percentage of protein in the handler’s receipts of producer skim milk during the month, as follows:

1. The hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1033.44(a)(14) and the corresponding step of §1033.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1033.44(a)(14) multiplied by the butterfat price, plus the butterfat pounds of overage subtracted from Class I pursuant to §1033.44(b) multiplied by the butterfat price;

2. The hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1033.44(a)(14) and the corresponding step of §1033.44(b) at the current month's Class I-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

3. The protein pounds in skim milk overage subtracted from Class III pursuant to §1033.44(b) multiplied by the butterfat price;

4. The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1033.44(a)(9) and the corresponding step of §1033.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

5. The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1033.44(a)(9) and the corresponding step of §1033.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

6. The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1033.44(a)(7)(i) through (iv) and the corresponding step of §1033.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

7. The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1033.44(a)(7)(v) and (vi) and the corresponding step of §1033.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

8. The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1033.44(a)(11) and the corresponding step of
§ 1033.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month’s Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to §1033.44, and the pounds of skim milk in Class I bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to §1033.43(d), both multiplied by the skim milk price for the month computed pursuant to §1033.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler’s receipts of producer skim milk during the month for each report filed, separately, and the pounds of protein in Class II and Class III skim milk in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to §1033.43(d), both multiplied by the protein price for the month, computed pursuant to §1033.50(e) and adjusted pursuant to §1033.66 for the weighted average somatic cell content of the handler’s receipts of milk.

(j) The pounds of butterfat in all three classes as determined pursuant to §1033.44, and the pounds of butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to §1033.43(d), both multiplied by the butterfat price for the month computed pursuant to §1033.50(d).

(k) 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, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) 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 §1033.76(c).

(m) 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.

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


§ 1033.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to §1033.60, paragraphs (a) through (g) and (k) and (l), excluding the values in paragraphs (a) and (b) associated with bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to §1033.43(d), for all handlers who made reports pursuant to §1033.30 and who made payments pursuant to §1033.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to §1033.74(a);
(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to §1033.74(a);
(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;
(e) 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 §1033.60(g);
(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the “Weighted Average Differential Price”.

§1033.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:
(a) Combine into one total the values computed pursuant to §1033.60, paragraphs (h) and (i), excluding the values associated with bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to §1033.43(d), for all handlers who made reports pursuant to §1033.30 and who made payments pursuant to §1033.71 for the preceding month;
(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer’s somatic cell count pursuant to §1033.66;
(c) Divide the resulting amount by the total pounds of protein in producer milk; and
(d) Round to the nearest whole cent. The result is the “Producer protein price.”

§1033.63 Uniform price.

A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to §1033.61 to the basic formula price for the month.

§1033.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to §1033.61, the producer protein price computed pursuant to §1033.62, and the uniform price computed pursuant to §1033.63(a).

§1033.65 Value of producer milk.

The value of producer milk shall be the sum of:
(a) The weighted average differential price computed pursuant to §1033.61 and adjusted pursuant to §1033.74, multiplied by the total hundredweight of producer milk received from the producer;
(b) The producer protein price computed pursuant to §1033.62 and adjusted pursuant to §1033.66, multiplied by the total milk protein contained in the producer milk received from the producer; and
(c) The butterfat price computed pursuant to §1033.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§1033.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer’s milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.
§ 1033.70

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment:

<table>
<thead>
<tr>
<th>Somatic cell counts</th>
<th>Factors</th>
<th>Constants for computing the somatic cell adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 50,000</td>
<td>.300</td>
<td>.09375</td>
</tr>
<tr>
<td>51,000 to 100,000</td>
<td>.200</td>
<td>.06250</td>
</tr>
<tr>
<td>101,000 to 150,000</td>
<td>.150</td>
<td>.046875</td>
</tr>
<tr>
<td>151,000 to 200,000</td>
<td>.100</td>
<td>.03125</td>
</tr>
<tr>
<td>201,000 to 250,000</td>
<td>.050</td>
<td>.015625</td>
</tr>
<tr>
<td>251,000 to 300,000</td>
<td>.025</td>
<td>.0078125</td>
</tr>
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<tr>
<td>751,000 and above</td>
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<td>.000000</td>
</tr>
</tbody>
</table>

[58 FR 43509, Aug. 17, 1993]

PAYMENTS FOR MILK

§ 1033.70 Producer-settlement fund.

The market administrator shall maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1033.71, 1033.76, and 1033.77 shall be deposited in this fund, and all payments made pursuant to §§ 1033.72 and 1033.77 shall be made out of this fund;

(b) The difference between the amount added pursuant to §1033.61(d) and the amount resulting from the subtraction pursuant to §1033.61(f) shall be deposited in, or withdrawn from, this fund, as the case may be.


§ 1033.71 Payments to the market administrator.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 25th day of each month an amount determined by multiplying the hundredweight of producer milk and bulk fluid milk products from a pool plant operated by a cooperative association received by such handler during the first 15 days of the month by the basic formula price for the preceding month, less proper deductions and charges authorized in writing by such producers.

(b) Subject to paragraph (c) of this section, each handler shall pay to the market administrator or before the 25th day after the end of each month the value of such handler's milk pursuant to §1033.60(a) through (l) and the value of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to §1033.43(d) as determined pursuant to §1033.60(a), (b), (h), (i) and (j), less:

1. The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to §1033.60(g);

2. Partial payments made pursuant to paragraph (a) of this section for such month; and

3. Proper deductions and charges authorized in writing by producers from whom the handler received milk, except that the total deductions and charges made under this section for the month for each producer shall not be greater than the total value of the milk received from such producer during the month.

(c) Subject to paragraph (d) of this section, each handler operating a distributing plant that is subject to the classification and pricing provisions of another order which provides for individual handler pooling shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

1. Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to the route disposition in each marketing area; and

2. Compute the value of the quantity of reconstituted skim milk assigned in paragraph (b)(1) of this section to route Divisions.
disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class III price) and subtract its value at the Class III price.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a), (b) and (c) 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;

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

(3) Payments due the market administrator from a cooperative association as a handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to §1033.72.

§1033.72 Payment to producers and to cooperative associations.

(a) On or before the 28th day of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the month by handlers from whom the appropriate payments have been received pursuant to §1033.71(b) of the amount determined pursuant to §1033.65, less:

(1) Partial payments made pursuant to paragraph (a) of this section with respect to such milk;

(2) Deductions for marketing services pursuant to §1033.86; and

(3) Other deductions authorized in writing by producers and made by handlers with respect to such milk.

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the first 15 days of the month by handlers from whom the appropriate payments have been received pursuant to §1033.71(a) at a rate per hundredweight equal to the basic formula price for the preceding month, less the deductions authorized in writing by producers and charges made by handlers with respect to such milk.

(c) In lieu of making payments to individual producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each cooperative association that so requests with respect to those producers for whom it markets milk who are certified to the market administrator as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section.

(d) In lieu of making payments to individual producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, 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 payable to 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
§ 1033.73

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

months. In making payments to the individual producers pursuant to this paragraph, the handler shall furnish the following information to each producer:

(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 and protein content and somatic cell count 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 it is other than the applicable minimum rate;
(4) The amount and nature of any deductions subtracted 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 by the market administrator 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 day 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 §1033.71(d)(2) of 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 producers or cooperative associations, 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 §1033.71, he shall reduce uniformly per hundredweight the payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete the payments to producers 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) If the unobligated balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, except those payments due producers as described in paragraph (f) of this section, the market administrator shall reduce uniformly per hundredweight the payments to producers and shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the funds become available.


§ 1033.73 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 §1033.51 (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 18962, Apr. 14, 1995]

§ 1033.74 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk at a plant outside the Central Zone shall be the Central Zone uniform price adjusted according to the location of the plant at the rates set forth in §1033.52(a); and

(b) For the purpose of computations pursuant to §1033.71(b)(1), the weighted average price shall be adjusted at the rate set forth in §1033.52(a) that is applicable at the location of the nonpool plant from which other source milk was received.

[58 FR 27822, May 11, 1993]
§ 1033.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler’s election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1033.30(c) and 1033.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(i) The obligation that would have been computed pursuant to § 1033.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I utilization that is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1033.60(e) and a credit in the amount specified in § 1033.71(b) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in paragraph (a)(1)(ii) of this section.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1033.30(c) and 1033.31(b) similar reports for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1033.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added to the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat in the plant’s route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other 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) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant (not to be less than the Class III price) subtract its value at the weighted average price applicable at such location (not to be less than the Class III price), and add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (b)(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.

(a) Charges on overdue accounts collected pursuant to this section shall be deposited into the administrative assessment fund maintained by the market administrator;

(b) Amounts payable pursuant to this section shall be computed by the market administrator monthly on the unpaid balance (including any unpaid charges previously assessed pursuant to this section) remaining on each overdue obligation on such date; and

(c) 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.

[49 FR 36077, Sept. 14, 1984]

§ 1033.85 Assessment for order administration.

As a pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th 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 farm production and milk received from a handler described in §1033.9(c) but excluding bulk fluid milk products delivered from a pool plant operated by a cooperative association to another pool plant pursuant to §1033.43(d));

(b) Receipts of bulk fluid milk products from a pool plant operated by a cooperative association to another pool plant pursuant to §1033.43(d));

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I pursuant to §1033.43(e) and other source milk allocated to Class I pursuant to §1033.44 (a)(7) and (a)(11) and the corresponding steps of §1033.44(b), except such other source milk that is excluded from the computations pursuant to §1033.60 (d) and (e); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in §1033.76(b)(2)(i).


§ 1033.86 Deduction for marketing services.

(a) The market administrator, in making payments to each producer pursuant to §1033.72, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk (except a handler’s own farm production) of such producer for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association as determined by the Secretary.

(b) The monies deducted pursuant to paragraph (a) of this section shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.


PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

GENERAL PROVISIONS

Sec. 1036.1 General provisions.

1036.2 Definitions.

(a) Eastern Ohio-Western Pennsylvania marketing area.

1036.3 Route disposition.

1036.4 [Reserved]

1036.5 Distributing plant.

1036.6 Supply plant.

1036.7 Pool plant.

1036.8 Nonpool plant.
§ 1036.1

1036.9 Handler.
1036.10 Producer-handler.
1036.11 [Reserved]
1036.12 Producer.
1036.13 Producer milk.
1036.14 Other source milk.
1036.15 Fluid milk product.
1036.16 Fluid cream product.
1036.17 Filled milk.
1036.18 Cooperative association.
1036.19 Reload point.
1036.20 [Reserved]
1036.21 Commercial food processing establishment.

HANDLER REPORTS
1036.30 Reports of receipts and utilization.
1036.31 Payroll reports.
1036.32 Other reports.

CLASSIFICATION OF MILK
1036.40 Classes of utilization.
1036.41 Shrinkage.
1036.42 Classification of transfers and diversions.
1036.43 General classification rules.
1036.44 Classification of producer milk.
1036.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES
1036.50 Class and component prices.
1036.51 Basic formula price.
1036.52 Plant location adjustments for handlers.
1036.53 Announcement of class and component prices.
1036.54 Equivalent price.

DIFFERENTIAL POOL AND HANDLER OBLIGATIONS
1036.60 Computation of handlers' obligations to pool.
1036.61 Computation of weighted average differential value.
1036.62 Computation of producer protein price.
1036.63 Uniform price and handlers' obligations for producer milk.
1036.64 Announcement of weighted average differential price, producer protein price, and uniform price.
1036.65 Value of producer milk.
1036.66 Computation of somatic cell adjustment.

PAYMENTS FOR MILK
1036.70 Producer-settlement fund.
1036.71 Payments to the market administrator.
1036.72 Payments from the producer-settlement fund.
1036.73 Payments to producers and to cooperative associations.
1036.74 Butterfat differential.
1036.75 Plant location adjustments for producers and on nonpool milk.
1036.76 Payments by handler operating a partially regulated distributing plant.
1036.77 Adjustment of accounts.
1036.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION
1036.85 Assessment for order administration.
1036.86 Deductions for marketing services.


Source: 43 FR 38798, Aug. 31, 1978, unless otherwise noted.

GENERAL PROVISIONS
§ 1036.1 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
§ 1036.2 Eastern Ohio-Western Pennsylvania marketing area.

The Eastern Ohio-Western Pennsylvania marketing area, hereinafter called the “marketing area,” means all the territory within the boundaries of the following geographical units, including all waterfront facilities connected therewith and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within the listed geographical units:

(a) In the State of Ohio:

(1) The following counties in their entirety:


(2) In Guernsey County: The townships of Londonderry, Millwood, and Oxford.

(b) In the State of Pennsylvania:

(1) The following counties in their entirety:


(2) In Clarion County: The townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby.
§ 1036.7 Pool plant.

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

(a) A distributing pool plant that has:

(1) Route disposition, except filled milk, during the month of not less than 50 percent (40 percent for each month of April through August) of the total receipts of fluid milk products, except filled milk, that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk pursuant to §1036.13 to plants other than those qualified as pool plants pursuant to this paragraph; and

(2) Route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of the receipts described in paragraph (a)(1) of this section.

(b) A supply plant from which not less than 40 percent during the months of September, October and November, not less than 35 percent during the months of January and February, and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to §1036.13 but excluding milk received as diverted milk) and handlers defined in §1036.9(c) is transferred or diverted and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area, subject to the following conditions:

(1) At least one tank load of Grade A fluid milk products (not less than 45,000 pounds) must be shipped from the supply plant to a pool distributing plant during one of the months of September, October and November; and

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants.

(c) A plant that qualified as a pool plant under paragraph (b) of this section on the basis of its transfers and diversions to pool plants (exclusive of its route disposition in the marketing area) in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through August during which it
§ 1036.8

A plant operated by a cooperative association if, during the month, 35 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s) when a Class II or Class III classification is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association’s plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;
(2) The 35 percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;
(3) The plant is approved by a duly constituted health authority to handle milk for fluid consumption; and
(4) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under the similar provisions of another Federal order applicable to a distributing plant or supply plant.

The term “pool plant” shall not apply to the following plants:

(a) A producer-handler plant; and
(b) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

§ 1036.9

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

§ 1036.8

Nonpool plant.

Nonpool plant means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling 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:
(1) A nonpool plant that is a distributing plant and is not an other order plant or a producer-handler plant; and
(2) An other order plant with respect to fluid milk products which were received at a pool plant from such a plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.
(d) Unregulated supply plant means:
(1) A nonpool plant that is a supply plant and is not an other order plant or a producer-handler plant; and
(2) An other order plant with respect to fluid milk products which were received at a pool plant from such a plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.
(b) Any cooperative association with respect to producer milk which it causes to be diverted for its account from a pool plant of another handler to a nonpool plant;

(c) Any cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

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

(e) Any producer-handler; and

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1036.10 Producer-handler.

Producer-handler means any person who:

(a) Operates a dairy farm and a distributing plant;

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

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1036.11 [Reserved]

§ 1036.12 Producer.

(a) Producer means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk for fluid consumption in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to §1036.13 from a pool plant to a nonpool plant or another pool plant.

(b) “Producer” shall not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II or Class III classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

§ 1036.13 Producer milk.

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

(a) With respect to a handler defined in §1036.9(a):

(1) Received at the handler’s pool plant directly from the producer, excluding receipts of milk diverted from another pool plant.

(2) Received at the handler’s pool plant from a handler defined in §1036.9(c) that does not operate a pool plant;

(3) Diverted pursuant to paragraphs (e) and (f) of this section for the handler’s account from his pool plant to a nonpool plant that is not a producer-handler plant; or

(4) Diverted for the handler’s account from his pool plant to another pool plant, subject to the conditions set forth in paragraph (h) of this section;

(b) With respect to a handler defined in §1036.9(b), diverted pursuant to paragraphs (e) and (f) of this section for the handler’s account from a pool plant of another handler to a nonpool plant that is not a producer-handler plant;

(c) With respect to a handler defined in §1036.9(c) that does not operate a pool plant, received by the handler from the producer’s farm in excess of the producer’s milk that is received by a pool plant operator pursuant to paragraph (a)(2) of this section; and

(d) With respect to a handler defined in §1036.9(c) that also operates a pool plant, received by the handler from the producer’s farm.

(e) During March through August, subject to the conditions of paragraph (f) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.
§ 1036.14 Other source milk.

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

(a) Fluid milk products and bulk fluid cream products from any source except producer milk, fluid milk products and bulk fluid cream products from pool plants, and fluid milk products and bulk fluid cream products in inventory at the beginning of the month;

(b) Receipts of packaged fluid cream products from other plants;

(c) Products, other than fluid milk products, bulk fluid cream products and Class II products listed in §1036.40(b)(3), from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for.

§ 1036.15 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.

§ 1036.16 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.

§ 1036.17 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).

§ 1036.18 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, known as the "Capper-Volstead Act";

(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; and

(c) To have all of its activities under the control of its members.

§ 1036.19 Reload point.

Reload point means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload operation on the premises of a plant shall be considered a part of the plant operation.

§ 1036.20 [Reserved]

§ 1036.21 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 §§ 1036.13, 1036.41 and 1036.52.

§ 1036.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, reports of receipts and utilization for such month shall be made to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler operating a pool plant shall report for each of his pool plants:

(i) Receipts of skim milk and butterfat contained in or represented by:

(1) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, the butterfat and milk protein contained in the milk, and the somatic cell count of the milk;
§ 1036.31 Payroll reports.

(a) On or before the 18th day after the end of each month, each handler who pays producers pursuant to §1036.73(a) 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 identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds of milk, and, with respect to final payments, the average butterfat and protein content and somatic cell count 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;

(5) The net amount of payment to the producer; and

(6) 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 payments pursuant to §1036.76(a) 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 of each dairy farmer;

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

(3) The average butterfat and milk protein content, and the somatic cell count, of such milk;

(4) The amount and nature of any deductions, as authorized by the dairy farmer, from the payment for such milk; and

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of bottling grade milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing the amount of reconstituted skim milk in route disposition in the marketing area.

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

§ 1036.32 Other reports.

(a) On or before the 22nd day of each month each delinquent handler pursuant to §1036.73(c) shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

1. The identity 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 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 §1036.9(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 22nd day of each month each handler defined in §1036.9(a), (b) and (c) except a handler who is required to file reports pursuant to paragraph (a) of this section shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

1. The total pounds of producer milk;
2. The total deductions as authorized by the producers to be made from the partial payment for such milk;
3. The total pounds of milk received from a handler described in §1036.9(c); and
4. 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 8th day after the end of each month, each delinquent handler (pursuant to §1036.73(c)), shall report to the market administrator the following information with respect to receipts of milk during such month:

1. The identity of each producer from whom milk was received;
2. The total pounds of producer milk received from such producer, its average butterfat and milk protein contents, and its average somatic count;
3. The amount and nature of any deductions, as authorized 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 §1036.9(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.

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

(e) In addition to the reports required pursuant to paragraphs (a) through (d) of this section and §§1036.30 and 1036.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(f) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(g) Each handler who operates another order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

§ 1036.40  Classification of Milk

§ 1036.40 Classes of utilization.

Except as provided in §1036.42, all skim milk and butterfat required to be reported by a handler pursuant to §1036.30 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 fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

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

(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

(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.

(2) In unprocessed 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;
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 §1036.15 and the fluid cream product definition pursuant to §1036.16; and

(7) In shrinkage assigned pursuant to §1036.41(a) to the receipts specified in §1036.41(a)(2) and in shrinkage specified in §1036.41(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.


§ 1036.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1036.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b)(1) through (b)(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 (b)(6) of this section which was received in bulk fluid form;

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in §1036.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §1036.9(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 (b)(2) 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), (b)(2), (b)(4), (b)(5), and (b)(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 §1036.9(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, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.


§ 1036.42 Classification of transfers and diversions.

Skim milk or butterfat in the form of a fluid milk product or a bulk fluid cream product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after the computations pursuant to §1036.44(a)(13) and the corresponding step of §1036.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor plant received during the month other source milk to be allocated pursuant to §1036.44(a)(7) and the corresponding step of §1036.44(b), the skim milk and 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 plant received during the month other source milk to be allocated pursuant to §1036.44(a)(12) or (13) and the corresponding steps of §1036.44(b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler plant;

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of paragraphs (c)(1) and (2) of this section are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from paragraph (c)(3) of this section:

(1) The transferring or diverting handler claims classification as Class II or Class III in his report submitted pursuant to §1036.30;

(2) The operator of such nonpool 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 the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of milk (approved by a duly constituted health authority for fluid consumption) for such nonpool plant;

(ii) Any route disposition in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of milk (approved by
§ 1036.43 General classification rules.

In determining the classification of producer milk pursuant to §1036.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1036.30 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 §1036.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1036.40, 1036.41, and 1036.42;

(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;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1036.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk and butterfat allocated to the other class shall be classified as Class III milk; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of §1036.40.

§ 1036.44 Classification of producer milk.

After making the computations pursuant to §1036.43, the market administrator shall determine the classification of producer milk for each handler as follows: Provided, That the classification of producer milk for which a cooperative association is the handler pursuant to §1036.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association:

(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 classified as Class III milk pursuant to §1036.41(b);

(2) Subtract from the total pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products received from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(3) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in fluid cream products in packaged form and in bulk concentrated fluid milk products that are in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II;

(4) 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 §1036.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1036.40(c)(8)), but not in excess of the pounds of skim milk remaining in Class II;

(5) 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: 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. 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 each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to paragraph (a)(7)(v) 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;

(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:

(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.
specified in §1036.40(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) and bulk fluid cream products for which appropriate health approval is not established and receipts of fluid milk products and bulk fluid cream products, from unidentified sources;

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

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

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(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) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2)(i) and (7)(iv) of this section for which the handler requests classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (a)(7)(iv) of this section which are in excess of the pounds of skim milk remaining in Class II and Class III combined;

(iii) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2)(ii), (a)(5) and (a)(7)(i) of this section.

(9) Subtract from the pounds of skim milk remaining in each class, in sequence beginning with Class III, the pounds of skim milk in fluid milk products and products specified in §1036.40(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,
§ 1036.44 7 CFR Ch. X (1-1-99 Edition)

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), (a)(7)(iv), and (a)(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 paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler’s other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler’s other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(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)(iv) and (a)(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 §1036.45(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 proportion 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 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
Agricultural Marketing Service, USDA § 1036.45

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)(i) 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 §1036.42(a);

(14) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of milk from a handler defined in §1036.9(c) that also operates a pool plant;

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

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to §1036.44(a)(15) and the corresponding step of §1036.44(b).


§ 1036.45 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 §1036.44(a)(13) and the corresponding step of §1036.44(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 §1036.43(d) and §1036.44 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 and bulk fluid cream products to an other order plant the classification to which the skim milk and butterfat in such fluid milk products and bulk fluid cream products were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any changes in such classification arising in the verification of such report.
§ 1036.50  
(d) On or before the 20th day of each month, report to each cooperative association that so requests the class utilization of milk received during the preceding month by each handler from producers who are members of such association, prorating to such receipts the class utilization of all producer receipts of such handler.


§ 1036.50  
CLASS PRICES

§ 1036.50 Class and component prices.

Subject to the provisions of §1036.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.00.

(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) Butterfat price. The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

1. The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

2. The butterfat differential for the month, computed pursuant to §1036.74 multiplied by 10.

(e) Milk protein price. The price per pound for milk protein shall be computed subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) Skim milk price. The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to §1036.74 times 35, and rounding the result to the nearest whole cent.

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


§ 1036.51  
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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1036.74 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.

(b) The gross value of milk used to manufacture Cheddar cheese shall be computed, using price data determined pursuant to paragraphs (a) and (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

   (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.
Agricultural Marketing Service, USDA

§ 1036.52

(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 value 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 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 18962, Apr. 14, 1995]

§ 1036.52 Plant location adjustments for handlers.

(a) At a plant in the marketing area or in the State of Pennsylvania, the Class I price for producer milk shall be the Class I price computed pursuant to paragraph (a) of §1036.50.

(b) At a plant outside the area specified in paragraph (a) of this section, the Class I price shall be adjusted by a reduction of 1.5 cents for each 10 miles or fraction thereof that such plant is from the city hall of the nearest of the following cities: Canton and Cleveland, Ohio; Erie, Pittsburgh, and Uniontown, Pennsylvania; and Clarksburg, West Virginia. Distance applied pursuant to this paragraph shall be the shortest hard-surfaced highway distances as determined by the market administrator.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

(d) For the purpose of computing location adjustments pursuant to paragraph (b) of this section, fluid milk products physically received at a pool plant from other pool plants shall be assigned any remainder of Class I milk at such plant that is in excess of 92.5 percent of the sum of producer milk receipts at the plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made in sequence beginning with receipts from
§ 1036.53 Announcement of class and component prices.

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

(a) The Class I price for the following month;
(b) The Class II price for the following month;
(c) The Class III and Class III–A prices for the preceding month;
(d) The butterfat differential for the preceding month; and
(e) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1036.50(d), (e) and (f) for the preceding month.

(f) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

§ 1036.54 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.

Differential Pool and Handler Obligations

§ 1036.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1036.9(a), (b), and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1036.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1036.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1036.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1036.44(a)(15) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1036.44(a)(15), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

1. The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1036.44(a)(15) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1036.44(b) multiplied by the butterfat price;

2. The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1036.44(a)(15) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1036.44(b) multiplied by the butterfat price;

3. The protein pounds in skim milk overage subtracted from Class III pursuant to § 1036.44(a)(15) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1036.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1036.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

1. The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1036.44(a)(9) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1036.44(b) multiplied by the butterfat price;

2. The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1036.44(a)(9) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1036.44(b) multiplied by the butterfat price;

3. The protein pounds in skim milk overage subtracted from Class III pursuant to § 1036.44(a)(9) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1036.44(b) multiplied by the butterfat price.
skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1036.44(a)(9) and the corresponding step of §1036.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1036.44(a)(9) and the corresponding step of §1036.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1036.44(a)(7)(i) through (iii), and the corresponding step of §1036.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1036.44(a)(7)(iv) and (v) and the corresponding step of §1036.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1036.44(a)(12) and the corresponding step of §1036.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to §1036.44 multiplied by the skim milk price for the month computed pursuant to §1036.50(f).

(i) The pounds of protein in skim milk in Class I and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to §1036.50(e) and adjusted pursuant to §1036.66 for the weighted average somatic cell content of the handler's receipts of milk.

(j) The pounds of butterfat in all three classes as determined pursuant to §1036.44 multiplied by the butterfat price for the month computed pursuant to §1036.50(d).

(k) 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, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) 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 §1036.76(c).

(m) 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
§ 1036.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (a) through (g) and (k) and (l), for all handlers who made reports pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;
(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1036.75(a);
(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1036.75(a);
(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;
(e) 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 § 1036.60(g);
(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result is the “Weighted Average Differential Price.”

§ 1036.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;
(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer’s somatic cell count pursuant to § 1036.66;
(c) Divide the resulting amount by the total pounds of protein in producer milk; and
(d) Round to the nearest whole cent. The result is the “Producer protein price.”

§ 1036.63 Uniform price and handlers’ obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1036.61 to the basic formula price for the month.
(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1036.65 and 1036.73.

§ 1036.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 13th day after the end of the month the weighted average differential price computed pursuant to § 1036.61, the producer protein price computed pursuant to § 1036.62, and the uniform price computed pursuant to § 1036.63(a).

§ 1036.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1036.61 and adjusted pursuant to § 1036.75, multiplied by the total hundredweight of producer milk received from the producer;
(b) The producer protein price computed pursuant to § 1036.62 and adjusted pursuant to § 1036.66, multiplied by the total milk protein contained in the


unconcentrated fluid milk products received at the plant during the prior month.

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

producer milk received from the producer; and

(c) The butterfat price computed pursuant to §1036.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

[58 FR 43512, Aug. 17, 1993]

§ 1036.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer’s milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment:

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<th>Somatic cell counts</th>
<th>Factors</th>
<th>Constants for computing the somatic cell adjustment</th>
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<td>751,000 and above</td>
<td>-.250</td>
<td>-.078125</td>
</tr>
</tbody>
</table>

[58 FR 43512, Aug. 17, 1993]

Payments for Milk

§ 1036.70 Producer-settlement fund.

(a) 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 §§1036.71, 1036.76 and 1036.77 and from which he shall make all payments pursuant to §§1036.72, 1036.73 and 1036.77.


§ 1036.71 Payments to the market administrator.

(a) Subject to paragraph (d) of this section, each handler operating a pool plant shall pay to the market administrator on or before the day prior to the last day of each month an amount determined by multiplying the Class III price for the preceding month (adjusted by the butterfat differential, if the handler so elects) by the following receipts during the first 15 days of such month:

(1) Producer milk from producers whose payments are authorized to be collected by a cooperative association;

(2) Bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association; and

(3) Milk from a cooperative association in its capacity as a handler pursuant to §1036.9(c) that also operates a pool plant.

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 17th day after the end of each month the value of such handler’s milk pursuant to §1036.60(a) through (l), less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to §1036.60(g);

(2) Payments to be made pursuant to §1036.73(a) and (c) for producer milk received during such month; and

(3) The value at the weighted average price applicable at the location of the plants from which received with respect to other source milk for which a value is computed pursuant to §1036.60(e).

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant to §1036.9(c)
that also operates a pool plant, shall
pay to the market administrator, on or
before the 17th day after the end of
each month, an amount determined by
the sum of the following:

(1) The quantity of such receipts clas-
sified as Class I pursuant to
§1036.44(a)(15) and the corresponding
step of §1036.44(b) multiplied by the dif-
ference between the Class I price (ad-
justed pursuant to §1036.44(a)(15) and
the corresponding step of §1036.44(b)
multiplied by the difference between
the Class I price at the receiving plant
(adjusted pursuant to §1036.52) and the
Class II price;

(2) The quantity of such receipts clas-
sified as Class II pursuant to
§1036.44(a)(15) and the corresponding
step of §1036.44(b) multiplied by the dif-
ference between the Class II price and
the Class III price;

(3) The quantity of skim milk in such
receipts classified as Class I pursuant
to §1036.44(a)(15) multiplied by the
skim milk price for the month com-
puted pursuant to §1036.50(f);

(4) The pounds of protein in the skim
milk in such receipts classified in Class
II and Class III, computed by multi-
plying the skim milk pounds so as-
signed by the percentage of protein in
the handler’s receipts of skim milk
from a pool plant operated by a coopera-
tive association, or from a coopera-
tive association in its capacity as a
handler pursuant to §1036.9(c);

(5) The pounds of butterfat in all
three classes as determined pursuant
to §1036.44(b)(15) multiplied by the but-
terfat price for the month computed
pursuant to §1036.50(d); less

(6) Any payments made by the han-
der pursuant to paragraphs (a)(2) and
(a)(3) of this section for such month.

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

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

(2) If the date by which payments
must be received by the market admin-
istrator falls on a Saturday or Sunday
or any day that is a national holiday,
payments shall not be due until the
next day on which the market adminis-
trator’s office is open for public busi-
ness; and

(3) Payments due the market adminis-
trator from a cooperative association
handler may be offset by payments de-
termined by the market administrator
to be due the cooperative association
pursuant to §1036.73(b).

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

(1) Determine the quantity of recon-
stituted skim milk in filled milk in
route disposition from such plant in
the marketing area which was allo-
cated to Class I at such plant. If there
is such disposition from such plant in
marketing areas regulated by two or
more marketwide pool orders, the re-
constituted 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 reconsti-
tuted skim milk assigned in paragraph
(e)(1) of this section to route disposi-
tion in this marketing area by multi-
plying 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
(not to be less than the Class III
price) and the Class III price.

[43 FR 38798, Aug. 31, 1978, as amended at 45
FR 36356, May 30, 1980; 58 FR 43512, Aug. 17,
1993]

§1036.72 Payments from the producer-
settlement fund.

Subject to §1036.73(c), on or before
the 18th day after the end of each
month, the market administrator shall
pay to each handler the amount, if any,
by which the net pool obligation pursu-
ant to §1036.60 for such handler is less
than the value of such handler’s re-
ceipts of producer milk at the weighted
average differential price adjusted pur-
suant for location pursuant to §1036.75,
the protein price before adjustments
are made for somatic cell count, and
the butterfat price.

[58 FR 43513, Aug. 17, 1993]
§ 1036.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (c) through (f) of this section, each handler shall make payment to each producer (whose payments are not authorized to be collected by a cooperative association) as follows:

(1) On or before the last day of the month, to each producer who has not discontinued delivery of to such handler, not less than the amount determined by multiplying the pounds of producer milk received from such producer during the first 15 days of the month by the Class III price for the preceding month, less proper deductions authorized by the producer; and

(2) On or before the 18th day after the end of the month, to each producer not less than the value determined pursuant to §1036.65, less the following amounts:

(i) The payment made pursuant to paragraph (a)(1) of this section for such month;

(ii) Proper deductions authorized by the producer;

(iii) Any marketing service deduction pursuant to §1036.86; and

(iv) [Reserved]

(v) If before such date the handler has not received full payment from the market administrator pursuant to §1036.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this section following the date on which the remaining payment is received from the market administrator.

(b) Subject to paragraphs (e) and (f) of this section, the market administrator shall pay to each cooperative association:

(1) On or before the last day of each month for milk for which payment pursuant to §1036.71(a) has been received by the market administrator; and

(2) On or before the 18th day after the end of each month for milk for which payment is received by the market administrator pursuant to §1036.71. Such payment shall be in the amount determined for such milk pursuant to §1036.65, less the payments made pursuant to paragraph (b)(1) of this section.

(c) 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 make payments directly to producers for its receipts of producer milk pursuant to paragraph (a) of this section. Any such payments due producers (except any amount due pursuant to §1036.72) shall be made to the market administrator on or before the day prior to the dates specified in paragraph (a) of this section. The market administrator shall, in turn, pay such producers the amounts so received from the handler plus any amounts due such producers pursuant to §1036.72. This payment arrangement shall be followed until the handler has met all prescribed payment obligations for three consecutive months.

(d) In making payments to producers pursuant to paragraphs (a) and (c) of this section each producer shall be furnished 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 and milk protein content and somatic cell count of the milk for which payment is being made;

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

(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 day that is a national holiday, such payments need not to be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of §1036.71(d)(2) or paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator, the market administrator shall not be liable for any such delay.
§ 1036.74 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 §1036.51(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 18963, Apr. 14, 1995]

§ 1036.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a plant shall be adjusted according to the location of such plant at the rates set forth in §1036.52.

(b) The weighted average price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price, except that the weighted average price shall not be less than the Class III price.

§ 1036.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler’s election) calculated pursuant to paragraph (a) or (b) of this section.

If the handler fails to report pursuant to §§1036.30 and 1036.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(i) Receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant;

(ii) Transfers from such nonpool plants to a pool plant or other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or another order plant at which such milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in §1036.60(e) and a credit in the amount specified in §1036.71(a)(2)(ii) with respect to receipts from an unregulated
supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in paragraph (a)(1)(iii) of this section;

(iii) If the operator of the partially regulated distributing plant requests, and provides with his report pursuant to §1036.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of §1036.7(b) and (c), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler for milk (adjusted to a 3.5-per-cent butterfat basis pursuant to §1036.74) received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat in the plant’s route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the plant;

(i) As Class I milk from pool plants and other regulated plants, except that deducted under a similar provision of another order issued pursuant to the act; and

(ii) From a nonpool plant that is not another order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other 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 applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the weighted average price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (b)(3) of this section by the difference between the Class I price applicable under the other order 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.

(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to
§ 1036.77 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 moneys due the market administrator from such handler, due such handler from the market administrator, or due any producer or cooperative association 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 date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice. The market administrator shall offset any moneys due a handler against moneys due from such handler.

§ 1036.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1036.71, 1036.73, 1036.76, 1036.77, 1036.85, and 1036.86 shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. All such charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

§ 1036.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 17th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk handled during the month as follows:

(a) Each handler with respect to his receipts of producer milk (including such handler's own-farm production and milk received from a cooperative association pursuant to §1036.9(c)), fluid milk products transferred or diverted in bulk from a pool plant operated by a cooperative association and receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1036.43(d) and other source milk allocated to Class I pursuant to §1036.44 (a)(7) and (a)(11) and the corresponding steps of §1036.44(b), except such other source milk that is excluded from the computations pursuant to §1036.60 (d) and (e); and

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of the skim milk and butterfat subtracted pursuant to §1036.76(b)(2).

§ 1036.86 Deductions for marketing services.

(a) Except as set forth in paragraphs (b) and (c) of this section, each handler or the market administrator in making payments to producers pursuant to §1036.73(a) and (c) shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to milk of such
Agricultural Marketing Service, USDA

producer (except a handler’s own-farm production) and shall pay such deductions to the market administrator not later than the 17th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide 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 and for whom the cooperative is not authorized to collect payment for milk, each handler shall make in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers, and, on or before the 18th day after the end of each month, pay over such deductions to the association rendering such services.

(c) In the case of producers for whom a cooperative association is not performing the services set forth in paragraph (a) but for whom the cooperative association is collecting payment for milk pursuant to §1036.73(b) the market administrator shall make the deduction and perform the services specified in paragraph (a) of this section.


PART 1040—MILK IN SOUTHERN MICHIGAN MARKETING AREA

GENERAL PROVISIONS

Sec.
1040.1 General provisions.
1040.2 Southern Michigan marketing area.
1040.3 Route disposition.
1040.4 [Reserved]
1040.5 Distributing plant.
1040.6 Supply plant.
1040.7 Pool plant.
1040.8 Nonpool plant.
1040.9 Handler.
1040.10 Producer-handler.
1040.11 [Reserved]
1040.12 Producer.
1040.13 Producer milk.
1040.14 Other source milk.
1040.15 Fluid milk product.
1040.16 Fluid cream product.
1040.17 Filled milk.
1040.18 Cooperative association.
1040.19 Commercial food processing establishment.
1040.20 Reload point.

HANDLER REPORTS

1040.30 Reports of receipts and utilization.
1040.31 Payroll reports.
1040.32 Other reports.

CLASSIFICATION OF MILK

1040.40 Classes of utilization.
1040.41 Shrinkage.
1040.42 Classification of transfers and diversions.
1040.43 General classification rules.
1040.44 Classification of producer milk.
1040.45 Market administrator’s reports and announcements concerning classification.

CLASS PRICES

1040.50 Class and component prices.
1040.51 Basic formula price.
1040.52 Plant location adjustments for handlers.
1040.53 Announcement of class and component prices.
1040.54 Equivalent price.

PRODUCER PRICE DIFFERENTIAL

1040.60 Handler’s value of milk.
1040.61 Producer price differential.
1040.62 Announcement of producer prices.
1040.63 Value of producer milk.

PAYMENTS FOR MILK

1040.70 Producer-settlement fund.
1040.71 Payments to the producer-settlement fund.
1040.72 Payments from the producer-settlement fund.
1040.73 Payments to producers and to cooperative associations.
1040.74 Butterfat differential.
1040.75 Plant location adjustments for producers and on nonpool milk.
1040.76 Payments by handler operating a partially regulated distributing plant.
1040.77 Adjustment of accounts.
1040.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1040.85 Assessment for order administration.
1040.86 Deduction for marketing services.


SOURCE: 38 FR 4649, Feb. 20, 1973, unless otherwise noted.
§ 1040.1 General Provisions

§ 1040.1 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

§ 1040.2 Southern Michigan marketing area.

Southern Michigan marketing area, hereinafter referred to as the “marketing area,” means all territory geographically within the places listed below, together with all piers, docks, and wharves connected therewith, and all craft moored therat, and all territory wholly or partly herein occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments.

MICHIGAN COUNTIES


§ 1040.3 Route disposition.

Route disposition means a delivery, either directly or through any distribution facility (including a delivery by a vendor or sale from a plant or plant store) of any fluid milk product classified as Class I milk to a wholesale or retail outlet other than a delivery to any milk or filled milk plant.

§ 1040.4 [Reserved]

§ 1040.5 Distributing plant.

Distributing plant means a plant in which milk approved by any duly constituted regulatory agency for fluid consumption in the marketing area is processed or packaged and from which there is route disposition of fluid milk products in consumer-type packages or dispenser units.


§ 1040.6 Supply plant.

Supply plant means a plant in which milk approved by any duly constituted regulatory agency for fluid consumption in the marketing area is assembled and either processed or shipped in the form of a bulk fluid milk product to another milk processing plant. Such supply plant shall be equipped with stationary holding facilities.

§ 1040.7 Pool plant.

Pool plant means:

(a) A distributing plant:

(i) From which total route disposition, except filled milk, during the month is not less than 50 percent of the combined Grade A milk received in bulk at such plant direct from producers, from supply plants, from a cooperative association as described in §1040.9(c) or diverted by the plant operator or by a cooperative association pursuant to §1040.13 as producer milk, except as provided in paragraph (c) of this section; or

(ii) That qualified as a pool plant in either of the immediately preceding 2 months on the basis of performance standards described in paragraph (a)(1) of this section, except as provided in paragraph (c) of this section; or

(iii) That meets the following conditions, regardless of the provisions of paragraph (c) of this section:

(A) The plant is located in the marketing area;

(B) The plant has total route disposition, except filled milk, during the month of not less than 50 percent of the combined Grade A milk received in bulk at such plant direct from producers, from supply plants, from a cooperative association as described in §1040.9(c) or diverted by the plant operator or by a cooperative association pursuant to §1040.13 as producer milk; and

(C) The principal activity of such plant is the processing and distributing of aseptically processed fluid milk products.
Agricultural Marketing Service, USDA

§ 1040.7

(b) Except as provided in paragraph (c) of this section, a supply plant which during the month meets one of the performance requirements specified in paragraph (b) (1), (2), (3) or (4) of this section. All supply plants which are operated by one handler, or all the supply plants for which a handler is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by both parties, may be considered as a unit for the purpose of meeting the performance requirements of paragraph (b) (3), (2), (3) or (4) of this section upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice and notice of any change in designation, shall be furnished on or before the fifth working day following the month to which the notice applies. In any months of March through August a unit shall not contain any plant which was not qualified under this paragraph either individually or as a member of a unit during the previous September through February.

(1) A supply plant from which each month not less than 30 percent of the total quantity of Grade A milk received at such plant from producers and from a handler described in §1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in §1040.9(b)) pursuant to §1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant, is transferred to plants described in paragraph (b)(5) of this section. Not more than one-half of the shipping percentage specified in this paragraph may be met through the diversion of producer milk from the supply plant to pool distributing plants.

(2) A plant operated by a cooperative association which supplies distributing plants qualified under paragraph (a) of this section, if the amount of producer milk of members of the association delivered by transfer from such association’s plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section is as follows:

(i) During the month, is not less than that percentage which is designated by the market administrator for the current month pursuant to paragraph (b)(6) of this section; or

(ii) During the second through thirteenth preceding months, was not less than that percentage which was designated by the market administrator for the second through thirteenth preceding months pursuant to paragraph (b)(6) of this section, if such plant was qualified under this paragraph in each of the preceding 13 months.

(3) A plant located in the State of Michigan which has been a pool plant for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(i) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than that percentage designated by the market administrator for the current month pursuant to paragraph (b)(6) of this section; and

(ii) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (b)(5) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(4) A supply plant that qualifies as a pool plant pursuant to paragraph (b) (1), (2), or (3) of this section in each of the months of September through February shall be a pool plant for the following months of March through August. The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (b)(1) of this section on the basis of actual shipments therefrom. To requalify as a pool plant under paragraph (b) (2) or (3) of this section
or on a unit basis, such plant must first have met the shipping requirements of paragraph (b)(1) of this section for 6 consecutive months.

(5) Qualifying transfers from supply plants pursuant to this paragraph may be made to the following plants:
(i) Pool plants described in paragraph (a) of this section; and
(ii) Distributing plants fully regulated under other Federal orders except that credit for transfers to such plants shall be limited to the quantity of milk transferred from the supply plant to pool distributing plants during the month. Qualifying transfers to other order plants shall not include transfers made on the basis of agreed upon Class II or Class III utilization.
(iii) Partially regulated distributing plants that are neither other order plants, producer-handler plants, nor exempt plants and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.
(6) The shipping percentage that applies to a handler described in paragraphs (b)(2) and (b)(3) of this section shall be determined in the following manner:
(i) The market administrator shall calculate the percentage that producer deliveries used in Class I represent of the total producer milk in that month's pool.
(ii) The following table shall be used in determining a cooperative's delivery requirement in qualifying its balancing plant or a unit of such plants as pool plants for the same month of the following year:

<table>
<thead>
<tr>
<th>Producer deliveries used in class I as a percent of total producer milk</th>
<th>Applicable delivery percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 34.99</td>
<td>30</td>
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<tr>
<td>35–39.99</td>
<td>35</td>
</tr>
<tr>
<td>40–44.99</td>
<td>40</td>
</tr>
<tr>
<td>45–49.99</td>
<td>45</td>
</tr>
<tr>
<td>50+</td>
<td>50</td>
</tr>
</tbody>
</table>
(7) The shipping percentages determined pursuant to paragraphs (b)(1) or (b)(6) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping requirements might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired to be effective.
(c) The term “pool plant” shall not apply to the following plants:
(1) A producer-handler plant;
(2) An exempt plant;
(3) A distributing plant from which the Secretary determines there is a greater proportion of route disposition (except filled milk) in another marketing area regulated by another order issued pursuant to the Act than in the Southern Michigan marketing area and such plant is fully subject to regulation of such other order: Provided, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which it has a greater proportion of its route disposition (except filled milk) in such other marketing area, unless, notwithstanding the provisions of this subparagraph, it is regulated by such other order;
(4) A distributing plant which meets the requirements of paragraph (a) of this section which also meets the pooling requirements of another order on the basis of its route disposition in such other marketing area and from which the Secretary determines there is a greater quantity of route disposition (except filled milk) during the month in this marketing area than in such other marketing area but which plant is nevertheless fully regulated under such other order; and
(5) A supply plant which during the month is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (b) of this section and
Agricultural Marketing Service, USDA § 1040.12

a greater volume of fluid milk products (except filled milk) is moved to pool distributing plants than is moved to plants qualified as fully regulated plants under such other order on the basis of route disposition in the other marketing area.


§ 1040.8 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 class 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 under this or any other Federal order issued pursuant to the Act.

(c) Partially regulated distributing plant means a nonpool plant that is neither an other order plant, a producer-handler plant nor an exempt 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 that is neither an other order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a pool plant.

(e) Exempt plant means a plant, other than a plant described in paragraph (b) of this section, located outside the marketing area from which there is route disposition within the marketing area, but from which the route disposition wholly or partly within the marketing area averages less than 600 pounds per day for the month, and from which no milk is transferred to other handlers. Only §§ 1040.32 and 1000.5 of this chapter shall apply to an exempt plant.

§ 1040.9 Handler.

Handler means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to producer milk diverted in accordance with § 1040.13 for the account of such association;

(c) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant (such milk shall be considered as having been received by such cooperative association at a location identical to that of the pool plant to which it is delivered);

(d) Any person who operates a partially regulated distributing plant;

(e) Any producer-handler;

(f) Any person in his capacity as the operator of an other order plant from which fluid milk products are distributed on routes in the marketing area or shipped to a pool plant.


§ 1040.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a milk plant from which there is route disposition in the marketing area and who received fluid milk products only from his own production or by transfer from a pool plant and no milk products other than fluid milk products for reconstitution into fluid milk products; and

(b) Provides proof that: (1) The care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts by transfer from a pool plant); and (2) the operation of the processing business is the personal enterprise and risk of such person.

§ 1040.11 [Reserved]

§ 1040.12 Producer.

Producer means any person, other than a producer-handler under any Federal order, who produces milk approved by any duly constituted regulatory agency for fluid consumption in the marketing area, which is moved to a pool plant or diverted pursuant to § 1040.13 from a pool plant to another
§ 1040.13 Producer milk.

Producer milk shall be the skim milk and butterfat in milk from producers that is:

(a) Received at a pool plant directly from a producer excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1040.9(c);

(c) Diverted by the operator of a pool plant to another pool plant; and

(d) Diverted by the operator of a pool plant or by a handler described in § 1040.9(b) to a nonpool plant, other than a producer-handler, subject to the following conditions:

(1) During each of the months of September through February, not less than one day’s production of a producer must be physically received at a pool plant;

(2) The total quantity of producer milk diverted by a cooperative association or by the operator of a pool plant may not exceed 60 percent during each of the months of September through February of the total quantity of producer milk for which it is the handler;

(3) Any milk diverted in excess of the limits described in paragraph (d)(2) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the total milk diverted on the last day of the month, then the second-to-the-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for; and

(4) Milk which is subject to pooling under another order, shall not be producer milk.

§ 1040.14 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 fluid cream products from any source other than producers, handlers described in § 1040.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1040.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1040.40(b)(1)), from any source (including those products produced at the plant) 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 § 1040.40(b)(1)) for which the handler fails to establish disposition.

§ 1040.15 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.
§ 1040.16 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.

§ 1040.17 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).

§ 1040.18 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";
(b) To have full authority in the sale of milk of its members and is engaged in making collective sales or marketing milk or its products for its members; and
(c) To have all of its activities under the control of its members.

§ 1040.19 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 §§1040.13, 1040.41 and 1040.52.

§ 1040.20 Reload point.
Reload point means a location at which milk moved from a farm in a tank truck is transferred directly to another tank truck and commingled with other milk before entering a plant. A reload operation on the premises of a plant shall be considered a part of the plant operation.

§ 1040.30 Reports of receipts and utilization.
On or before the fifth working 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 described in §1040.9 (a), (b), and (c) shall report for each of its operations the following information:
(1) Product pounds, pounds of butterfat, pounds of protein, and the value of the somatic cell adjustment contained in or represented by:
(i) Receipts of producer milk, including producer milk diverted by the handler,
(ii) Receipts of milk from handlers described in §1040.9(c).
(2) Product pounds and pounds of butterfat contained in:
(i) Receipts by transfer or diversion of bulk fluid milk products;
(ii) Receipts of fluid milk products not included in (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;
(iii) Receipts of other source milk; and
(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in §1040.40(b)(1).
(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.
(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and

§ 1040.30 Reports of receipts and utilization.
On or before the fifth working 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 described in §1040.9 (a), (b), and (c) shall report for each of its operations the following information:
(1) Product pounds, pounds of butterfat, pounds of protein, and the value of the somatic cell adjustment contained in or represented by:
(i) Receipts of producer milk, including producer milk diverted by the handler,
(ii) Receipts of milk from handlers described in §1040.9(c).
(2) Product pounds and pounds of butterfat contained in:
(i) Receipts by transfer or diversion of bulk fluid milk products;
(ii) Receipts of fluid milk products not included in (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;
(iii) Receipts of other source milk; and
(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in §1040.40(b)(1).
(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.
(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and

§ 1040.30 Reports of receipts and utilization.
On or before the fifth working 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 described in §1040.9 (a), (b), and (c) shall report for each of its operations the following information:
(1) Product pounds, pounds of butterfat, pounds of protein, and the value of the somatic cell adjustment contained in or represented by:
(i) Receipts of producer milk, including producer milk diverted by the handler,
(ii) Receipts of milk from handlers described in §1040.9(c).
(2) Product pounds and pounds of butterfat contained in:
(i) Receipts by transfer or diversion of bulk fluid milk products;
(ii) Receipts of fluid milk products not included in (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;
(iii) Receipts of other source milk; and
(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in §1040.40(b)(1).
(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.
(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and
§ 1040.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in §1040.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

1. The producer's name and address;
2. The total pounds of milk received from such producer, with its protein and butterfat percentage;
3. The total pounds of butterfat contained in the producer's milk;
4. The total pounds of protein contained in the producer's milk;
5. The somatic cell count of the producer's milk;
6. The amount, or the rate per hundredweight, or rate per pound of component, the somatic cell adjustment to the protein price, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1040.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

[38 FR 4649, Feb. 20, 1973, as amended at 60 FR 45575, Aug. 31, 1995]

§ 1040.32 Other reports.

(a) [Reserved]

(b) In addition to the reports required pursuant to §§1040.30 and 1040.31, each handler and each operator of an exempt plant shall report such other information as the market administrator deems necessary to verify or establish such person's obligation under the order.

(c) When a holiday prevents normal business activities on any day except Sunday during the first 15 days of the month, those of the dates specified in §§1040.30, 1040.62, 1040.71, 1040.72, 1040.73, 1040.76, 1040.85, and 1040.86 which follows such holiday shall be postponed by the number of days lost as a result of such holiday.

[38 FR 4649, Feb. 20, 1973, as amended at 50 FR 24612, June 12, 1985]

Classification of Milk

§ 1040.40 Classes of utilization.

Except as provided in §1040.42, all skim milk and butterfat required to be reported by a handler pursuant to §1040.30 shall be classified as follows:

(a) Class I milk. Class I milk shall be:

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:

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 fluid milk products in inventory at the end of the month; and
3. In bulk fluid milk products and bulk fluid cream products in inventory at the end of the month.

§ 1040.41 Classes of utilization.

(a) Class I milk. Class I milk shall be:

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:

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 fluid milk products in inventory at the end of the month; and
3. In bulk fluid milk products and bulk fluid cream products in inventory at the end of the month.

§ 1040.42 Classes of utilization.

(a) Class I milk. Class I milk shall be:

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:

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 fluid milk products in inventory at the end of the month; and
3. In bulk fluid milk products and bulk fluid cream products in inventory at the end of the month.
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 §1040.15 and the fluid cream product definition pursuant to §1040.16;

(7) In shrinkage assigned pursuant to §1040.41(a) to the receipts specified in §1040.41(a)(2) and in shrinkage specified in §1040.41(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.

§ 1040.42 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 except as provided in §1040.43(d) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in the transferee-plant or divertee-plant after the computations.
pursuant to §1040.44(a)(12) and the corresponding step of §1040.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1040.44(a)(7) or the corresponding step of §1040.44(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 §1040.44(a)(11) or §1040.44(a)(12) or the corresponding steps of §1040.44(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 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 the 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;

(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 §1040.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred 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 producer-handler’s utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his 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 or a producer-handler plant shall be classified:
§ 1040.42

1040.42 National Dairy Promotion Order—Cooperative Marketing Agreement

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

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 §1040.30 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

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

§ 1040.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler 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 §1040.41(b);

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

(i) In 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) In packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(d) Milk in bulk delivered by a cooperative association as a handler under §1040.9(c) or from the pool plant of a cooperative association to a handler’s pool plant shall be classified according to use or disposition by the latter handler and the value thereof at the class prices shall be included in his value of milk pursuant to §1040.60.

(e) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under §1040.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1040.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

(f) 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.

§ 1040.43 General classification rules.

In determining the classification of producer milk pursuant to §1040.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1040.30 and shall compute the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1040.40, 1040.41, and 1040.42;

(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;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1040.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) Milk in bulk delivered by a cooperative association as a handler under §1040.9(c) or from the pool plant of a cooperative association to a handler’s pool plant shall be classified according to use or disposition by the latter handler and the value thereof at the class prices shall be included in his value of milk pursuant to §1040.60.

(e) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under §1040.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1040.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.
§ 1040.44 7 CFR Ch. X (1-1-99 Edition)

(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 §1040.40(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) Except for the first month that a pool plant is subject to this paragraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in §1040.40(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;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and 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 §1040.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1040.40(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:

(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 §1040.40(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) and bulk cream for which Grade A certification is not established;

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

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

(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; and

(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;

(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)(ii) 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;

(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)(ii)(A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step...
§ 1040.44

at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step (exclusive of transfers between pool plants of the same handler) at all pool plants of the handler;

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, 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 remaining at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an 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 §1040.44(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs 1040.44(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)(11) 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 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)(ii), (a)(7)(v), and (a)(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 paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available.
(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 paragraph (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 §1040.45(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 fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to §1040.42(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 pursuant to §1040.43(d), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as “overage”;

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to §1040.44(a)(14).
§ 1040.45 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 §1040.44(a)(12) and the corresponding step of §1040.44(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 §1040.43(e) and §1040.44 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.


CLASS PRICES

§ 1040.50 Class and component prices.

Subject to the provisions of §1040.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices per hundredweight or per pound for the month shall be as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $1.75.

(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.

(e) Class I differential price. The Class I differential price shall be the difference between the current month’s Class I and Class III price (this price may be negative).

(f) Class II differential price. The Class II differential price shall be the difference between the current month’s Class II and Class III price (this price may be negative).

(g) Class III-A differential price. The Class III-A differential price shall be the difference between the current month’s Class III-A and Class III price (this price may be negative).

(h) Skim milk price. The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by .965 and dividing the resulting amount by one hundred.

(j) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) Fluid carrier price. The fluid carrier price per hundredweight, rounded
to the nearest whole cent, shall be the Class III price, less the sum of the butterfat price times 3.5 and the protein price times the average protein test of the basic formula price as reported by the Department for the month (this price may be negative).

(1) Somatic cell adjustment. For each producer, an adjustment to the protein price for the somatic cell count of the producer’s milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the following table by the simple average price for the month of 40-pound blocks of Cheddar cheese at the National Cheese Exchange as reported by the Department. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

<table>
<thead>
<tr>
<th>Somatic cell counts</th>
<th>Constants for computing the somatic cell adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 50,000</td>
<td>.078125</td>
</tr>
<tr>
<td>51,000 to 100,000</td>
<td>.062500</td>
</tr>
<tr>
<td>101,000 to 150,000</td>
<td>.046875</td>
</tr>
<tr>
<td>151,000 to 200,000</td>
<td>.031250</td>
</tr>
<tr>
<td>201,000 to 250,000</td>
<td>.015625</td>
</tr>
<tr>
<td>251,000 to 300,000</td>
<td>.0078125</td>
</tr>
<tr>
<td>301,000 to 350,000</td>
<td>.000000</td>
</tr>
<tr>
<td>351,000 to 400,000</td>
<td>.000000</td>
</tr>
<tr>
<td>401,000 to 450,000</td>
<td>.000000</td>
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<tr>
<td>451,000 to 500,000</td>
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<td>501,000 to 550,000</td>
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<tr>
<td>551,000 to 600,000</td>
<td>.000000</td>
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<tr>
<td>601,000 to 650,000</td>
<td>.000000</td>
</tr>
<tr>
<td>651,000 to 700,000</td>
<td>.000000</td>
</tr>
<tr>
<td>701,000 to 750,000</td>
<td>.000000</td>
</tr>
<tr>
<td>751,000 and above</td>
<td>.000000</td>
</tr>
</tbody>
</table>

(2) The gross value 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:

(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 427;
(ii) Multiply the nonfat dry milk price by 8.07; and
(iii) Multiply the dry buttermilk price by 0.42.

(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
§ 1040.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant and classified as Class I milk without movement in bulk to another pool plant and for which a location adjustment is applicable, the Class I price computed pursuant to §1040.50(a) shall be reduced pursuant to paragraph (a)(1) or (2) of this section on the basis of the applicable rate per hundredweight for the location of such plant.

(1) Zone rates. For a plant located within the following described territory, including the cities located there-in, the applicable zone rates shall be as follows:

<table>
<thead>
<tr>
<th>Michigan Counties</th>
<th>Zone I—No Adjustments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clinton, Genesee,</td>
<td>Huron, Ingham, Jackson,</td>
</tr>
<tr>
<td>Geniot, Hillsdale,</td>
<td>Lapeer, Lenawee,</td>
</tr>
<tr>
<td>Livingston, Macomb,</td>
<td>Monroe, Oakland, Saginaw,</td>
</tr>
<tr>
<td>Sanilac, St. Clair,</td>
<td>Shiawassee, Tuscola,</td>
</tr>
<tr>
<td>Washtenaw and Wayne.</td>
<td>Bay (except Gibson, Mount Forest,</td>
</tr>
<tr>
<td>Pinconning, Garfield and Fraser Townships).</td>
<td>Zone II—5 Cents</td>
</tr>
<tr>
<td>Allegan, Barry, Berrien, Branch, Calhoun,</td>
<td>Cass, Eaton, Ionia, Kalamazoo, Kent,</td>
</tr>
<tr>
<td>Charlevoix, Cheboygan, Clare, Crawford,</td>
<td>Montcalm, Muskegon, Ottawa, St. Joseph</td>
</tr>
<tr>
<td>Emmet, Gladwin, Grand Traverse, Isabella,</td>
<td>and Van Buren.</td>
</tr>
<tr>
<td>Iosco, Kalkaska, Lake, Leelanau, Manistee,</td>
<td>Zone III—7 Cents</td>
</tr>
<tr>
<td>Mason, Missaukee, Mecosta, Midland,</td>
<td>Montmorency, Newago, Oceana, Ogemaw,</td>
</tr>
<tr>
<td>Otsego, Osceola, Oscoda, Otsego, Presque Isle,</td>
<td>Roscommon and Wexford.</td>
</tr>
<tr>
<td>Roscommon and Wexford.</td>
<td></td>
</tr>
</tbody>
</table>

(b) For fluid milk products transferred in bulk from a pool plant to a pool plant described in §1040.7(a), the operator of the transferee-plant shall receive credit at the applicable zone or mileage rate, based on the location of the transferor-plant. The total volume on which such credit is computed shall be limited to the amount by which 108 percent of Class I disposition at the transferee-plant is in excess of the sum of receipts at such plant:

(1) From producers, (2) from cooperative associations pursuant to §1040.9(c), and (3) from other order plants and unregulated supply plants which are assigned in Class I, such assignment of receipts from the transferor-plant to be
pro rata to receipts of fluid milk products from all transferor pool plants.

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

[38 FR 4649, Feb. 20, 1973, as amended at 54 FR 29328, July 12, 1989]

§ 1040.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices and any other price information deemed appropriate:

(a) The Class I price for the following month;
(b) The Class II price for the following month;
(c) The Class III price for the preceding month;
(d) The Class III-A price for the preceding month;
(e) The skim milk price for the preceding month;
(f) The butterfat price for the preceding month;
(g) The protein price for the preceding month;
(h) The fluid carrier price for the preceding month;
(i) The butterfat differential for the preceding month;

[60 FR 45576, Aug. 31, 1995]

§ 1040.54 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.

PRODUCER PRICE DIFFERENTIAL

§ 1040.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1040.9 (b) and (c), as follows:

(a) Calculate the following values:
(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1040.44(c) by the Class I differential price for the month;
(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1040.44(c) by the Class II differential price for the month;
(3) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III-A by the Class III-A differential price for the month;
(4) Add an amount obtained by multiplying the pounds of skim milk in Class I as determined pursuant to § 1040.44(a) by the skim milk price;
(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1040.44(a) by the average protein content of producer skim milk; and
(6) Add a fluid carrier value calculated as follows: Subtract from the pounds of skim milk allocated to Class II and Class III pursuant to § 1040.44(a) the protein pounds contained therein, determined by multiplying the pounds of skim milk in Class I and Class III by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price for the month computed pursuant to § 1040.50(j) and adjusted pursuant to § 1040.50(l) for the weighted average somatic cell content of the handler's receipts of milk; and

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1040.44(a)(1)(a) and the corresponding step of § 1040.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1040.74, 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
§ 1040.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1040.60 (a)(1), (a)(2), (a)(3) and (b) through (i) for all handlers who made reports pursuant to § 1040.30 for the month and who made payments pursuant to § 1040.71 for the preceding month;

(2) Add the values computed pursuant to § 1040.60 (a)(4), (a)(5), and (a)(6); and

(b) Subtract the values obtained by multiplying the handlers' total pounds of protein and total hundredweight of fluid carrier contained in such milk by their respective prices;

(c) Add an amount equal to the total value of the applicable location adjustments computed pursuant to § 1040.75(a)(1); and

(d) 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 § 1040.43(e);

(h) 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 § 1040.76(a)(5) or (c); and

(i) 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.

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

(b) Divide the aggregate value computed pursuant to paragraph (a) of this section by the sum of the following:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to §1040.60(f).

(c) Subtract not less than 6 cents nor more than 7 cents per hundredweight. The result shall be the "producer price differential."

[60 FR 45576, Aug. 31, 1995]

§1040.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential; (b) The protein price; (c) The fluid carrier price; (d) The butterfat price; (e) The average butterfat content and protein content of producer milk; and (f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

[60 FR 45577, Aug. 31, 1995]

§1040.63 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The producer price differential computed pursuant to §1040.63 and adjusted for location pursuant to §1040.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The butterfat price computed pursuant to §1040.50(i), multiplied by the total pounds of butterfat contained in the producer milk received from the producer;

(c) The protein price computed pursuant to §1040.50(j), adjusted for somatic cell count pursuant to §1040.50(l), multiplied by the total pounds of protein contained in the producer milk received from the producer; and

(d) The fluid carrier price computed pursuant to §1040.50(k), multiplied by the total hundredweight of fluid carrier contained in the producer milk received from the producer.

[60 FR 45577, Aug. 31, 1995]

PAYMENTS FOR MILK

§1040.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§1040.71, 1040.76, and 1040.77 and out of which he shall make all payments due handlers pursuant to §§1040.72 and 1040.77.

§1040.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to §1040.60.

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to §1040.44(c) by the producer price differential, excluding any applicable location adjustment pursuant to §1040.75(a)(3);

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price adjusted pursuant to §1040.50(l) for the weighted average somatic cell content of the handler's receipts of milk;

(iii) An amount obtained by multiplying the total hundredweight of fluid carrier contained in producer milk by the fluid carrier price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to §1040.60(f) by the producer price differential.

(b) On or before the 25th day after the end of the month each handler 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 (b)(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.

[38 FR 4649, Feb. 20, 1973, as amended at 50 FR 24612, June 12, 1985; 60 FR 45577, Aug. 31, 1995]

§ 1040.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1040.71(a)(2) exceeds the amount computed pursuant to §1040.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments to all handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1040.73 Payments to producers and to cooperative associations.

(a) Except as provided by paragraph (b) of this section, on or before the 15th day of each month, each handler (except a cooperative association) shall pay each producer for milk received from the producer during the preceding month not less than the value determined pursuant to §1040.63 adjusted by the location differential pursuant to §1040.75, less the payment made pursuant to paragraph (d) of this section. If by such date such handler has not received full payment for such month pursuant to §1040.72 he may reduce such payments uniformly per hundredweight for all producers, by an amount not in excess of the per hundredweight reduction in payment from the market administrator; however, the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(b) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by producers to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall pay to the cooperative association on or before the second day prior to the end of the month an amount equal to the payments authorized pursuant to paragraph (d) of this section, and on or before the 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all such milk received from certified producers, less amounts owed by each such producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer.

(1) Each handler shall submit to the cooperative association written information on or before the sixth working day of each month which shows for each such producer:

(i) The total pounds of milk received from him during the preceding month;
(ii) The total pounds of butterfat, total pounds of protein, and total pounds of fluid carrier contained in the producer’s milk, and the average somatic cell count of the producer’s milk;
(iii) The number of days on which milk was received; and
§ 1040.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, 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 §1040.51 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.


§ 1040.75 Plant location adjustments for producers and on nonpool milk.

(a) Subject to the conditions of paragraph (b) of this section, in making payments to producers or cooperative associations pursuant to §1040.73 each handler:

(1) May deduct from the producer price differential the rate per hundredweight applicable pursuant to §1040.52(a)(1) or (2) for the location of the plant at which the milk was first physically received.

(2) [Reserved]

(3) Shall add not less than 10 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to §1040.9(c) at a pool plant located within the Michigan counties of Macomb, Oakland, and Wayne.

(b) When milk of an individual producer is physically received at more than one location (including any nonpool plant) during the month, the location adjustment rate shall be the weighted average (rounded to the nearest one-half cent) of the amounts computed pursuant to §1040.63.

(d) On or before the last day of each month for producer milk received during the first 15 days of the month at not less than the Class III milk price for the preceding month, less any proper deductions authorized in writing by the producer.

§ 1040.76 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 §§1040.30(b) and 1040.31(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 amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant (but not to 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 §1040.60 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
§ 1040.76  7 CFR Ch. X (1-1-99 Edition)

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)(ii) 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 $1040.60 shall be priced at the statistical 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 statistical 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 $1040.60 for such handler shall include, in lieu of the value of other source milk specified in §1040.60(f) less the value of such other source milk specified in §1040.71(a)(2)(ii), a value of milk determined pursuant to $1040.60 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 §1040.7(b)(1), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§1040.30(b) and 1040.31(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 $1040.60 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 (adjusted to 3.5 percent butterfat value using the butterfat differential pursuant to §1040.74) by the operator of such partially regulated distributing plant 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 (adjusted to 3.5 percent butterfat value using the butterfat differential pursuant to §1040.74) by the operator of such nonpool supply plant 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 §1040.43(e). Payments may be made to the producer-settlement fund of the order pricing a plurality of 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.

§ 1040.77 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 moneys due:
(a) To the market administrator from such handler;
(b) To such handler from the market administrator; or
(c) To any producer or cooperative association 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 date for making payment set forth in the provisions under which such error occurred, following the fifth day after such notice.

§ 1040.78 Charges on overdue accounts.
Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1040.71, 1040.77, 1040.85, and 1040.86, shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 1040.85 Assessment for order administration.
As his pro rata share of the expense of administration of the order, each handler (excluding a handler described in §1040.9(c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 13th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:
(a) Producer milk (including milk of such handler’s own production);
(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1040.43(e) and other source milk allocated to Class I pursuant to §1040.44(a)(7) and (a)(11) and the corresponding steps of §1040.44(b), except such other source milk that is excluded from the computations pursuant to §1040.60(d) and (f); and
(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to §1040.76(a)(2).

§ 1040.86 Deduction for marketing services.
(a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to §1040.73(a) for milk received from each producer (including milk of such handler’s own production) at a plant not operated by a cooperative association of which such producer is a member shall deduct 7 cents per hundredweight, or such amount not exceeding 7 cents per hundredweight as the Secretary may prescribe, and, on or before the 13th day after the end of each month, shall pay such deductions to the market administrator. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him;
(b) In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members, for which payment is not made pursuant to §1040.73(b) or (c), and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to §1040.73 as may be
authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services of which such producers are members.

[38 FR 4649, Feb. 20, 1973, as amended at 60 FR 45578, Aug. 31, 1995]

PART 1044—MILK IN MICHIGAN UPPER PENINSULA MARKETING AREA

GENERAL PROVISIONS AND DEFINITIONS

Sec.
1044.1 General provisions.
1044.5 Michigan Upper Peninsula marketing area.
1044.6 Fluid milk product.
1044.7 Route.
1044.8 Fluid milk plant.
1044.9 Nonfluid milk plant.
1044.10 Handler.
1044.11 Producer.
1044.12 Associated producer.
1044.13 Producer-handler.
1044.14 Producer milk.
1044.15 Associated producer milk.
1044.16 Other source milk.
1044.17 Cooperative association.
1044.18 Fluid cream product.
1044.19 Filled milk.
1044.20 [Reserved]
1044.21 Commercial food processing establishment.

MARKET ADMINISTRATOR

1044.22 Additional duties of the market administrator.

REPORTS

1044.30 Monthly reports of receipts and utilization.
1044.31 Associated producer reports.
1044.32 Payroll reports.
1044.33 Other reports.

CLASSIFICATION

1044.40 Classes of utilization.
1044.41 Shrinkage.
1044.42 Classification of transfers.
1044.43 General classification rules.
1044.44 Classification of producer milk.

MINIMUM PRICES

1044.50 Class prices.
1044.51 Basic formula price.
1044.52 [Reserved]
1044.53 Handler location adjustments.
1044.54 Equivalent price provision.

HANDLER'S OBLIGATION AND UNIFORM PRICE

1044.60 Computation of the net obligation of each handler.
1044.61 Computation of uniform price.
1044.62 Butterfat differential.
1044.63 Producer location differentials.

PAYMENT FOR MILK

1044.70 Time and method of payment.
1044.71 Expense of administration.
1044.72 Marketing services.
1044.73 Errors in payment.
1044.74 Overdue accounts.

APPLICATION OF PROVISIONS

1044.80 Producer-handler exemption.
1044.81 Exempt handler.
1044.82 Handlers subject to other Federal orders.


GENERAL PROVISIONS AND DEFINITIONS

§ 1044.1 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.

[36 FR 9850, May 29, 1971]

§ 1044.5 Michigan Upper Peninsula marketing area.

(a) Michigan Upper Peninsula marketing area (hereinafter referred to as the "marketing area") means all the territory including all municipal corporations within the zones described below in this section;

(b) Zone I(a): The city of Menominee and the townships of Menominee, Mellen and Ingallston in Menominee County, Michigan; the town of Peshtigo and the cities of Marinette and Peshtigo in Marinette County, Wisconsin;

(c) Zone I: Counties of Delta, Dickinson, Gogebic, Iron, Ontonagon and all territory in Menominee County not included in Zone I(a), all in the State of Michigan; the town of Niagara and the village of Niagara in Marinette County; the towns of Aurora and Florence in Florence County and the towns of Carey, Kimball, Oma, Pence, Saxon and the cities of Hurley and Montreal in Iron County all in the State of Wisconsin;

(d) Zone 2: Counties of Alger, Baraga, Chippewa, Houghton, Keweenaw, Luce,
Agricultural Marketing Service, USDA

Mackinac, Marquette and Schoolcraft all in the State of Michigan.

[28 FR 4750, May 11, 1963]

§ 1044.6 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 27832, May 11, 1993]

§ 1044.7 Route.

Route means a delivery (including delivery by a vendor or sale from a plant or plant store) of any fluid milk product, other than a delivery to any milk or filled milk processing plant.

[34 FR 18649, Nov. 22, 1969]

§ 1044.8 Fluid milk plant.

Fluid milk plant means the premises, buildings and facilities of any milk receiving, processing or packaging plant handling milk eligible for distribution in the marketing area as Grade A milk or conforming to the requirements of Michigan Act No. 169, Public Acts 1929, as amended.

(a) From which any fluid milk product, except filled milk, is disposed of during the month in the marketing area on routes except as provided in §1044.81; or

(b) From which any milk or skim milk, except skim milk in filled milk, is delivered to plants described in paragraph (a) of this section on ten or more days in any of the months of July through December or on three or more days in any of the months of January through June.

[34 FR 18649, Nov. 22, 1969]

§ 1044.9 Nonfluid milk plant.

Nonfluid milk plant means any milk or filled milk receiving, manufacturing or processing plant other than a fluid milk plant. The following categories of nonfluid milk 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 nonfluid milk plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) Unregulated supply plant means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a fluid milk plant.

[34 FR 18649, Nov. 22, 1969]

§ 1044.10 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more fluid milk plants;

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

(c) Any cooperative association with respect to milk from producers which it causes to be diverted from a fluid
§ 1044.11 Producer.

Producer means a person, other than a producer-handler as defined in any order (including this part) who produces milk in conformity with the sanitation requirements for Grade A milk of any duly constituted health authority, or in conformity with the requirements of Michigan Act No. 169, Public Acts 1929, as amended, which milk is:

(a) Received at a fluid milk plant; or
(b) Delivered from such plant for the account of a handler.

[28 FR 10867, July 30, 1964]

§ 1044.12 Associated producer.

Associated producer means any person, other than a producer-handler, with respect to any of his milk not accepted or accounted for by a handler at a fluid milk plant in any month of December through June, who:

(a) Produces milk in conformity with the sanitation requirements for Grade A milk of any duly constituted health authority or in conformity with the requirements of Michigan Act No. 169, Public Acts 1929, as amended;
(b) Delivers milk to a fluid milk plant in any three of the preceding months of July through November; and
(c) Certifies in writing to the market administrator, on or before the first day after each month of December through June in which his milk is not accepted or accounted for by a handler at a fluid milk plant, that he will deliver his milk to such fluid milk plant and does so deliver upon request from the handler to the market administrator.

[28 FR 4750, May 11, 1963]

§ 1044.13 Producer-handler.

Producer-handler means a dairy farmer who distributes fluid milk products on a route in the marketing area but receives no fluid milk products during the month except his own production or from fluid milk plants.

[28 FR 4751, May 11, 1963]

§ 1044.14 Producer milk.

Producer milk means skim milk and butterfat contained in Grade A milk received at a fluid milk plant directly from a dairy farmer or a handler pursuant to §1044.10(d): Provided, That:

(a) Milk diverted pursuant to §1044.11(b) to a nonfluid milk plant that is not subject to the classification and pricing provisions of another order issued pursuant to the Act shall be deemed to have been received by the diverting handler at the location of the plant from which diverted, and
(b) Milk diverted pursuant to §1044.11(b) to a fluid milk plant shall be deemed to have been received by the diverting handler at the location of the plant to which diverted.


§ 1044.15 Associated producer milk.

Associated producer milk means the milk produced by an associated producer that is not accepted or accounted for by a handler at a fluid milk plant and is used for manufacturing purposes in a nonfluid milk plant engaged exclusively in manufacturing operations.

[28 FR 4751, May 11, 1963]

§ 1044.16 Other source milk.

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

(a) Receipts during the month of fluid milk products except: (1) Receipts
§ 1044.22 Additional duties of the market administrator.

In addition to the duties specified in §1000.3(c) of this chapter, the market administrator shall perform the following duties:

(a)–(h) [Reserved]

(i) Publicly announce on or before:

(1) The fifth day of each month:

(i) The Class I price and Class II price for the following month;
(ii) The butterfat differential for the preceding month;
(iii) The Class III and Class III±A prices for the preceding month; and

(2) The 12th day of each month the uniform price for the proceeding month;

(j) On or before the 8th day after each month of December through June, notify each handler of each person who has qualified as an associated producer at each of his fluid milk plants;

(k) On or before the 12th day after each month of December through June, notify each handler of the quantity and butterfat test of associated producer milk assigned to each of his fluid milk plants and the amount to be remitted to the market administrator pursuant to §1044.70(d).

(l) 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 §1044.43(e) and §1044.44 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.
§ 1044.30 Monthly reports of receipts and utilization.

On or before the 5th day (exclusive of Sundays and holidays) of each month, each handler shall report to the market administrator for the preceding month in the detail and on forms prescribed by the market administrator as follows:

(a) Each handler for each fluid milk plant shall report:
   (1) The quantities of butterfat and skim milk contained in or represented by:
      (i) Producer milk,
      (ii) Fluid milk products received from other fluid milk plants,
      (iii) Other source milk, and
      (iv) Inventories of fluid milk products on hand at the end of each month;
   (2) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing in-area and outside area route disposition of filled milk; and
   (3) Such other information with respect to sources and disposition as the market administrator may prescribe.

(b) Each handler specified in §1044.10(b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of milk from dairy farmers shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of in the marketing area as Class I milk on routes.

§ 1044.31 Associated producer reports.

Each associated producer, or a cooperative association on his behalf, shall submit in the manner prescribed by the market administrator:

(a) On or before the 5th day after each month of December through June, a statement of the quantity and butterfat test of his milk sold for manufacturing purposes in such month, and

(b) On or before the 15th day after each month of December through June, delivery receipts or other evidence verifying the quantity and butterfat test of his milk sold for manufacturing purposes in such month.

§ 1044.32 Payroll reports.

On or before the 20th day of each month each handler shall report his producer payroll for each fluid milk plant for the preceding month which shall show:

(a) The pounds of milk received from each producer and the percentage of butterfat contained therein;

(b) The date and net amount of payment to such producer or to a cooperative association for such producer's milk, with the price, deductions and charges involved and the nature of each.

§ 1044.33 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator shall request.

(b) Each handler exempt pursuant to §1044.81 or 1044.82 shall report to the market administrator his disposition of fluid milk products on routes within the marketing area at such time and in such manner as the market administrator shall prescribe.

(c) Each handler pursuant to §1044.10(d) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 5th day of each month the quantities of skim milk and
Agricultural Marketing Service, USDA

§ 1044.40 Classes of utilization.

Except as provided in §1044.42, all skim milk and butterfat required to be reported by a handler pursuant to §1044.30 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; and

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

(c) Class III milk. Class III 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;

(3) In bulk fluid milk products in inventory at the end of the month;

(4) 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

(v) In inventoried 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 §1044.6 and the fluid cream product definition pursuant to §1044.18; and

(7) In shrinkage assigned pursuant to §1044.41(a) to the receipts specified in §1044.41(a)(2) and in shrinkage specified in §1044.41(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.

§1044.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1044.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b)(1) through (b)(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 (b)(6) of this section which was received in bulk fluid form;

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in §1044.10(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §1044.10(c) and in milk diverted to such plant from another fluid milk 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 (b)(2) 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 fluid milk plants;

(5) 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 operators of both plants;

(6) Plus 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.
§ 1044.42 Classification of transfers.

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

(1) The skim milk and 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 after the computations pursuant to §1044.44(a)(11) and the corresponding step of §1044.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to §1044.44(a)(7) or the corresponding step of §1044.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1044.44(a)(11) or the corresponding steps of §1044.44(b), the skim milk or butterfat so transferred, 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.

(b) Transfers to other order plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a fluid milk 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 fluid milk plant from the other order plant of skim milk and butterfat, respectively, that are in the same category as described in paragraph (b)(1), (b)(2), or (b)(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 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 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 §1044.40.

(c) Transfers to producer-handlers and to exempt plants. Skim milk or butterfat in the following forms that is transferred from a fluid milk plant to a producer-handler under this or any other Federal order or to an exempt 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 nonfluid milk plants. Skim milk or butterfat transferred or diverted in the following forms from a fluid milk plant to a nonfluid milk plant that is not an other order plant, a producer-handler plant or an exempt 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 nonfluid milk plant's utilization to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The transferor-handler or diverter-handler claims such classification in its report of receipts and utilization filed pursuant to §1044.30 for the month within which such transaction occurred; and

(B) The nonfluid milk 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 nonfluid milk plant and transfers of packaged fluid milk products from such nonfluid milk 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 nonfluid milk plant from fluid milk plants;

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

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

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

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

(iv) Transfers of bulk fluid milk products from the nonfluid milk 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 nonfluid milk plant from fluid milk plants; and

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

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

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

(B) To such nonfluid milk 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 nonfluid milk plant;

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

(vii) Receipts of bulk fluid cream products at the nonfluid milk plant from fluid milk 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 nonfluid milk plant; and

(viii) In determining the nonfluid milk plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonfluid milk plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in paragraph (d)(2) of this section.

[58 FR 27834, May 11, 1993]

§ 1044.43 General classification rules.

In determining the classification of producer milk pursuant to §1044.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1044.30 and shall compute separately for each fluid milk plant and for each cooperative association with respect to milk for which it is the handler pursuant to §1044.10 (c) or (d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1044.40, 1044.41, and 1044.42;

(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;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1044.10 (c) or (d) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association;

(d) Bulk fluid milk products transferred or diverted from a fluid milk plant operated by a cooperative association to another fluid milk plant shall be classified in accordance with the rules set forth in §1044.42(a) and the value thereof at class prices (applicable at the location of the transferee-plant) shall be used to compute the receiving handler's net obligation for such milk pursuant to §1044.60; and

(e) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under §1044.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1044.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

(f) 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.
§ 1044.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk at each fluid milk plant described in §1044.10(a) by allocating the plant’s receipts of skim milk and butterfat to its utilization pursuant to paragraphs (a) through (c) of this section.

(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 §1044.41(b);

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

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the fluid milk 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 remaining pounds of skim milk in each class 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 §1044.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1044.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in §1044.40(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 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 §1044.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1044.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in 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 §1044.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1044.40(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 §1044.40(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;

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

(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.

(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) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (a)(7)(v) of this section for which the handler requests classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(ii), (a)(7)(v), and (a)(8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(2)(ii), (a)(5), and (a)(7)(ii) of this section;

(iii) Receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, 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 remaining at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) 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 §1044.40(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)(ii) 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) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all fluid milk plants of the receiving handler:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to paragraphs (a)(7)(vi) and (a)(8) (i) and (ii) of this section; and

(ii) (A) The pounds of skim milk in receipts of fluid milk products from fluid milk 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 remaining at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) 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 §1044.40(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)(ii) 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) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all fluid milk plants of the receiving handler:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to paragraphs (a)(7)(vi) and (a)(8) (i) and (ii) of this section; and

(ii) (A) The pounds of skim milk in receipts of fluid milk products from fluid milk 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
§ 1044.50

Subject to the provisions of §1044.53, the class prices per hundredweight for the month shall be as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $1.15. For plants located in Zone 1 the price shall be the price specified for Zone 1; for plants located in Zone 2 the price shall be the price specified for Zone 1 plus 20 cents. Through April 30, 1988, and thereafter until amended, the differential value for Zone 2 shall be $1.35 and for plants located outside the marketing area and west of Lake Michigan, the price (subject to §1044.53) shall be that specified for Zone 1 and for plants located outside the marketing area and east of Lake Michigan, the price (subject to §1044.53) shall be that specified for Zone 2.

(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.

§ 1044.51

The basic formula price shall be the preceding month’s average pay price for manufacturing grade milk in Minnesota and Wisconsin using the “base month series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to §1044.62 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:
§ 1044.52 (Reserved)

§ 1044.53 Handler location adjustments.

(a) For milk received at a fluid milk plant located outside the marketing area, west of Lake Michigan and more than 50 miles from the nearer of the City Hall in Ironwood, Michigan, or the City Hall in Iron Mountain, Michigan, the applicable Zone 1 price for Class I milk shall be reduced 10 cents, plus 2 cents for each 20 miles or fraction thereof in excess of 70 miles.

(b) For milk received at a fluid milk plant located outside the marketing area, east of Lake Michigan, and more than 50 miles from the City Hall in St. Ignace, Michigan, the applicable Zone 2 price for Class I milk shall be reduced 10 cents, plus 2 cents for each 20 miles or fraction thereof in excess of 70 miles.

(c) Any distance used to determine location adjustments shall be the shortest hard surfaced highway distance as determined by the market administrator.

[27 FR 4052, Apr. 28, 1962]
§ 1044.54 Equivalent price provision.

Whenever the provisions of this part require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose and the specified price is not reported or published, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with, the price specified.

[27 FR 4052, Apr. 28, 1962]

§ 1044.60 Computation of the net obligation of each handler.

The net obligation of each handler at fluid milk plant(s) shall be computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to §1044.44(c), by the applicable class prices;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to §1044.44(a)(13) and the corresponding step of §1044.44(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price for the current month by the lesser of:

1. The hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1044.44(a)(9) and the corresponding step of §1044.44(b); or

2. The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after computations pursuant to §1044.44(a)(11)(i) and the corresponding step of §1044.44(b) for the preceding month; and

(d) Add or subtract, as the case may be, the amount necessary to correct errors in receipts or utilization for previous months as disclosed by audit by the market administrator.

[29 FR 10869, Jul 30, 1964, as amended at 58 FR 27838, May 11, 1993]

§ 1044.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price for each handler as follows:

(a) Add the value obtained pursuant to §1044.60;

(b) Add the value of the handler’s associated producer milk at the Class II price for milk of 3.5 percent butterfat content;

(c) Add if a deduction was made or subtract if an addition was made, in computing the uniform price for such handler to the nearest cent for the preceding month, the amount of such adjustment;

(d) Add an amount equal to the sum of the producer location deductions to be made pursuant to §1044.63; and

(e) Divide the resulting amount by the handler’s total hundredweight of producer milk and associated producer milk. The quotient, rounded to the nearest cent, shall be the handler’s uniform price.


§ 1044.62 Butterfat differential.

The applicable uniform prices to be paid pursuant to §1044.70 shall be increased or decreased, for each one-tenth of one 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, adjust pursuant to §1044.51(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 18964, Apr. 14, 1995]

§ 1044.63 Producer location differentials.

For each handler operating two or more fluid milk plants at which different Class I prices are applicable pursuant to §1044.50 or §1044.53, the uniform price pursuant to §1044.61 at each
such plant shall be reduced by the amount that its applicable Class I price is less than the highest Class I price applicable at such handler's fluid milk plants during the month.


§ 1044.70 Time and method of payment.

(a) Except as provided in paragraph (b) or (c) of this section, on or before the 15th day after the end of each month each handler who received milk from producers shall pay for milk received during such month to each producer for milk received from him the uniform price as provided in §1044.61 adjusted by the butterfat differential pursuant to §1044.62 and the location adjustment pursuant to §1044.63.

(b)(1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any claim on the part of the association, each handler shall pay to the cooperative association on or before the 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amount owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer and submitted to the cooperative association on or before the 13th day of each month, written information which shows for each such member-producer:

(i) The total pounds of milk received from him during the preceding month,

(ii) The total pounds of butterfat contained in such milk,

(iii) The number of days on which milk was received, and

(iv) The amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, shall be made by written notice to the market administrator, and shall be subject to his determination.

(c) Each handler shall make payment to a cooperative association for milk received from the fluid milk plant of such cooperative association on or before the 10th day after the end of the month in which it was received, at not less than the applicable class prices.

(d) On or before the 15th day after each month of December through June, each handler shall remit to the market administrator for payment to associated producers, an amount obtained by multiplying the quantity of his associated producer milk for the month by the difference between his uniform price and the Class II price: Provided, That remittances to the market administrator pursuant to this paragraph shall be maintained by him in a separate fund out of which he shall make payments to associated producers on or before the 17th day after each month of December through June.

[27 FR 4053, Apr. 28, 1962, as amended at 28 FR 4752, May 11, 1963]

§ 1044.71 Expense of administration.

For the pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month five cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production); and
§ 1044.72 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to §1044.70 for milk received from each producer (excluding milk of such handler’s own production) at a plant not operated by a cooperative association of which such producer is a member, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as the Secretary may prescribe, and on or before the 13th day after the end of each month shall pay such deductions to the market administrator. Such monies shall be used by the market administrator to verify weights, samples and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers whose milk is received at a fluid milk plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to §1044.70 as may be authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services of which such producers are members.

(c) In making payments to associated producers pursuant to the proviso of §1044.70(d), the market administrator shall deduct the applicable amounts prescribed for producer milk in paragraphs (a) and (b) of this section for such milk.


§ 1044.73 Errors in payment.

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:

(a) To the market administrator from such handler,
(b) To such handler from the market administrator, or
(c) To any producer or cooperative association 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 date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

[27 FR 4053, Apr. 28, 1962]

§ 1044.74 Overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§1044.71, 1044.72 and 1044.73 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

[27 FR 4053, Apr. 28, 1962]

APPLICATION OF PROVISIONS

§ 1044.80 Producer-handler exemption.

Only §§1044.33 and 1000.5 of this chapter, as incorporated by §1044.1, shall apply to a producer handler.

[36 FR 9850, May 29, 1971]

§ 1044.81 Exempt handler.

Only §§1044.33 and 1000.5 of this chapter, as incorporated by §1044.1, shall apply to a handler who operates a fluid milk plant, of the type specified in §1044.8(a), located outside the marketing area from which an average of less than 600 pounds of fluid milk products per day are disposed of during the month in the marketing area on route(s).

[36 FR 9850, May 29, 1971]
§ 1044.82 Handlers subject to other Federal orders.

The provisions of this part shall not apply to a handler with respect to the operation of a fluid milk plant during any month in which the milk at such plant would be subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the Act and the disposition of fluid milk products, except filled milk, in the other Federal marketing area exceeds that in the Michigan Upper Peninsula marketing area: Provided, That the operator of a fluid milk plant which is exempted from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

[34 FR 18650, Nov. 22, 1969]
§ 1046.1  
Subpart—Order Regulating Handling  
GENERAL PROVISIONS  
§ 1046.1  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  
§ 1046.2  Louisville-Lexington-Evansville marketing area.  
The Louisville-Lexington-Evansville marketing area hereinafter called the marketing area, means all the territory geographically within the counties listed below and all territory wholly or partly therein occupied by municipal corporations and institutions owned or operated by Federal, State or local governments:  
INDIANA COUNTIES  
Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Harrison, Knox, Martin, Orange, Perry, Pike, Posey, Spencer, Vanderburgh, Warrick, Washington.  
KENTUCKY COUNTIES  
§ 1046.3  Route disposition.  
Route disposition means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor) of a fluid milk product(s) classified as Class I milk to a wholesale or retail outlet(s) other than to a milk or filled milk plant(s). A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets without intermediate movement to another milk or filled milk plant.  
§ 1046.4  [Reserved]  
§ 1046.5  City plant.  
City plant means a plant where milk is processed or packaged and from which there is route disposition in the marketing area of fluid milk products permitted to be labeled as “Grade A” by a duly constituted health authority.  
§ 1046.6  Country plant.  
Country plant means a milk plant, other than a city plant, which is approved by a duly constituted health authority to supply milk or skim milk to a city plant(s) for disposition as “Grade A” milk and at which milk is received during the month from persons described in §1046.12(a)(1) or from a handler described in §1046.9(c).  
§ 1046.7  Pool plant.  
Except as provided in paragraph (e) of this section, pool plant means:  
(a) A city plant which meets the following requirements:  
(1) The total quantity of fluid products, except filled milk, disposed of in Class I is not less than 50 percent in each of the months of August through November and January and February, and is not less than 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to §1046.13; and  
(2) There is an amount of route disposition in the marketing area, except filled milk, equal to not less than an average of 13,500 pounds per day or not less than 10 percent of the fluid milk products, except filled milk, received during the current month from persons described in §1046.12(a)(1), from a handler described in §1046.9(c), and from country plants.  
(b) A country plant which delivers milk or skim milk to city plants during any of the months of August through November and January and February equal to not less than 50 percent, and during other months of the year equal to not less than 40 percent,
Agricultural Marketing Service, USDA § 1046.7

of the milk from persons described in §1046.12(a)(1) and from handlers described in §1046.9(c) that is physically received at such country plant (except by diversion from other plants) or diverted therefrom pursuant to §1046.13.

In determining whether a country plant has met the required shipments, milk or skim milk transferred or diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) that receives milk or skim milk as a transfer or diversion from such city plant shall be offset against the country plant's transfer or diversion from such city plant to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. The operator of a country plant may include milk diverted pursuant to §1046.13(b) from such plant to a city plant in meeting up to one-half of the shipping percentage(s) specified in this paragraph.

(c) Except for March through July 1991 a country plant that was a pool plant pursuant to paragraph (b) of this section each month during the preceding August through February shall continue to be a pool plant during each of the months of March through July, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through July next following. A country plant that qualified as a pool plant during each of the months of September 1990 through February 1991 shall be a pool plant for the months of March through July 1991, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through July next following.

(d) A country plant which is operated by a cooperative association if (1) two-thirds or more of the milk from persons described in §1046.12(a)(1) who are members of such association is delivered during the month from farms to the pool plant(s) of other handlers or (2) such plant qualified as a pool plant pursuant to paragraph (d)(1) of this section during each of the immediately preceding consecutive months of October through February.

(e) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) Unless determined otherwise by the Secretary, a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act, except:

(i) A plant that qualifies as a pool plant pursuant to paragraph (a), (b), (c) or (d) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets than in the marketing area regulated pursuant to such other order during the current month; and

(ii) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the pooling requirements of another Federal order on the basis of route disposition if the plant is located in the Louisville-Lexington-Evansville marketing area and this order's Class I price applicable at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition; and

(3) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.


421
§ 1046.8 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 an other 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 other than a producer-handler plant or an other order plant, 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 other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1046.9 Handler.

Handler means:

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

(b) Any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in §1046.13;

(c) Any cooperative association with respect to the milk which is delivered for the account of the cooperative association from the farm to the pool plant(s) of another handler in a tank truck owned by, operated by, or under contract to such cooperative association if the cooperative association has notified in writing prior to delivery both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. Such milk shall be considered as having been received by the cooperative association at the location of the plant to which it was delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in §1046.7(e).

§ 1046.10 Producer-handler.

Producer-handler means any person who processes and packages milk from his own farm production, distributes any portion of such milk as route disposition in the marketing area and receives no fluid milk products from other dairy farmers or nonpool plants and no milk products other than fluid milk products for reconstitution into fluid milk products: Provided, That such person provides proof satisfactory to the market administrator that: (a) The care and management of all of the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person, and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 1046.11 [Reserved]

§ 1046.12 Producer.

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

(1) Who produces milk on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition (this definition shall include approval of milk by the authority to administer the regulations governing the quality of milk acceptable to agencies of the United States Government for fluid consumption in its institutions or bases located in the marketing area during any month in which such milk is disposed of to such institutions or bases); and

(2) Whose milk so produced pursuant to paragraph (a)(1) of this section is received at a pool plant or by a handler described in §1046.9(c) or diverted in accordance with the conditions set forth in §1046.13.

(b) “Producer” shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;
(2) Any person with respect to milk produced by him which 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 §1046.44(a)(8)(iii) and the corresponding step of §1046.44(b);

(3) Any person with respect to milk produced by him which 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; and

(4) A person with respect to any milk produced by him that is received at or diverted from a country plant in any month of March through August, unless at least 60 days’ production from the farm of such person was producer milk during the preceding September through February or unless such country plant is a pool plant for the month pursuant to §1046.7(b) or (d).

§ 1046.13 Producer milk.

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

(a) Received from producers at a pool plant for the account of the person operating such plant. When milk is withdrawn at more than one pool plant from the same load delivered by a farm tank pickup truck, the entire load shall be deemed to have been received at the first pool plant at which any of such milk was withdrawn unless:

(1) There is an agreement among the operators of the pool plants receiving such milk providing for other receiving handler(s) to report and pay for all or a portion of such milk; or

(2) The milk involved is that which is delivered to pool plants for the account of a handler described in §1046.9(c).

(b) Diverted by a handler from a pool plant pursuant to §1046.7(a), (b), or (c) to another pool plant for any number of days of the month. Milk so diverted shall be deemed to have been received by the diverting handler:

(1) At the location of the pool plant from which diverted if no location adjustment or the same location adjustment is applicable at both the plant from which diverted and the plant to which diverted; and

(2) At the location of the pool plant to which diverted if the location adjustment applicable pursuant to §1046.52 is different at the plant from which diverted than at the plant to which diverted.

(c) Diverted by a handler from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be accounted for as received by the diverting handler at the location of the nonpool plant to which diverted;

(2) Not less than 2 days’ production of a producer whose milk is diverted to a nonpool plant is physically received at a pool plant during the month;

(3) Producer milk pursuant to this paragraph shall not include the milk of any person during September through February on days that it is diverted by a handler to a nonpool plant in excess of 22 days (11 days in the case of every-other-day delivery) during the month; and

(4) Any milk diverted in excess of the limits prescribed in paragraph (c)(3) of this section shall not be producer milk.

The diverting handler shall designate the farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk.

(d) Received by a handler described in §1046.9(c).

§ 1046.14 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 §1046.40(b)(1) from any source other than producers, handlers described in §1046.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1046.40(b)(1);

(c) Products (other than fluid milk products) specified in §1046.40(b)(1), and products produced at
§ 1046.15 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 27838, May 11, 1993]

§ 1046.16 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 27838, May 11, 1993]

§ 1046.17 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).

§ 1046.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines:

(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 of or marketing milk or its products for its members.

§ 1046.19 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 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 §§1046.13, 1046.41 and 1046.52.

[58 FR 27838, May 11, 1993]

HANDLER REPORTS

§ 1046.30 Reports of receipts and utilization.

On or before the 8th 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:
Agricultural Marketing Service, USDA § 1046.32

(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 §1046.9(c);

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

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, for which a transportation credit is requested pursuant to §1046.82, including the date that such milk was received;

(6) Receipts of producer milk described in §1046.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

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

(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.

(c) Each handler described in §1046.9(b) and (c) shall report:

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

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

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to §1046.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

(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.

§ 1046.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described §1046.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1046.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1046.32 Other reports.

(a) Each handler shall report to the market administrator, as soon as possible after first receiving milk from any producer, the name and address of such producer, the date upon which such milk was first received, and the plant at which such milk was received.

(b) On or before the 10th day after the request of the market administrator, each handler shall submit a schedule of rates which are charged and paid for the transportation of milk from the farm of each producer to such handler's plant. Changes in such schedule of
§ 1046.40 Classes of utilization.
Except as provided in §1046.42, all skim milk and butterfat required to be reported by a handler pursuant to §1046.30 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 §1046.15 and the fluid cream product definition pursuant to §1046.16; and

(7) In shrinkage assigned pursuant to §1046.41(a) to the receipts specified in §1046.41(a)(2) and in shrinkage specified in §1046.41(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.

§1046.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1046.30, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant, which shall be assigned pro rata to:

(1) The quantity of skim milk and butterfat, respectively, that is equal to 50 times the maximum amount that may be computed pursuant to paragraph (b) of this section; and

(2) The quantity of skim milk and butterfat, respectively, in other source milk received in bulk form as fluid milk products or bulk fluid cream products, excluding any such receipts used in the computations pursuant to paragraphs (b)(5) and (6) of this section;

(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 §1046.9(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 (b)(2) shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in 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;
§ 1046.42 Classification of transfers and diversions.

(a) Transfers and diversions to pool plants. Skim milk or butterfat transferred or diverted in the form of fluid milk or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in §1046.9(c) to another handler’s 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 §1046.44(a)(12) and the corresponding step of §1046.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1046.44(a)(7) or the corresponding step of §1046.44(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;

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to §1046.44(a)(11) or (12) or the corresponding steps of §1046.44(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; and

(4) If a specified classification is not claimed by both handlers in the case of transfers or diversions by such a cooperative association, such skim milk and butterfat shall be classified pro rata to the respective amounts remaining in each class at the pool plant of the transferee- or divertee-handler after making the assignments pursuant to §1046.44(a)(12) and the corresponding step of §1046.44(b), and after the assignment of milk for which a specified classification has been claimed pursuant to this paragraph.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of fluid milk 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;

(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 §1046.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred 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 producer-handler’s utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his 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 or a producer-handler 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 §1046.30 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;
(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class II utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and
(viii) In determining the nonpool plant’s utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant’s utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1046.43 General classification rules.

In determining the classification of producer milk pursuant to §1046.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1046.30 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 §1046.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1046.40, 1046.41, and 1046.42;
(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 and butterfat, respectively, in each class in accordance with §§1046.40, 1046.41, and 1046.42;
(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1046.9(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 §1046.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1046.44 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.

§ 1046.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1046.9(a) for each of his pool plants separately and of each handler described in §1046.9(b) and (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 §1046.41(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 an other 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 §1046.40(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 §1046.40(b)(3) 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 §1046.40(b) (excluding the quantity of such skim milk that was classiﬁed as Class III milk pursuant to §1046.40(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:

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form
§ 1046.44

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

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 §1046.40(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;

(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 milk from a dairy farmer described in §1046.12(b)(4);

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

(a) Multiply by 1.25 the 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 §1046.9(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 §1046.40(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 paragraph 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) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I 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 § 1046.48(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 I 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 paragraphs (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 or a handler described in §1046.9(c) according to the classification of such products pursuant to §1046.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as “overage.”

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.


§ 1046.45 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 §1046.44(a)(12) and the corresponding step of §1046.44(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 §1046.43(d) and §1046.44 on the basis of the 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.
§ 1046.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1046.74 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.

(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...
§ 1046.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in §1046.9(c) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows:

(1) For such milk that is physically received at plants located in the Kentucky counties of Bell, Breathitt, Caldwell, Christian, Clay, Harlan, Hopkins, Knott, Knox, Laurel, Leslie, Letcher, Logan, Lyon, McCreary, Muhlenberg, Perry, Pulaski, Todd, Trigg and Whitley, the Class I price shall be increased by a location adjustment of 15 cents;

(2) For such milk that is physically received at plants located in the Kentucky counties of Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Marshall and McCracken and the Missouri counties of New Madrid, Pemiscot and Scott, the Class I price shall be increased by a location adjustment of 28 cents;

(3) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee or the northern boundary of North Carolina, the Class I price shall be increased by a location adjustment of 41 cents;

(4) For such milk that is physically received at plants located in the marketing area or the state of Kentucky and outside the areas specified in paragraph (a)(1), (2), or (3) of this section, no location adjustment shall apply; and

(5) For such milk that is physically received at plants located outside the areas specified in paragraph (a)(1), (2), (3), or (4) of this section, and 85 miles or more from the City Halls in Louisville and Lexington, Kentucky, and Evansville, Indiana, by the shortest hard-surfaced highway distance as determined by the market administrator, the Class I price shall be reduced by a location adjustment of 2.5 cents for each 10 miles or fraction thereof that such plant is from the City Hall in Louisville, Lexington, or Evansville, whichever is nearest.

(b) For purposes of calculating such adjustment, transfers between pool...
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 §1046.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to §1046.44 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 §1046.44(a)(14) and the corresponding step of §1046.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1046.74, 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 §1046.44(a)(9) and the corresponding step of §1046.44(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 §1046.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1046.44(a)(7)(i) through (iv) and (vii) and the corresponding step of §1046.44(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 §1046.44(a)(7)(i)(v) and (vi) and the corresponding step of §1046.44(b); and

(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 skimmilk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to §1046.43(d) and §1046.44(a)(7)(i) and the pounds of skimmilk and butterfat subtracted from Class I pursuant to §1046.44(a)(11) and the corresponding steps of §1046.44(b), excluding such skimmilk 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 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 §1046.43(d);

(h) 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 §1046.76(a)(5) or (c); and

(i) 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.

§ 1046.61 Computation of uniform price (including weighted average price).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to §1046.60 for all handlers who filed the reports prescribed in §1046.30 for the month and who made the payments pursuant to §1046.71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus location adjustments and subtract an amount equal to the total value of the plus location adjustments computed pursuant to §1046.75;

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

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to §1046.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price.

(b) [Reserved]


§ 1046.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 12th day after the end of each month the uniform price pursuant to §1046.61 for such month.


§ 1046.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all payments made by handlers pursuant to §§1046.71, 1046.76, and 1046.77 subject to the provisions of §1046.78, and from which he shall make all payments pursuant to §§1046.72 and 1046.77. Provided,
§ 1046.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler, at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher.

(b) On or before the 17th day of the following month, an amount equal to not less than the uniform price, as adjusted pursuant to §§1046.74 and 1046.75, multiplied by the hundredweight of milk received from such producer during the month subject to the following adjustments:

(1) Plus or minus adjustments for errors made in previous payments to such producer;

(2) Minus payments made to such producer pursuant to paragraph (a) of this section;

(3) Minus deductions for marketing services made pursuant to §1046.86;

(4) Minus proper deductions authorized by such producer which, in the case of a deduction for hauling, shall be in writing and signed by such producer or, in the case of members of a cooperative association which is marketing

§ 1046.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1046.71(a)(2) exceeds the amount computed pursuant to §1046.71(a)(1): Provided, That the market administrator shall offset any payment due any handler against payments due from such handler, and if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1046.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

1. The total value of milk of the handler for such month as determined pursuant to §1046.60.

2. The sum of:

   (i) The value at the uniform price, as adjusted pursuant to §1046.75, of such handler’s receipts of producer milk; and

   (ii) 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 is computed pursuant to §1046.60(f).

(b) 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 (b)(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.

§ 1046.73

the producer's milk, by such association.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association in lieu of payments pursuant to paragraphs (a) and (b) of this section, each handler shall pay to the cooperative association on or before the second day prior to the dates specified in paragraphs (a) and (b), respectively, of this section, an amount equal to the sum of the individual payments otherwise payable to such producers without the deductions provided by paragraphs (b)(2) and (3) of this section: Provided, That deductions for supplies authorized by such producer may be made. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the month next following receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making the payments to producers pursuant to paragraph (b) of this section, each handler shall furnish each producer a supporting statement which shall show the following:

(1) The month and identity of the producer;

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

(3) [Reserved].

(4) The minimum rate at which payment to the producer is required under the order;

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

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

(7) The net amount of payment to such producer.

(e) In making payments to a cooperative association pursuant to paragraph (c) of this section, each handler shall report to such cooperative association for each such producer on forms approved by the market administrator as follows:

(1) On or before the 20th day of the month, the total pounds of milk received during the first 15 days of such month;

(2) On or before the 7th day of the following month, the total pounds of milk received each month, together with the butterfat content of such milk and the amount of deductions claimed by such handler; and

(3) On or before the 7th day after the end of each month of March through June, the total pounds of base milk received.

(f) Each handler shall pay to the cooperative association for milk received from it as a handler described in §1046.9(c) as follows:

(1) On or before 2 days prior to the last day of the month for milk received during the first 15 days of the month, an amount computed at not less than the value of such milk at the minimum prices for milk in each class, as adjusted by the butterfat differential specified in §1046.74 applicable at the location of the receiving handler's pool plant and any transportation credit that is due the cooperative association pursuant to §1046.82(a), less the payment made.
§ 1046.74 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 §1046.51 (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.

§ 1046.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price received at a plant shall be adjusted according to the location of the plant at the rates set forth in §1046.52; and

(b) For purposes of computations pursuant to §§1046.71 and 1046.72, the weighted average price shall be adjusted at the rates set forth in §1046.52 applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1046.76 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 (f)(1) of this section. If the handler submits pursuant to §§1046.30(b) and 1046.31(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 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 (but not to 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...
§ 1046.76 7 CFR Ch. X (1-1-99 Edition)

the producer milk used to produce the
nonfluid milk ingredients at the dif-
ference between the Class I price appli-
cable under the other order at the loca-
tion 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 ingre-
dients 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 reconsti-
tuted fluid milk products cannot be de-
termined by the market administrator.

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

(1) Determine the value that would
have been computed pursuant to
§ 1046.60 for the partially regulated dis-
tributing 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 par-
tially regulated distributing plant from
a pool plant or an other order plant
shall be allocated at the partially regu-
lated distributing plant to the same
class in which such products were clas-
sified at the fully regulated plants;

(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 par-
tially regulated distributing plant in
the class to which allocated at the
fully regulated plant. Such transfers
shall be allocated to the extent pos-
sible 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)(ii) 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 oper-
ating the partially regulated distrib-
uting plant pursuant to § 1046.60 shall
be priced at the uniform price (or at
the weighted average price if such is
provided) of the respective order regu-
lating 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 recon-
stituted 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 re-
quests, the value of milk determined
pursuant to § 1046.60 for such handler
shall include, in lieu of the value of
other source milk specified in
§ 1046.60(f) less the value of such other
source milk specified in
§ 1046.71(a)(2)(ii), a value of milk deter-
mined pursuant to § 1046.60 for each
nonpool plant that is not an other
order plant which serves as a supply
plant for such partially regulated dis-
tributing plant by making shipments
to the partially regulated distributing
plant during the month equivalent to
the requirements of § 1046.7(b) and (c),
subject to the following conditions:

(a) The operator of the partially regu-
lated distributing plant submits with
his reports filed pursuant to
§§ 1046.30(b) and 1046.31(b) similar re-
ports for each such nonpool supply
plant;

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

(c) The value of milk determined pur-
suant to § 1046.60 for such nonpool sup-
ply plant shall be determined in the
same manner prescribed for computing
the obligation of such partially regu-
lated distributing plant; and

(2) From the partially regulated dis-
tributing plant’s value of milk com-
puted pursuant to paragraph (b)(1) of
this section, subtract:

(i) The gross payments by the oper-
ator of such partially regulated distrib-
uting plant, adjusted to a 3.5 percent
butterfat basis by the butterfat dif-
ferential specified in § 1046.74, for
milk received at the plant during the month
Agricultural Marketing Service, USDA

§ 1046.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to §1046.81 and out of which shall be made the payments due handlers pursuant to §1046.82. Payments due a handler shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to §1046.72 or §1046.82, the market administrator shall make payment to such handler within 15 days or, in the case of the transportation credit balancing fund, as soon as funds become available. If a handler is due additional payment for a month in which payments to handlers were prorated pursuant to §1046.82(a), the additional payment pursuant to this section shall be multiplied by the final proration percentage computed in §1046.82(a)(2).

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by §1046.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.


§ 1046.78 Charges on overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §1046.71, §1046.72, §1046.73, §1046.76, §1046.77, §1046.81, §1046.85, or §1046.86 shall be increased one-half of one percent on the first of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.


Marketwide Service Payments

§ 1046.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to §1046.81 and out of which shall be made the payments due handlers pursuant to §1046.82. Payments due a handler shall
§ 1046.81 Payments to the transportation credit balancing fund.

(a) On or before the 15th day after the end of the month, each handler operating a pool plant and each handler specified in §1046.9 (b) and (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to §1046.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June-January period. In the event that during any month of the June-January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month.


§ 1046.82 Payments from the transportation credit balancing fund.

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

(1) On or before the 16th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to §1046.30(a)(5), bulk milk transferred from another order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to §1046.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to §1046.32(c). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to §1046.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to §1046.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association by the pool plant operator pursuant to §1046.73(f)(2).
(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

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

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, and allocated to Class I milk pursuant to §1046.44(a)(12); and

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

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to §1046.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in §1046.44;

(ii) The dairy farmer was not a “producer” under this order during more than 2 of the immediately preceding months of January through June and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months. However, if January and/or June are months in which transportation credits are disbursed pursuant to paragraph (a) of this section, these months shall not be included in the 2-month limit provided in this paragraph;

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1011, or within the Kentucky counties of Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(d) Transportation credits shall be computed as follows:

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

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

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

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the other order’s Class I price applicable at the shipping plant’s location from the Class I price applicable at the receiving plant as specified in §1046.52;

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

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) introductory text of this section.

(3) For milk described in paragraph (c)(2) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer’s farm
from which milk was picked up for delivery to the receiving pool plant. Alternatively, the milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may establish an origination point following the last farm pickup by stopping at the nearest independently-operated truck stop with a certified truck scale and obtaining a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) If the origination point determined pursuant to paragraph (d)(3)(i) of this section is in a Federal order marketing area, subtract the Class I price applicable at the origination point pursuant to the provisions of such other order (as if the origination point were a plant location) from the Class I price applicable at the distributing plant receiving the milk. If the origination point is not in any Federal order marketing area, determine the Class I price at theorigination point based upon the provisions of this order and subtract this price from the Class I price applicable at the distributing plant receiving the milk;

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

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


§ 1046.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, excluding a handler described in §1046.9(c), shall pay to the market administrator on or before the 15th day after the end of the month three cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler’s own production) and milk received from a handler described in §1046.9(c):

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1046.44(a)(7) and (a)(11) and the corresponding steps of §1046.44(b), except such other source milk that is excluded from the computations pursuant to §1046.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to §1046.76(a)(2).


§ 1046.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to §1046.73(b), shall deduct 5 cents per hundredweight, or such amount not in excess thereof as the Secretary may prescribe, with respect to all milk received by such handler from producers (other than such handler’s own farm production) during the month and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such money shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Each cooperative association which is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, may file with a handler a claim for authorized deductions from.
the payments otherwise due to its producer members for milk delivered to such handler. Such claim shall contain a list of the producers for whom such deductions apply, an agreement to indemnify the handler in the making of the deductions, and a certification that the association has an unterminated membership contract with each producer. In making payments to producers for milk received during the month, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, deductions in accordance with the association's claim and shall pay the amount deducted to the association within 15 days after the end of the month.

PART 1049—MILK IN THE INDIANA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1049.1 General provisions.

DEFINITIONS

1049.2 Indiana marketing area.
1049.3 Route disposition.
1049.4 [Reserved]
1049.5 Distributing plant.
1049.6 Supply plant.
1049.7 Pool plant.
1049.8 Nonpool plant.
1049.9 Handler.
1049.10 Producer-handler.
1049.11 [Reserved]
1049.12 Producer.
1049.13 Producer milk.
1049.14 Other source milk.
1049.15 Fluid milk product.
1049.16 Fluid cream product.
1049.17 Filled milk.
1049.18 Cooperative association.
1049.19 Commercial food processing establishment.

HANDLER REPORTS

1049.30 Reports of receipts and utilization.
1049.31 Payroll reports.
1049.32 Other reports.

CLASSIFICATION OF MILK

1049.40 Classes of utilization.
1049.41 Shrinkage.
1049.42 Classification of transfers and diversions.
1049.43 General classification rules.
1049.44 Classification of producer milk.

1049.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1049.50 Class and component prices.
1049.51 Basic formula price.
1049.52 Plant location adjustments for handlers.
1049.53 Announcement of class and component prices.
1049.54 Equivalent price.

DIFFERENTIAL POOL AND HANDLER OBLIGATIONS

1049.60 Computation of handlers' obligations to pool.
1049.61 Computation of weighted average differential value.
1049.62 Computation of producer protein price.
1049.63 Uniform price and handlers' obligations for producer milk.
1049.64 Announcement of weighted average differential price, producer protein price, and uniform price.
1049.65 Value of producer milk.
1049.66 Computation of somatic cell adjustment.

PAYMENTS FOR MILK

1049.70 Producer-settlement fund.
1049.71 Payments to the producer-settlement fund.
1049.72 Payments from the producer-settlement fund.
1049.73 Payments to producers and to cooperative associations.
1049.74 Butterfat differential.
1049.75 Plant location adjustments for producers and on nonpool milk.
1049.76 Payments by handler operating a partially regulated distributing plant.
1049.77 Adjustment of accounts.
1049.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1049.85 Assessment for order administration.
1049.86 Deduction for marketing services.

ADVERTISING AND PROMOTION PROGRAM

1049.105 Dairy research and promotion order.
1049.106 Qualified program.
1049.107 Deduction for advertising and promotion program.
1049.110 Agency.
1049.111 Composition of the Agency.
1049.112 Term of office.
1049.113 Selection of Agency members.
1049.114 Agency operating procedure.
1049.115 Powers of the Agency.
1049.116 Duties of the Agency.
§ 1049.1  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

§ 1049.2  Indiana marketing area.

Indiana marketing area (hereinafter referred to as the “marketing area”) means all of the territory within the boundaries of the following counties, including territory wholly or partly within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) In Indiana, the counties of:

(b) In Michigan, the counties of:
Berrien, Branch, Cass, St. Joseph.

[42 FR 56650, Oct. 31, 1977]
filled milk and of packaged fluid milk products received from other pool or other Federal order plants;

(ii) A plant meeting such percentage requirement for the two immediately preceding months and the requirement of paragraph (a)(2) of this section for the current month may remain qualified under this paragraph in the current month; and

(iii) A plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June and July immediately following if the plant meets the requirements of paragraph (a)(2) of this section;

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk.

(b) A supply plant from which not less than 40 percent during the months of September through February and not less than 35 percent during the months of March through August of the Grade A milk received from producers (including producer milk diverted to such plant) and from handlers described in §1049.9(c) at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph. Pool supply plant qualification shall be subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries;

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants; and

(3) The shipping percentage requirements of this paragraph may be increased or decreased temporarily by up to 10 percentage points by the market administrator if such person finds that such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision on either such person's own initiative or at the request of interested persons. If the investigation shows that a temporary revision might be appropriate, the market administrator shall issue a notice stating that revision is being considered and invite data, views, or arguments in favor of or in opposition to the proposed temporary revision.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or by meeting the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood) fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(d) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant from which the Secretary determines there is a greater proportion of route disposition (except filled milk) in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order; Provided, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this
§ 1049.8 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 neither an other order plant nor a producer-handler plant, 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 supply plant that is not an other order plant or a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

§ 1049.9 Handler.

Handler means:

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

(b) Any cooperative association with respect to producer milk diverted for the account of such association pursuant to §1049.13;

(c) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant operated by another person, unless both the cooperative association and the operator of the pool plant notify the market administrator that the plant operator will be responsible for payment for the milk and is purchasing the 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 who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in §1049.7(c).

§ 1049.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool plants, and no milk products other than fluid milk products for reconstitution into fluid milk products. Provided, That such person provides proof satisfactory to the market administrator that the
care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and distributing business are at the personal enterprise and risk of such person.

§ 1049.11 [Reserved]

§ 1049.12 Producer.
(a) Except as provided in paragraph (b) of this section, producer means any person who, in compliance with Grade A inspection requirements of a duly constituted health authority, produces milk for distribution as fluid milk products within the marketing area or produces milk acceptable for fluid consumption at Federal, State or municipal institutions, which milk is received at a pool plant, diverted pursuant to §1049.13, or received by a handler pursuant to §1049.9(c).
(b) "Producer" shall not include:
(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;
(2) Any person with respect to milk produced by him which 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 §1049.44(a)(8)(iii) and the corresponding step of §1049.44(b); and
(3) Any person with respect to milk produced by him which 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.

§ 1049.13 Producer milk.
Producer milk means the skim milk and butterfat contained in milk from producers which is:
(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;
(b) Received at a pool plant from a handler described in §1049.9(c) under the conditions set forth therein;
(c) Received by a handler described in §1049.9(c) from producers in excess of the quantity delivered to pool plants;
(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or
(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in §1049.9(b), subject to the following conditions:
(1) During each of the months of September through November not less than one day’s production of the producer must be physically received at a pool plant;
(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;
(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;
(4) Any milk diverted in excess of the limit set forth in paragraph (e) (2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and
(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that the uniform price applicable to milk that is diverted to a plant located outside the areas specified in §1049.52(a) (1) through (3) shall not be adjusted downward below the uniform price for the
§ 1049.14 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 § 1049.40(b)(1) from any source other than producers, or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1049.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1049.40(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 § 1049.40(b)(1)) for which the handler fails to establish a disposition.

[58 FR 27841, May 11, 1993]

§ 1049.16 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 27841, May 11, 1993]

§ 1049.17 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).

[58 FR 27841, May 11, 1993]

§ 1049.18 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";

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

(c) To have all of its activities under the control of its members.

§ 1049.19 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

month applicable at the location of the producer's farm: Provided, That 65 percent or more of such producer's milk is delivered to a plant or plants in an area specified in § 1049.52(a) (1) through (3) or to a plant at which the same or a higher uniform price is applicable.

[58 FR 43514, Aug. 17, 1993]
Agricultural Marketing Service, USDA

§ 1049.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in §1049.9 (a), (b) and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;
(2) The total pounds of milk received from such producer;
(3) The average butterfat content, average milk protein content, and average somatic cell count of such milk; and
(4) The price per hundredweight, butterfat and milk protein prices and somatic cell adjustment to the producer protein price, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(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 cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to §1049.9 (b) or (c), showing:
   (i) The quantities of such receipts delivered to each pool plant of other handlers; and
   (ii) The classification of such receipts diverted pursuant to §1049.13.

(2) [Reserved]

(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.

[58 FR 27841, May 11, 1993]

HANDLER REPORTS

§ 1049.30 Reports of receipts and utilization.

On or before the 8th 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, showing the pounds of milk, butterfat and milk protein contained in the milk, and the somatic cell count of the milk;
(2) Receipts of milk from handlers pursuant to §1049.9 (b) or (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 §1049.40(b)(1); and
(6) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:
   (i) Total route dispositions and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and
   (ii) Transfers and diversions to other plants, the butterfat and milk protein content of such milk, and the somatic cell count of the milk;

(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 cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to §1049.9 (b) or (c), showing:
   (i) The quantities of such receipts delivered to each pool plant of other handlers; and
   (ii) The classification of such receipts diverted pursuant to §1049.13.

(2) [Reserved]

(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.

§ 1049.32

§ 1049.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.


§ 1049.32 Other reports.

In addition to the reports required pursuant to §§ 1049.30 and 1049.31, 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

§ 1049.40 Classes of utilization.

Except as provided in §1049.42, all skim milk and butterfat required to be reported by a handler pursuant to §1049.30 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 §1049.15 and the fluid cream product definition pursuant to §1049.16; and

(7) In shrinkage assigned pursuant to §1049.41(a) to the receipts specified in §1049.41(a)(2) and in shrinkage specified in §1049.41(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.

§1049.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1049.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b)(1) through (7) 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 (7) of this section which was received in bulk fluid form;

(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 skim milk and butterfat, respectively, in milk received from a handler pursuant to §1049.9(c), except that if the handler operating the pool plant files notice with the market administrator that he is purchasing 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 2.0 percent;

(3) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk diverted to such plant from another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph (b)(3) shall be 2 percent;

(4) 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
§ 1049.42 Classification of transfers and diversions.

(a) Transfers and diversions to pool plants. Skim milk and butterfat transferred or diverted in the form of a fluid milk product to a pool plant from another pool plant or by a handler pursuant to §1049.9(b) or (c) and skim milk and butterfat transferred in the form of a bulk fluid cream product between pool plants shall be classified as Class I milk unless both parties to each such transfer or diversion 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 §1049.44(a)(12) and the corresponding step of §1049.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1049.44(a)(7) or the corresponding step of §1049.44(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 §1049.44(a)(11) or (12) or the corresponding steps of §1049.44(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:

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

(6) 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;

(7) 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

(8) 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), (3), (5), (6) and (7) 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 §1049.9(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, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

Agricultural Marketing Service, USDA

§ 1049.42

(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 another 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 § 1049.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred 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 producer-handler’s utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his 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 or a producer-handler 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) 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 § 1049.30 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;
§ 1049.43  General classification rules.

In determining the classification of producer milk pursuant to §1049.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1049.30 and shall compute separately for each pool plant and each handler pursuant to §1049.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1049.40, 1049.41 and 1049.42;

(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 §1049.9(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
§ 1049.44 Classification of producer milk.

For each month the market administrator shall determine for each pool plant the classification of milk received from producers and from handlers pursuant to §1049.9(b) or (c) and the classification of milk received from producers by each handler pursuant to §1049.9(b) or (c) that was not received at a pool plant, 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 §1049.41(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 an other 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;

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 §1049.40(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 §1049.40(b)(3) 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 §1049.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1049.40(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:

i. Bulk concentrated fluid milk products and 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 §1049.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1049.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II.

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§ 1049.44

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

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 §1049.40(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;

(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; and

(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;

(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 I 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)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and then Class III 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 the pounds of skim milk remaining in decreased by a like amount. In such case, 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 at all pool plants of the handler in producer milk, receipts of fluid milk products from pool plants of other handlers, from handlers pursuant to §1049.9(b) and (c), 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 I and Class III combined;

(9) Subtract from the pounds of skim milk in fluid milk products and products specified in §1049.40(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)(ii) 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 paragraph 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) by an amount equal to the 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, beginning with the nearest plant at which Class I utilization is available;

(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 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 computation 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, and 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 receipt from handlers pursuant to §1049.9(b) and (c) and in receipts of fluid milk products and bulk fluid cream products from other pool plants according to the classification assigned pursuant to §1049.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as ‘‘overage’’;

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§1049.45 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 §1049.44 (a)(12) and the corresponding step of §1049.44(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 §1049.43(d) and §1049.44 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.
Agricultural Marketing Service, USDA § 1049.51

§ 1049.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1049.74 and rounded to the nearest cent.

(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:

(a) Class I price shall be the basic formula price for the second preceding month plus $1.90.

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

(c) Class III price shall be the basic formula price for the month.

(d) Butterfat price. The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(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.

(e) Milk protein price. The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to §1049.74 times 35, and rounding the result to the nearest whole cent.

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

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk received at pool plants located in the following zones, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to §1049.50(a) shall be adjusted as set forth in paragraphs (a)(1) through (a)(7), as follows, except that in no event shall the adjustment result in a price less than the Class III price for the month:

(1) Zero adjustment zone. Any Indiana county not specifically named in paragraphs (a)(2) through (a)(5) of this section, and not part of the Louisville-Lexington-Evansville marketing area.

(2) Plus 10-cent adjustment zone. The Indiana counties of Jackson, Jefferson, Jennings, Lawrence, Ripley, Scott and Switzerland.


(5) Minus 35-cent adjustment zone. The Indiana counties of Lake and Porter.

(6) At locations in other Federal order marketing areas, the appropriate

(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 18965, Apr. 14, 1995]
price adjustment shall be the difference between the applicable Class I price effective at such plant location under the order for the area in which the plant is located and the Class I price specified in §1049.50(a). For purposes of this paragraph, the locations in the Ohio counties of Defiance, Paulding, Van Wert and Williams, and the Michigan counties of Hillsdale, Lenawee and Monroe that are not part of any Federal milk order marketing area, will be considered to be in pricing zone 1 of the Ohio Valley milk marketing area.

(7) At locations outside any Federal order marketing area and north of 38 degrees latitude, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be minus 2.0 cents for each 10 miles or fraction thereof from such point in addition to the amount of the location adjustment pursuant to paragraphs (a) (1) through (5) of this section applicable at the respective point.

(b) For the purpose of calculating adjustments pursuant to this section, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the receipts at such plant from producers and handlers pursuant to §1049.9 (b) and (c) and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which the Class I price is not less than the Class I price at the transferee plant, and then to receipts from plants with lower Class I prices in sequence beginning with the plant having the highest Class I price.

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

§1049.53 Announcement of class and component prices.

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

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III and Class III-A prices for the preceding month;

(d) The butterfat differential for the preceding month; and

(e) The butterfat price, the milk protein price, and the skim milk price computed pursuant to §1049.50 (d), (e) and (f) for the preceding month.

(f) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

§1049.54 Equivalent price.

If for any reason a price quotation or factor required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price or factor determined by the Secretary to be equivalent to the price or factor which is required.

§1049.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each pool plant of each handler, and for each handler pursuant to §1049.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to §1049.44 multiplied by the difference between the Class I price (adjusted pursuant to §1049.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to §1049.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to

§1049.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each pool plant of each handler, and for each handler pursuant to §1049.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to §1049.44 multiplied by the difference between the Class I price (adjusted pursuant to §1049.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to §1049.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to
§ 1049.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to §1049.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler’s receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1049.44(a)(14) and the corresponding step of §1049.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to §1049.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to §1049.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1049.44(a)(14) and the corresponding step of §1049.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to §1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to §1049.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to §1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to §1049.44(b) multiplied by the butterfat price;

(4) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1049.44(a)(7) (v) and (vi) and the corresponding step of §1049.44(b) applicable at the location of the transferor-plant at the current month’s Class I-Class III price difference;

(5) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to §1049.44(a)(11) and the corresponding step of §1049.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month’s Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to §1049.44 multiplied by the skim milk price for the month computed pursuant to §1049.50(f).
(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler’s receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to §1049.50(e) and adjusted pursuant to §1049.66 for the weighted average somatic cell content of the handler’s receipts of milk.

(j) 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, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(k) 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 §1049.76(c).

(l) 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.

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

§ 1049.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to §1049.60, paragraphs (a) through (g) and (j) and (k), for all handlers who made reports pursuant to §1049.30 and who made payments pursuant to §1049.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to §1049.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to §1049.75(a);

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

(e) 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 §1049.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the “Weighted Average Differential Price”.

[58 FR 43516, Aug. 17, 1993]

§ 1049.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to §1049.60, paragraphs (h) and (i), for all handlers who made reports pursuant to §1049.30 and who made payments pursuant to §1049.71 for the preceding month;

(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer’s somatic cell count pursuant to §1049.66;

(c) Divide the resulting amount by the total pounds of protein in producer milk; and

§ 1049.63
(d) Round to the nearest whole cent. The result is the “Producer protein price.”
[58 FR 43517, Aug. 17, 1993]

§ 1049.63 Uniform price and handlers’ obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to §1049.61 to the basic formula price for the month.
(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§1049.65 and 1049.73.
[58 FR 43517, Aug. 17, 1993]

§ 1049.64 Announcement of weighted average differential price, producer protein price, and uniform price.
The market administrator shall announce publicly on or before the 14th day after the end of the month the weighted average differential price computed pursuant to §1049.61, the producer protein price computed pursuant to §1049.62, and the uniform price computed pursuant to §1049.63(a).
[58 FR 43517, Aug. 17, 1993]

§ 1049.65 Value of producer milk.

The value of producer milk shall be the sum of:
(a) The weighted average differential price computed pursuant to §1049.61 and adjusted pursuant to §1049.75, multiplied by the total hundredweight of producer milk received from the producer;
(b) The producer protein price computed pursuant to §1049.62 and adjusted pursuant to §1049.66, multiplied by the total milk protein contained in the producer milk received from the producer; and
(c) The butterfat price computed pursuant to §1049.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.
[58 FR 43517, Aug. 17, 1993]

§ 1049.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer’s milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.
(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment:

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<th>Constants for computing the somatic cell adjustment</th>
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[58 FR 43517, Aug. 17, 1993]

§ 1049.70 Producer-settlement fund.
The market administrator shall maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all payments received pursuant to §§1049.71, 1049.76, 1049.77 and 1049.78 and out of which he shall make all payments pursuant to §§1049.72 and 1049.77: Provided, That a payment due a handler shall be offset against payments due the market administrator from such handler pursuant to §§1049.71, 1049.76, 1049.77, 1049.78, 1049.85 and 1049.86.
Agricultural Marketing Service, USDA
§ 1049.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total obligation of the handler for such month as determined pursuant to §1049.60.

(2) The sum of:

(i) The value of such handler’s receipts of producer milk at the weighted average differential price adjusted pursuant to §1049.75;

(ii) The value of the protein in such handler’s receipts of producer milk at the producer protein price computed pursuant to §1049.62; and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to §1049.60(g).

(b) On or before the 25th day after the end of the month each person who operated an other 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 (b)(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.


§ 1049.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1049.71(a)(2) exceeds the amount computed pursuant to §1049.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1049.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

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

(2) On or before the 18th day after the end of the month to each producer, not less than the value determined pursuant to §1049.65, less any payment made pursuant to paragraph (a)(1) of this section, and less the deduction for advertising and promotion made pursuant to §1049.107. If by such date the handler has not received full payment from the market administrator pursuant to §1049.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall make payment to the cooperative association for producer milk, if such cooperative association is authorized to collect such payments for its members and exercises
such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before two days prior to the last day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 16th day after the end of each month for milk received during such month.

(c) Each handler shall pay a cooperative association for milk received by the handler from the cooperative association as follows:

(1) In the case of milk received from a pool plant(s) operated by a cooperative association:

(i) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before two days prior to the last day of such month not less than the Class III price for the preceding month;

(ii) For milk received during the month the handler shall pay the cooperative association on or before the 10th day of the following month, not less than the value of milk determined pursuant to §1049.65, less any payments made pursuant to paragraph (c)(1)(i) of this section.

(2) Each handler pursuant to §1049.9(a) who receives milk from a cooperative association as a handler pursuant to §1049.9(b) or (c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(i) On or before two days prior to the last day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month;

(ii) On or before the 16th day of the following month for milk received during the month, not less than the value of milk determined pursuant to §1049.65, less any payments made pursuant to paragraph (c)(2)(i) of this section.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds of producer milk, its butterfat and milk protein content, and the somatic cell count of the milk;

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

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

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

(6) The net amount of payment to such producer or cooperative association.

§1049.74 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 §1049.51 (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.

§1049.75 Plant location adjustments for producers and on nonpool milk.

(a) The weighted average differential price for producer milk received at pool plants or diverted to nonpool plants shall be adjusted according to the location of the plants at which it
Agricultural Marketing Service, USDA § 1049.76

was received or was deemed to have been received at the rates set forth in § 1049.52(a), except that the adjusted weighted average differential price plus the withholding rate for the Advertising and Promotion program computed in § 1049.121(e), shall be not less than zero for the month.

(b) For purposes of computations pursuant to §§ 1049.71 and 1049.72 the weighted average differential price shall be adjusted at the rates set forth in § 1049.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average differential price shall not be less than zero.

§ 1049.76 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 §§ 1049.30(b) and 1049.31(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. 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. 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. For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by $1.00.

(b) 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.

[58 FR 43518, Aug. 17, 1993]
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 §1049.60 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 transeree-plant, with such uniform price adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in §1049.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to §1049.60 for such handler shall include, in lieu of the value of other source milk specified in §1049.60(f), less the value of such other source milk specified in §1049.71(a)(2)(ii), a value of milk determined pursuant to §1049.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant during the month equivalent to the requirements of §1049.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§1049.30(b) and 1049.31(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 §1049.60 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 §1049.74, 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 §1049.74, 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.

(2) 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 §1049.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the
§ 1049.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to §1049.73 shall deduct 7 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of

The date it would have been due if the report had been filed when due. [58 FR 43518, Aug. 17, 1993]

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1049.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler (except a handler pursuant to §1049.9(b) or (c) for milk delivered to pool plants) shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own farm production) and milk received from handler pursuant to §1049.9(b) or (c);

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1049.43(d) and other source milk allocated to Class I pursuant to §1049.44(a)(7) and (a)(11) and the corresponding steps of §1049.44(b), except such other source milk that is excluded from the computations pursuant to §1049.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to §1049.76(a)(2). [39 FR 31288, Aug. 28, 1974, as amended at 58 FR 27843, May 11, 1993]

§ 1049.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to §1049.71, §1049.76, §1049.77(a), §1049.78, §1049.85, or §1049.86(a) shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. All such charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

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

the date it would have been due if the report had been filed when due. [58 FR 43518, Aug. 17, 1993]
producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.


ADVERTISING AND PROMOTION PROGRAM

§ 1049.105 Dairy research and promotion order.


[49 FR 23031, June 4, 1984]

§ 1049.106 Qualified program.

Qualified program means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to Section 1150.153 of the Dairy Research and Promotion Order.

[49 FR 23031, June 4, 1984]

§ 1049.107 Deduction for advertising and promotion program.

On or before the 18th day after the end of each month, each handler described in §1049.9 (a), (b), or (c) shall remit to the market administrator as a deduction from payments to producers an amount equal to the rate per hundredweight specified in §1049.121(e) times the volume of milk pooled by each such producer for such month. When making such deductions from payments to producers, the handler shall credit any payments required under authority of State law applicable to such producers for an advertising and promotion program that is a qualified program. Such credit shall not exceed the amount of each producer’s deduction computed pursuant to this section.

[49 FR 23031, June 4, 1984]

§ 1049.110 Agency.

Agency means an agency organized by producers and producers’ cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to §1049.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1049.111 Composition of the Agency.

Each cooperative association or combination of cooperative associations as provided for under §1049.113(b) with 3 percent or more of the total participating producers (producers who have not requested refunds for the most recent quarter) is authorized one Agency representative plus one additional Agency representative for each additional full 10 percent of the participating member producers it represents. Cooperative associations with less than 3 percent of the total participating producers that have elected not to combine pursuant to §1049.113(b), and participating producers who are not members of cooperatives are authorized to select from such group, in total, one Agency representative for the first full 10 percent of the participating member producers it represents. Cooperative associations with less than 3 percent of the total participating producers that have elected not to combine pursuant to §1049.113(b), and participating producers who are not members of cooperatives are authorized to select from such group, in total, one Agency representative for each additional full 10 percent that such producers constitute of the total participating producers. For the purpose of the Agency’s initial organization, all persons defined as producers shall be considered as participating producers.
§ 1049.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1049.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 3 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1049.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 3 percent of the total participating producers, who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) In June of each year the market administrator shall give notice to participating producer members of their opportunity to nominate one or more Agency representatives, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1049.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1049.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1049.110.

(b) Make rules and regulations to effectuate the purposes of Pub. L. 91–670.

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1049.110 and 1049.117.

§ 1049.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1049.110 and 1049.117;
§ 1049.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1049.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to §1049.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1049.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1049.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

(b) Except as provided in paragraphs (c) and (d) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July and October, respectively.

(c) Except as provided in paragraph (d) of this section, a dairy farmer who first acquires producer status under this part after the 15th day of December, March, June or September, as the
§ 1049.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1049.70.
PART 1050—MILK IN CENTRAL ILLINOIS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec. 1050.1 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

§ 1050.2 Central Illinois marketing area. The Central Illinois marketing area, hereinafter called the "marketing area", means all the territory within the following counties, all of which are in the State of Illinois, together with all municipal corporations therein and all institutions owned or operated by the Federal, State, county, or municipal governments located wholly or partially within such counties:

ZONE I

ZONE II
Bureau, Grundy, Iroquois, Kankakee, La Salle, Putnam.
§ 1050.3 Route disposition.

Route disposition means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a pool plant or a nonpool plant.

§ 1050.4 [Reserved]

§ 1050.5 Distributing plant.

Distributing plant means any plant at which fluid milk products are processed and packaged and from which there is route disposition of Grade A fluid milk products in the marketing area during the month.

§ 1050.6 Supply plant.

Supply plant means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1050.7 Pool plant.

Except as provided in paragraph (d) of this section, pool plant means a plant specified in paragraph (a), (b), or (c) of this section. For purposes of determining pool plant status pursuant to this section, Grade A receipts from dairy farmers shall include all quantities of milk diverted pursuant to §1050.13(b) and (c) by an operator of a pool plant.

(a) A distributing plant from which during the month there is:

(1) Route disposition of fluid milk products, except filled milk, in the marketing area equal to 10 percent or more of its Grade A receipts from dairy farmers, handlers described in §1050.9(c), and other pool plants, such receipts to be exclusive of fluid milk products (except filled milk) transferred without specific Class II or Class III designation to other pool plants described in this paragraph, during the months of August through February and 40 percent during all other months.

(2) Total route disposition of fluid milk products, except filled milk, equal to 50 percent or more of its Grade A receipts from dairy farmers, handlers described in §1050.9(c), and other pool plants, such receipts to be exclusive of fluid milk products (except filled milk) transferred without specific Class II or Class III designation to other pool plants described in this paragraph, during the months of August through February and 40 percent in other months.

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from dairy farmers and handlers described in §1050.9(c) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 50 percent Class use (not including filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months.

(c) Any supply plant which qualified pursuant to paragraph (b) of this section in each of the immediately preceding months of September through January shall be a pool plant for the months of February through August unless the operator of such plant notifies the market administrator in writing before the first day of any such month of his intention to withdraw such plant as a pool plant, in which case such plant shall thereafter be a nonpool plant until it again meets the shipping requirements set forth in paragraph (b) of this section.

(d) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area regulated by the other order than in the Central Illinois marketing area: Provided, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area, unless the other
order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this paragraph;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which during the month there is greater quantity of route disposition, except filled milk, in the Central Illinois marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater route disposition in the marketing area of the Central Illinois order; and

(4) Any plant qualified pursuant to paragraph (c) of this section for any portion of the period of February through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1050.8 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 neither an other order plant nor a producer-handler plant, 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 that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

§ 1050.9 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 producers diverted for its account pursuant to §1050.13;

(c) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant(s);

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

(e) A producer-handler;

(f) Any person who operates an other order plant described in §1050.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1050.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a distributing plant and processes milk from his own farm production and who disposes of all or a portion of such milk as route disposition in the marketing area but who receives no milk from other dairy farmers or fluid milk products from nonpool plants: Provided, That the skim milk and butterfat disposed of in the form of fluid milk products designated as Class I milk pursuant to §1050.40(a) does not exceed the skim milk and butterfat, respectively, in the form of milk from his own farm production, and in the form of fluid milk products from pool plants of other handlers, allowing for inventory derived from such sources; and

(b) Assumes as his personal enterprise and risk the processing and distributing of fluid milk products and the maintenance, care and management of dairy animals and other resources necessary to produce his own farm milk production.

§ 1050.11 [Reserved]

§ 1050.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, (2) diverted pursuant to §1050.13, or (3) accounted
for by a cooperative association pursuant to §1050.13(b).

(b) "Producer" shall not include:

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

(2) Any person with respect to milk produced by him which 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 §1050.44(a)(b)(ii) and the corresponding step of §1050.44(b); and

(3) Any person with respect to milk produced by him which 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.

§ 1050.13 Producer milk.

Producer milk means all skim milk and butterfat contained in milk from producers that is:

(a) Received at a pool plant from producers or from a handler described in §1050.9(c);

(b) Represented by the difference between the quantity of milk received by a handler described in §1050.9(c) at producers' farms and the quantity of such milk delivered to pool plants. For the purposes of §§1050.52 and 1050.75, such milk shall be deemed to have been received by such handler at the pool plant to which all other producer milk in the same tank truck was delivered;

(c) Diverted by a handler from a pool plant for the account of the plant operator to another pool plant(s) for not more days of production of such producer's milk than is physically received at the pool plant from which diverted: Provided, That the total quantity of producer milk diverted does not exceed 35 percent of the physical receipts of producer milk at the handler's pool plant during the month, exclusive of milk of producers who are members of a cooperative association that is diverting milk and the milk of other producers that is diverted pursuant to paragraph (d)(3) of this section;

(d) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of this paragraph. For pricing purposes, milk so diverted shall be deemed to be received at the plant from which diverted, unless the plant to which the milk is diverted is located more than 110 miles from the city hall in Peoria, Ill. (by shortest highway distance as determined by the market administrator) in which case the milk shall be deemed to be received by the diverting handler at the location of the plant to which diverted:

(1) During May, June and July the operator of a pool plant or a cooperative association may divert the milk production of a producer on any number of days;

(2) Subject to the conditions set forth in paragraph (d)(4) of this section, during the months of August through April the operator of a pool plant may divert the milk of a producer for not more days of production of such producer's milk than it is physically received at the pool plant from which diverted: Provided, That the total quantity of producer milk diverted does not exceed 35 percent of the physical receipts of producer milk at the handler's pool plant during the month, exclusive of milk of producers who are members of a cooperative association that is diverting milk and the milk of other producers that is diverted pursuant to paragraph (d)(3) of this section;

(3) Subject to the conditions set forth in paragraph (d)(4) of this section, during the months of August through April a cooperative association may divert the milk of producers for not more days of production of each producer's milk than is physically received at a pool plant: Provided, That the total quantity of producer milk does not exceed 35 percent of (i) its member milk physically received at pool plants during such month and (ii) other producer milk for which the cooperative association is the handler pursuant to §1050.9(c) during such month;

(4) In the case where a cooperative association has notified the market administrator and the handler in writing prior to the first day of the month that milk of specified member producers will not be diverted by the cooperative and is not to be included in computing the cooperative association's diversions percentage for the month, milk of such producers shall be deducted from the cooperative's total receipts of member milk for the purposes specified in paragraph (c)(3) of this section and added to the total milk receipts included in computing the diversions of the pool plant handler who receives their milk.
§ 1050.14 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 §1050.40(b)(1) from any source other than producers, handlers described in §1050.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1050.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1050.40(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 §1050.40(b)(1)) for which the handler fails to establish a disposition.

§ 1050.15 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 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 27843, May 11, 1993]

§ 1050.16 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 27843, May 11, 1993]

§ 1050.17 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).
§ 1050.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines:

(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 be engaged in making collective sales, or marketing milk or its products for its members.

§ 1050.19 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 §§1050.13, 1050.41 and 1050.52.

[58 FR 27844, May 11, 1993]

HANDLER REPORTS

§ 1050.30 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 §1050.9(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 §1050.40(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 §1050.9(b) and (c) shall report:

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

(2) The utilization or disposition of all 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.

§ 1050.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in §1050.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

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

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1050.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.
§ 1050.32 Other reports.

(a) Not later than the 7th day after the end of the month, each handler operating a pool plant shall report to the market administrator, for each of his pool plants separately, the name and address of each producer from whom milk was received during the month with statements showing dates on which such producer started shipping and the date on which milk shipments stopped.

(b) In addition to the reports required pursuant to §§1050.30 and 1050.31 and paragraph (a) of this section, 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

§ 1050.40 Classes of utilization.

Except as provided in §1050.42, all skim milk and butterfat required to be reported by a handler pursuant to §1050.30 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:

(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;

(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;
Agricultural Marketing Service, USDA § 1050.41

(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 §1050.15 and the fluid cream product definition pursuant to §1050.16; and

(7) In shrinkage assigned pursuant to §1050.41(a) to the receipts specified in §1050.41(a)(2) and in shrinkage specified in §1050.41 (b) and (c).

[58 FR 27844, May 11, 1993]

§ 1050.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1050.30, the market administrator shall determine the following:

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

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

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

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in §1050.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §1050.9(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 (b)(2) 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 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;
§ 1050.42 Classification of transfers and diversions.

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

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to §1050.44(a)(12) and the corresponding step of §1050.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1050.44(a)(7) or the corresponding step of §1050.44(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 §1050.44(a)(11) or (12) or the corresponding steps of §1050.44(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;
Agricultural Marketing Service, USDA § 1050.42

(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 §1050.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred 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 producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his 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 or a producer-handler 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 §1050.30 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...
§ 1050.43 General classification rules.

In determining the classification of producer milk pursuant to § 1050.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1050.30 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 § 1050.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1050.40, 1050.41, and 1050.42;

(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 § 1050.9(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 § 1050.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1050.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1050.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1050.9(a) for each of his pool plants separately and of each handler described in §1050.9(b) and (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 §1050.41(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:

(i) Bulk concentrated fluid milk products and 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 §1050.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1050.40(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 products specified in §1050.40(b)(1) that were received in bulk concentrated 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:

(i) Bulk concentrated fluid milk products and 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 §1050.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1050.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II.

(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;

(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; and

(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;

(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), (7)(v), and (8)(i) of this section which are 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 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;

(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 §1050.40(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)(ii) 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), 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 paragraph 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)(i), (iii), and (iv) of this section, such subtraction shall be proportioned 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 §1050.45(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; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the
§ 1050.45 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 §1050.44(a)(12) and the corresponding step of §1050.44(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 §1050.43(d) and §1050.44 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 operation 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 12th day after the end of each month, report to each cooperative association which so requests, the class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be so delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

§ 1050.50 Class prices.

Subject to the provisions of §1050.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and
§ 1050.51 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 buttermilk basis using the butterfat differential for the preceding month computed pursuant to §1050.74 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 18966, Apr. 14, 1995]

§ 1050.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk at a plant located outside the State of Illinois or in the State of Illinois but north of the northernmost boundaries of the counties of Mercer, Henry, Bureau, La Salle, Grundy, and Kankakee shall be reduced 10 cents if such plant is 50 miles or more from the City Hall in Peoria, Illinois, plus an additional 2.0 cents for each 10 miles or fraction thereof that such distance exceeds 60 miles. Distances applied pursuant to this paragraph shall be the shortest hard-surfaced highway distances as determined by the market administrator from the latest Mileage Guide as published by the Household Goods Carrier’s Bureau.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 105 percent of Class I disposition at the transferee-plant only to the extent that 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and cooperative associations pursuant to §1050.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants; such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

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


§ 1050.53 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 price for the preceding month.

[60 FR 6610, Feb. 2, 1995]

§ 1050.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 1050.60 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 §1050.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to §1050.44 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 §1050.44(a)(14) and the corresponding step of §1050.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1050.74, 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
§ 1050.44(a)(9) and the corresponding step of § 1050.44(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 §1050.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1050.44(a)(7) (i) through (iv) and the corresponding step of § 1050.44(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 § 1050.44(a)(7) (v) and (vi) and the corresponding step of § 1050.44(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 § 1050.44(a)(11) and the corresponding steps of § 1050.44(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 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 §1050.43(d);
(h) 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 §1050.76 (a)(5) or (c); and
(i) 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.

§ 1050.61 Computation of uniform price (including weighted average price).
For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers at plants at which no location adjustment pursuant to §1050.43 is applicable as follows:
(a) Combine into one total the values computed pursuant to §1050.60 for all handlers who filed the reports prescribed by §1050.30 for the month and who made the payments pursuant to §1050.71 for the preceding month;
(b) Add an amount equal to the sum of the location and zone adjustments computed pursuant to §1050.75;
(c) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;
(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 §1050.60(f);
(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and the "uniform price" for milk received from producers.

(b) On or before the 25th day after the end of each 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 (b)(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.

§ 1050.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 12th day after the end of each month the uniform price for such month.

§ 1050.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1050.71, 1050.76, and 1050.77 shall be deposited in such fund and from which shall be made all payments pursuant to §§ 1050.72 and 1050.77: Provided, That any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1050.61(g) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1050.73 in accordance with the requirements of § 1050.61(h).

§ 1050.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of each month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1050.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1050.75, of such handler's receipts of producer milk; and

(ii) 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 is computed pursuant to § 1050.60(f).

§ 1050.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1050.71(a)(2) exceeds the amount computed pursuant to § 1050.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler.

§ 1050.73 Payments to producers and to cooperative associations.

(a) On or before the 20th day of the following month, each handler shall make payment to each producer for milk received from such producer during such month:

(1) An amount equal to not less than the uniform price, as adjusted pursuant to §§ 1050.74 and 1050.75, multiplied by
the hundredweight of milk received from such producer during the month, subject to the following adjustments: 

(i) Less deductions for marketing services made pursuant to §1050.86; 

(ii) Plus or minus adjustments for errors made in previous payments made to such producer; and 

(iii) Less proper deductions authorized in writing by such producer: Provided, That, if by such date, such handler has not received full payment from the market administrator pursuant to §1050.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator; 

(b) Payments required in paragraph (a) of this section for milk caused to be delivered to such handler by a cooperative association qualified under §1050.18 shall be made to such association, or its duly authorized agent, which the market administrator determines is authorized by such producers to collect payment for their milk and which has so requested the handler in writing. Such handler shall, on or before the 18th day of the following month, pay the cooperative association for milk received during the month from producers at the direction of such association an amount equal to not less than the amounts due such producers as determined pursuant to paragraph (a) of this section, plus or minus adjustments for errors made in previous payments made to such producers; and 

(c) On or before the 18th day after the end of each month, each handler shall report on or before the 7th day after the end of the month to such cooperative association for each such producer on forms approved by the market administrator: 

(1) The total pounds of milk received from each producer together with the butterfat content of such milk; and 

(2) The amount or rate and nature of any deductions authorized by a cooperative association.

§ 1050.74 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 §1050.51 (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 18966, Apr. 14, 1995]
§ 1050.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to §1050.73, the uniform price per hundred-weight for producer milk received at a plant outside Zone I shall be adjusted according to the location of the plant at the rates set forth in §1050.52.

(b) For purposes of computation pursuant to §§1050.71 and 1050.72, the weighted average price shall be adjusted in the same manner as the uniform price is adjusted pursuant to paragraph (a) of this section for 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.

§ 1050.76 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 §§1050.30(b) and 1050.33(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 (but not to 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 §1050.60 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 §1050.60 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 §1050.60 for such handler shall include, in lieu of the value of other source milk specified in §1050.71(a)(2)(ii), a value of milk determined pursuant to §1050.60 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 §1050.7 (b) and (c), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§1050.30(b) and 1050.31(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 §1050.60 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 §1050.74, 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 §1050.74, 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 §1050.43(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.


§ 1050.77 Adjustment of accounts.

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


§ 1050.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1050.71, § 1050.85, or § 1050.86 shall be increased one-half of 1 percent for each month or portion thereof that such payment is overdue.

§ 1050.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler (excluding a handler described in §1050.9(c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 20th day after the end of the month 5 cents per hundredweight or such less amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1050.43(d) and other source milk allocated to Class I pursuant to §1050.44 (a)(7) and (a)(11) and the corresponding steps of §1050.44(b), except such other source milk that is excluded from the computations pursuant to §1050.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to §1050.76(a)(2).


§ 1050.86 Deduction for marketing services.

(a) Deduction for marketing services. Except as set forth in paragraph (b) of this section, each handler in making payments to producers, pursuant to §1050.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the month, and shall pay such deductions to the market administrator on or before the 20th day after the end of such month. Such monies shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Producer's cooperative association. In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section each handler, in lieu of the deduction specified in paragraph (a) of this section, shall make such marketing service deductions as are authorized by producer-
members, and pay the money so deducted to the cooperative association on or before the 20th day after the end of the month.

PART 1051-1063 [RESERVED]

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec. 1064.2 Greater Kansas City marketing area.

DEFINITIONS

1064.2 Greater Kansas City marketing area. Greater Kansas City marketing area, hereinafter called "marketing area," means all the territory within the boundaries of the counties listed below, including territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

MISSOURI COUNTIES

§ 1064.2 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1064.70 Producer-settlement fund.
1064.71 Payments to the producer-settlement fund.
1064.72 Payments from the producer-settlement fund.
1064.73 Payments to producers and to cooperative associations.
1064.74 Butterfat differential.
1064.75 Plant location adjustments for producers and on nonpool milk.
1064.76 Payments by handler operating a partially regulated distributing plant.
1064.77 Adjustment of accounts.
1064.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1064.85 Assessment for order administration.
1064.86 Deduction for marketing services.


SOURCE: 39 FR 16260, May 8, 1974, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1064.1 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

§ 1064.2 Greater Kansas City marketing area. Greater Kansas City marketing area, hereinafter called "marketing area," means all the territory within the boundaries of the counties listed below, including territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1064.85 Assessment for order administration.
1064.86 Deduction for marketing services.


SOURCE: 39 FR 16260, May 8, 1974, unless otherwise noted.
§ 1064.3 Route disposition.

Route disposition means a delivery (either direct or through a distributing facility such as a distribution point, a plant store, a vendor, or vending machine), other than a delivery to a poll plant or a nonpool plant, of a fluid milk product classified as Class I milk.

§ 1064.5 Distributing plant.

Distributing plant means a plant from which during the month there is route disposition in the marketing area of Grade A fluid milk products that are processed or packaged in such plant.

§ 1064.6 Supply plant.

Supply plant means a plant from which a Grade A fluid milk product is shipped during the month to a pool plant.

§ 1064.7 Pool plant.

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

(a) A distributing plant from which during the month or the immediately preceding month there is:

(1) Route disposition, except filled milk, in the marketing area that is not less than 15 percent of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to §1064.13 by the handler operating such plant; and

(2) Route disposition, except filled milk, that is not less than the following percentage of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to §1064.13 by the handler operating such plant: Provided, That the combined receipts and disposition of each handler who operates more than one distributing plant, each of which meets the performance requirements of paragraph (a)(1) of this section, shall be used in determining the percentages specified in this subparagraph:

(i) April through June, 35 percent;

(ii) September and October, 50 percent; and

(iii) All other months, 45 percent.

(b) A supply plant from which during the month 50 percent or more of the Grade A milk received at such plant from dairy farmers and handlers described in §1064.9(c) (including milk diverted from such plant pursuant to §1064.13(c) but excluding milk diverted to such plant pursuant to §1064.13(c)) is shipped from such plant as fluid milk products, except filled milk, to and received at pool distributing plants, subject to the following conditions:

(1) A supply plant which is a pool plant under this paragraph during each month of September through January shall be pooled for the following months of February through August if the required percentage pursuant to this paragraph is not met, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of shipments;

(2) The shipping percentage specified in this paragraph may be increased or decreased temporarily for any of the months of September through January up to 20 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. For any of the months of February through August, a minimum shipping percentage of up to 20 percent may be established by the Director for all pool supply plants that are qualified as a pool plant pursuant to paragraph (b)(1) of this section. Before making such a finding the Director shall investigate the need for revision, either at the Director’s initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a...
Agricultural Marketing Service, USDA § 1064.8

reduction in shipping requirements pursuant to this subparagraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to §1064.30.

(c) A supply plant operated by a cooperative association in any month in which the member producer milk of such cooperative association received at pool distributing plants during the current month, or immediately preceding 12-month period ending with the current month, either by transfer from such supply plant or directly from member producers' farms, is 50 percent or more of such cooperative's total member producer milk. Such direct deliveries from member producers' farms shall be considered as having been received first at the plant of such cooperative association for the purpose of determining the qualification of such plant as a pool plant pursuant to this paragraph. If two or more cooperative associations desire to qualify a supply plant operated by one of the associations as a pool plant on the basis of their combined deliveries to pool distributing plants and have filed a written request to this effect with the market administrator on or before the first day of the month the agreement is effective, such a supply plant shall be a pool plant during the month if the above specified percentage of the total member producer milk of such cooperative associations was received at pool distributing plants during the current month, or the immediately preceding 12-month period ending with the current month.

(d) The term “pool plant” shall not apply to the following plants:

1. A producer-handler plant;
2. A distributing plant or supply plant operated by a State educational institution;
3. A plant from which there is route disposition in the marketing area of less than an average of 600 pounds per day;
4. A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month a greater volume of fluid milk products, except filled milk, was disposed of as route disposition in such other marketing area and to pool plants qualified on the basis of route disposition in such other marketing area than was so disposed of 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 fluid product disposition, except filled milk, is made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;
5. A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month a greater volume of fluid milk products, except filled milk, was disposed of as route disposition in this marketing area and to pool plants qualified on the basis of route disposition in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;
6. A supply plant meeting the pooling requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order, and which has greater qualifying shipments to plants regulated under such other order than are made under this order, unless during any month of February through August automatic pool plant status for such plant is retained under this part for such month; and
7. A supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant also qualified as a pool plant pursuant to paragraph (c) of this section.

§ 1064.8 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 (except the plant of a handler pursuant to §1064.9(h), an order plant, or a producer-handler plant) 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 which is not an other order plant, a producer-handler plant, or a plant of a handler pursuant to §1064.9(h) from which a fluid milk product is shipped during the month to a pool plant.

§ 1064.9 Handler.

Handler means:

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

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to §1064.13 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its producers which is received by the cooperative from the farm for delivery to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association if the cooperative association, prior to delivery, notifies the market administrator in writing that it will be the handler for the milk. Such milk shall be considered to have been received at the location of the pool plant to which delivery is made;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant that is either a distributing plant or a supply plant;

(g) Any person who operates an unregulated supply plant; and

(h) A State educational institution which operates either a nonpool distributing plant or supply plant.

§ 1064.10 Producer-handler.

Producer-handler means a person who operates both a dairy farm and a distributing plant at which each of the following conditions is met during the month:

(a) Milk is received from the dairy farm of such person but from no other dairy farm;

(b) The butterfat or skim milk disposed of in the form of a fluid milk product does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm of such person and in the form of a fluid milk product from pool plants of other handlers;

(c) Such person shall furnish proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for the production of milk in his name and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1064.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to §1064.13.

(b) “Producer” shall not include:

1. A producer-handler as defined in any order (including this part) issued pursuant to the Act or a handler pursuant to §1064.9(h);

2. Any person with respect to milk produced by him which is diverted to a pool plant from an order plant if the order designates such person as a producer under that order, and such milk is allocated to Class II or Class III utilization pursuant to §1064.44(a)(8)(iii) and the corresponding step of §1064.44(b); and

3. Any person with respect to milk produced by him which is reported as diverted to an order plant if any portion of such person’s milk so moved
is assigned to Class I under the provisions of such other order.

§ 1064.13 Producer milk.

Producer milk means the skim milk and butterfat contained in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer or a handler described in §1064.9(c);

(b) Received by a handler described in §1064.9(c) from producers in excess of the quantity delivered to pool plants; or

(c) Diverted, subject to the following conditions, from a pool distributing plant to a pool supply plant or from a pool plant to a nonpool plant that is not a producer-handler plant. Diverted milk is milk normally received at a pool plant but which is moved directly from a dairy farm to a nonpool plant as specified in this paragraph or from a pool distributing plant to a pool supply plant for the account of a handler operating the pool distributing plant or a handler described in §1064.9(b). Such milk shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted except that milk diverted to a plant located more than 125 miles by the shortest highway distance as determined by the market administrator from the nearest of the City Halls of Kansas City, Missouri, or Topeka, Kansas, shall be deemed to have been received at the location of the plant to which diverted in applying §§1064.52 and 1064.75:

(1) A handler described in §1064.9(b) may divert for its account the milk of any member producer whose milk is received at a pool plant for at least 1 day's delivery during the month, without limit during the other days of the month. The total quantity of milk so diverted may not exceed the larger of the following amounts:

(i) The total quantity of milk received at such plant during the current month from producers who are not members of a cooperative association that has diverted milk pursuant to paragraph (c)(1) of this section; or

(ii) The average daily quantity of milk received at such plant during the previous month from producers who are not members of a cooperative association that has diverted milk in the current month pursuant to paragraph (c)(1) of this section, multiplied by the number of days in the current month.

(3) Diversions in excess of the applicable percentages pursuant to paragraphs (c)(1) and (2) of this section shall first be assigned to diversions to nonpool plants and any excess quantity assigned to nonpool plants shall not be producer milk and shall not be deemed to have been received by the diverting handler. The diverting handler shall specify the dairy farmers whose milk shall not be included as producer milk pursuant to this subparagraph. Excess diversions to a pool supply plant shall be producer milk at the supply plant in applying §§1064.7, 1064.52 and 1064.75.


§ 1064.14 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 §1064.40(b)(1) from any source other than producers, handlers described in §1064.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1064.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1064.40(b)(1), and products produced at the plant during the same month) from
§ 1064.15 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.

§ 1064.16 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.

§ 1064.17 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).

§ 1064.18 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 is engaged in making collective sales of or marketing milk or milk products for its members.

§ 1064.19 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 §§1064.13, 1064.41 and 1064.52.

§ 1064.30 Reports of receipts and utilization.

On or before the seventh 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 §1064.9(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 §1064.40(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 §1064.9(b) and (c) shall report:

1. The quantities of all skim milk and butterfat contained in receipts of milk from producers; and
2. The utilization or disposition of all 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.

§ 1064.41 Payroll reports.

(a) On or before the 23rd day after the end of each month, each handler described in §1064.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

1. His name and address;
2. The total pounds of milk received from such producer;
3. The average butterfat content of such milk; and
4. The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1064.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1064.42 Other reports.

(a)–(b) [Reserved]

(c) Each handler shall report such other information as the market administrator deems necessary to verify or establish such handler’s obligation under the order.

[39 FR 16260, May 8, 1974, as amended at 40 FR 27641, July 1, 1975]

Classification of Milk

§ 1064.40 Classes of utilization.

Except as provided in §1064.42, all skim milk and butterfat required to be reported by a handler pursuant to §1064.30 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
§ 1064.40

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

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;
   (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 §1064.15 and the fluid cream product definition pursuant to §1064.16; and

(7) In shrinkage assigned pursuant to §1064.41(a) to the receipts specified in §1064.41(a)(2) and in shrinkage specified in §1064.41(b) and (c).

[58 FR 27846, May 11, 1993]
§ 1064.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1064.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such 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 and milk received from a handler described in § 1064.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1064.9(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 for the cooperative association shall be zero.

§ 1064.42 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 (to a pool supply plant, in the case of diversion) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to...
the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to §1064.44(a)(12) and the corresponding step of §1064.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1064.44(a)(7) or the corresponding step of §1064.44(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 §1064.44(a)(11) or (12) or the corresponding steps of §1064.44(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)(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 I 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 §1064.40.

(c) Transfers to producer-handlers and transfers and diversions to a State educational institution plant. Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a plant of a handler described in §1064.9(h) shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product, except that if a handler described in §1064.9(h) certifies that the fluid milk product is acquired for use in Class II or Class III products for research or educational purposes, such fluid milk product shall be classified in the applicable lower class; 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 his 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 plant of a handler pursuant to §1064.9(h) 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 divertor-handler claims such classification in his report of receipts and utilization filed pursuant to §1064.30 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 other order plants;

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

(c) Pro rata to receipts of fluid milk products at such nonpool plant from other order plants;

(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, then to Class II utilization, and then to Class III utilization at such nonpool plant;
§ 1064.43

(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 priorities at the second plant that are set forth in this subparagraph.

§ 1064.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1064.9(a) for each of his pool plants separately and of each handler described in §1064.9(b) and (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 shrinkage specified in §1064.41(b);

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

(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 §1064.9(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 §1064.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1064.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

other 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 §1064.40(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 §1064.40(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 subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph 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 §1064.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1064.40(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 §1064.40(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 handler described in §1064.9(h);

(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; and

(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;

(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)(ii), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be
§ 1064.44  7 CFR Ch. X (1-1-99 Edition)

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), 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)(ii), (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 subparagraph 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,
(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 another 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 (b)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be prorata 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 §1064.45(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 §1064.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as “overage”;

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

(c) The quantity of producer milk in each class shall be the combined
§ 1064.45

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 §1064.44(a)(12) and the corresponding step of §1064.44(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 §§1064.43(d) and 1064.44 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 such cooperative association in its capacity as a handler described in §1064.9(c) and directly from members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after the allocation pursuant to §1064.44(a)(1) through (13) and the corresponding steps of §1064.44(b).


§ 1064.50 Class prices.

Subject to the provisions of §1064.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.92.

(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.


§ 1064.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1064.74 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 18966, Apr. 14, 1995]
§ 1064.53 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 price for the preceding month.

[60 FR 6610, Feb. 2, 1995]

§ 1064.54 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.

§ 1064.60 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 §1064.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to §1064.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of average subtracted from each class pursuant to §1064.44(a)(14) and the corresponding step of §1064.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1064.74, 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 §1064.44(a)(9) and the corresponding step of §1064.44(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 §1064.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1064.44(a)(7) (i) through (iv) and the corresponding step of §1064.44(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 §1064.44(a)(7) (v) and (vi) and the corresponding step of §1064.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plant 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 §§1064.43(d) and 1064.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1064.44(a)(11) and the corresponding steps of §1064.44(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 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 §1064.43(d);

(h) 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 §1064.76 (a)(5) or (c); and

(i) 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.


§ 1064.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute in the following manner the “uniform price” (and “weighted average price”) per hundredweight of milk of 3.5 percent butterfat content received from producers:

(a) Combine into one total the values computed pursuant to §1064.60 for all handlers who filed the reports prescribed by §1064.30 for the month and who made the payments pursuant to §§1064.71 and 1064.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to §1064.75;

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

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

(1) The total hundredweight of processor milk; and

(2) The total hundredweight for which a value is computed pursuant to §1064.60(f); and

(e) Subtract no less than 4 cents nor more than 5 cents per hundredweight. The result shall be the “weighted average price,” and the “uniform price” for milk received from producers.

[44 FR 7654, Feb. 7, 1979, as amended at 49 FR 23032, June 4, 1984]

§ 1064.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly or before:

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

(b) The 12th day after the end of each month the uniform price for such month.

[39 FR 16260, May 8, 1974, as amended at 40 FR 27641, July 1, 1975]

PAYMENTS FOR MILK

§ 1064.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all funds received pursuant to paragraph (a) of this section and out of which he shall make all payments required pursuant to paragraph (b) of this section.

(a) Payments made by handlers pursuant to §§1064.71, 1064.76, and 1064.77.

(b) Payments due handlers pursuant to §§1064.72 and 1064.77: Provided, That payments due any handler shall be offset by payments due from such handler pursuant to §§1064.71, 1064.76, 1064.77, 1064.85, and 1064.86.

§ 1064.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:
§ 1064.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1064.71(a)(2) exceeds the amount computed pursuant to §1064.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payment and shall complete such payments as soon as the necessary funds are available.

[39 FR 16260, May 8, 1974, as amended at 40 FR 27641, July 1, 1975]

§ 1064.73 Payments to producers and to cooperative associations.

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) or (d) of this section, at not less than the applicable uniform price pursuant to §1064.61, adjusted by the butterfat differential computed pursuant to §1064.74 and the location adjustment to producers pursuant to §1064.75, and less the following amounts: (1) The payments made pursuant to paragraph (b) of this section, (2) deductions for marketing services made pursuant to §1064.86, (3) any deductions authorized by the producer: Provided, That if by such date such handler has not received full payment for such month pursuant to §1064.72 he may reduce his total payment to all producers uniformly by not less than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month to each producer (1) for whom payment is not received from the handler by a cooperative association pursuant to paragraphs (c) and (d) of this section; and (2) who had not discontinued shipping milk to such handler before the 18th day of the month, a partial payment with respect to milk received from such producer during the first 15 days of the month at the approximate value of such milk, not to be less than the Class III price for the preceding month, without deduction for hauling.

[39 FR 16260, May 8, 1974, as amended at 40 FR 27641, July 1, 1975]
(c) To a cooperative association which has filed a written request for such payment with such handler and with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 20th day of the month, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section less any deductions authorized in writing by such cooperative associations; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association.

(d) To a cooperative association with respect to milk for which such association is acting in the capacity of a handler pursuant to §1064.9(c):

(1) On or before the 20th day of the month an amount equal to the rate specified in paragraph (b) of this section times the volume received during the first 15 days of the month; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the value of such milk at the uniform price pursuant to §1064.61, as adjusted pursuant to §§1064.74 and 1064.75, less payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

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

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

(3) The minimum rate or rates at which payment to the producer is required under the provisions of §§1064.73, 1064.74, and 1064.75;

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

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (b) of this section and §1064.86 together with a description of the respective deductions; and

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

(f) Each handler who receives milk from producers, payment for which is to be made to a cooperative association pursuant to paragraph (c) of this section, shall report to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) On or before the 23rd day of the month, the total pounds of milk received during the first 15 days of the month; and

(2) On or before the seventh day after the end of the month:

(i) The pounds per shipment, the total pounds of milk and the average butterfat test of milk received from such producer during the month;

(ii) The amount or rate and nature of any deductions; and

(iii) The amount of any payments due such producer pursuant to §1064.77.

§1064.74 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 butter price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to §§1064.51 (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 18967, Apr. 14, 1995]
§ 1064.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price pursuant to §1064.61 for producer milk received at a pool plant or diverted from a pool plant shall be reduced according to the location of the pool plant at the rate set forth in §1064.52, subject to §1064.13(c).

(b) For purposes of computations pursuant to §§1064.71 and 1064.72 the weighted average price shall be adjusted at the rates set forth in §1064.52 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.


§ 1064.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant, except a plant described in §1064.1(d)(3), 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 §§1064.30(b) and 1064.31(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 was 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 §1064.60 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 §1064.60 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 §1064.60 for such handler shall include, in lieu of the value of other source milk specified in §1064.60(f) less the value of such other source milk specified in §1064.71(a)(2)(ii), a value of milk determined pursuant to §1064.60 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 §1064.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§1064.30(b) and 1064.31(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 §1064.60 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 §1064.74, 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 §1064.74, 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 §1064.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the
§ 1064.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due the market administrator or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of the amount due and payment therefor shall be made within 5 days if such amount is due the market administrator, or on or before the next date for making payments to producers or a cooperative association, if such amount is due them. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made within 5 days.

§ 1064.85 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 12th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, of:

(a) Producer milk (including such handler's own production);
(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1064.43(d) and other source milk allocated to Class I pursuant to §1064.44 (a)(7) and (a)(11) and the corresponding steps of §1064.44(b), except such other source milk that is excluded from the computations pursuant to §1064.60 (d) and (f); and
(c) Class I milk disposed of from a partially regulated distributing plant (except from a plant described in §1064.7(d)(3)) as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to §1064.76(a)(2).

§ 1064.86 Deduction for marketing services.

(a) Deductions. Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself pursuant to §§1064.71, 1064.73, 1064.77, 1064.85, and 1064.86 shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.
Agricultural Marketing Service, USDA

PART 1065—MILK IN THE  
NEBRASKA—WESTERN IOWA MARKETING AREA  

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1065.1 General provisions.

DEFINITIONS

1065.2 Nebraska-Western Iowa marketing area.
1065.3 Route disposition.
1065.4 Distributing plant.
1065.5 Supply plant.
1065.6 Pool plant.
1065.7 Nonpool plant.
1065.8 Handler.
1065.9 Producer-handler.
1065.10 Producer.
1065.11 Producer milk.
1065.12 Other source milk.
1065.13 Fluid milk product.
1065.14 Fluid cream product.
1065.15 Filled milk.
1065.16 Cooperative association.
1065.17 Commercial food processing establishment.

HANDLER REPORTS

1065.30 Reports of receipts and utilization.
1065.31 Payroll reports.
1065.32 Other reports.

CLASSIFICATION OF MILK

1065.40 Classes of utilization.
1065.41 Shrinkage.
1065.42 Classification of transfers and diversions.
1065.43 General classification rules.
1065.44 Classification of producer milk.
1065.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1065.50 Class and component prices.
1065.51 Basic formula price.
1065.52 Plant location adjustments for handlers.
1065.53 Announcement of class and component prices.
1065.54 Equivalent price.

PRODUCER PRICE DIFFERENTIAL

1065.60 Handler's value of milk.
1065.61 Producer price differential.
1065.62 Announcement of producer prices.

PAYMENTS FOR MILK

1065.70 Producer-settlement fund.
1065.71 Payments to the producer-settlement fund.
1065.72 Payments from the producer-settlement fund.
1065.73 Payments to producers and to cooperative associations.
1065.74 Butterfat differential.
1065.75 Plant location adjustments for producers and on nonpool milk.
1065.76 Payments by handler operating a partially regulated distributing plant.
1065.77 Adjustment of accounts.
1065.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1065.85 Assessment for order administration.
1065.86 Deduction for marketing services.

ADVERTISING AND PROMOTION PROGRAM

1065.105 Dairy research and promotion order.
1065.106 Qualified program.
1065.107 Agency.
1065.108 Composition of Agency.
1065.109 Term of office.
1065.110 Selection of Agency members.
1065.111 Agency operating procedure.
1065.112 Powers of the Agency.
1065.113 Duties of the Agency.
1065.114 Advertising, research, education, and promotion program.
1065.115 Limitation of expenditures by the Agency.
1065.116 Personal liability.
1065.117 Procedure for requesting refunds.
1065.118 Duties of the market administrator.
1065.119 Liquidation.


SOURCE: 39 FR 16273, May 8, 1974, unless otherwise noted.
Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1065.1 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

§ 1065.2 Nebraska-Western Iowa marketing area.
The Nebraska-Western Iowa marketing area (hereinafter referred to as the “marketing area”) means all the territory within the boundaries of the counties and townships listed below, including such territory as is now occupied and as may be occupied in the future by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments. Where such establishment is partly within and partly without the designated boundaries, the marketing area shall include the entire area encompassed by such establishment.

(a) Nebraska counties:

(b) Iowa counties:

(c) South Dakota counties. That portion of Union County comprising Jefferson Township, North Sioux City, and the unorganized territory adjacent thereto as defined and mapped in the United States 1960 Census of Population.

[46 FR 18313, Apr. 1, 1981]

§ 1065.3 Route disposition.
Route disposition means a delivery (including delivery by a vendor or through a distribution point, or sale from a plant store) of a fluid milk product classified as Class I to retail or wholesale outlets other than a delivery in bulk to a milk plant.

§ 1065.5 Distributing plant.
Distributing plant means a plant which is approved by a duly constituted health authority for the processing or packaging of Grade A milk and from which there is route disposition of any fluid milk product during the month in the marketing area.

§ 1065.6 Supply plant.
Supply plant means a plant from which milk or skim milk acceptable to a duly constituted health authority for distribution in the marketing area as Grade A milk, is shipped during the month to a pool plant qualified pursuant to § 1065.7.

[39 FR 16273, May 8, 1974]

EDITORIAL NOTE: At 57 FR 45563, Oct. 2, 1992, in § 1065.6, the words “during the month” were suspended indefinitely, effective Sept. 1, 1992.

§ 1065.7 Pool plant.
Except as provided in paragraph (d) of this section, pool plant means:
(a) A distributing plant from which there is:
(1) Route disposition (except filled milk) in the marketing area during the month equal to not less than 15 percent of the Grade A milk received at such plant from dairy farmers, supply plants (exclusive of transfers and diversions from plants qualifying as pool plants pursuant to this paragraph), and handlers described in § 1065.9(c); and
(2) Total route disposition (except filled milk) during the month or the immediately preceding month equal to not less than 35 percent of the Grade A milk received at the plant during such month from the sources specified in paragraph (a)(1) of this section.
(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred and diverted to pool distributing plants is 30 percent or more of the total
Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant but excluding producer milk diverted to the plant pursuant to §1065.13) and handlers described in §1065.9(c), subject to the following additional conditions:

(1) Not more than one-half of the shipping percentage specified in this paragraph may be met through the diversion of milk from the supply plant to pool distributing plants;

(2) The volume of fluid milk products included as qualifying shipments to any pool distribution plant pursuant to this paragraph shall be reduced by the volume of any fluid milk products transferred or diverted by the operator of such pool distributing plant to the supply plant or to any other plant operated by the operator of the supply plant.

(3) The shipping requirements of this paragraph may be increased or decreased up to 20 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision at the Director’s own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments; and

(4) A supply plant that qualifies as a pool plant in each of the months of September through March shall be a pool plant for the following months of April through August unless written application is filed with the market administrator by the plant operator requesting the plant be designated a nonpool plant. In such case, nonpool status will be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of transfers and diversions. Any plant that qualifies as a pool plant pursuant to this paragraph will be subject to any shipping requirement announced pursuant to paragraph (b)(3) of this section.

(c) A supply plant operated by a cooperative association if, during the month, 51 percent or more of the producer milk of members of the association is received at a pool distributing plant(s) of another handler(s), or is transferred to such plant(s) from the association’s supply plant.

(d) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section from which a lesser volume of fluid milk products (not including filled milk) is disposed of in the Nebraska-Western Iowa marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period of April through August, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act; and

(4) That portion of a plant that is physically apart from the Grade A portion of such plant, is operated separately and is not approved by a duly constituted health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

EFFECTIVE DATE NOTE: At 57 FR 45562, Oct. 2, 1992, in §1065.7(b)(1), the words “not more than one half of” were suspended indefinitely, effective Sept. 1, 1992.

§1065.8 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.
§ 1065.9 Handler.

Handler means:
(a) Any person who operates a pool plant. In case a corporation with recognized divisions which are operated as separate business units operates two or more pool plants, each such division shall be the handler with respect to the pool plant(s) it operates;
(b) Any cooperative association with respect to milk of its member producers which is diverted pursuant to §1065.13 for the account of such association;
(c) A cooperative association with respect to milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association. The milk shall be deemed to have been received from producers by the cooperative association at the location of the plant to which it is delivered. Milk delivered pursuant to this paragraph shall not include milk of its member producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section;
(d) Any person who operates a partially regulated distributing plant;
(e) A producer-handler; and
(f) Any person who operates an other order plant described in §1065.7(d).

§ 1065.10 Producer-handler.

Producer-handler means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:
(a) Receipts of fluid milk products at his plant are solely milk of his own production and fluid milk products from pool plants of other handlers;
(b) Receives no milk products other than fluid milk products for reconstituting into fluid milk products; and
(c) The maintenance, care, and management of the dairy animals and other resources necessary to produce the milk, and the processing, packaging, and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

§ 1065.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is received at a pool plant or by a handler described in §1065.9(c) or is diverted as producer milk pursuant to §1065.13.
(b) “Producer” shall not include:
(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;
(2) Any person with respect to milk produced by him which 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 §1065.44(a)(8)(iii) and the corresponding step of §1065.44(b); and
(3) Any person with respect to milk produced by him which 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.

§ 1065.13 Producer milk.

Producer milk of each handler means all skim milk and butterfat contained in milk from producers that is:
(a) Received at a pool plant directly from a producer or a handler described in §1065.9(c), excluding such milk that is diverted from another pool plant;
(b) Received by a handler described in §1065.9(c) from producers in excess of the quantity delivered to pool plants;
(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant. Milk delivered pursuant to this paragraph by a supply plant operator shall be limited...
to those producers who are located within 150 miles of the supply plant (as based on the post office address of the producer). Such milk shall be priced at the plant to which diverted; or

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in §1065.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless during the month at least one day's production of milk of such dairy farmer is physically received at a pool plant;

(2) The total quantity of milk diverted by a cooperative association during the month may not exceed 60 percent in the months of September through March, and 70 percent in other months, of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month;

(3) The operator of a pool plant (other than a cooperative association) may divert for his account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity so diverted during the month may not exceed 60 percent in the months of September through March, and 70 percent in other months, of the milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator;

(4) The diversion limits of this paragraph may be increased or decreased up to 20 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2), (3), and (4) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the total milk diverted on the last day of the month, then the second-to-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for; and

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


EFFECTIVE DATE NOTE: At 57 FR 45563, Oct. 2, 1992, in §1065.13, paragraph (d)(1) was suspended indefinitely, effective Sept. 1, 1992.

§ 1065.14 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 §1065.40(b)(1) from any source other than producers, handlers described in §1065.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1065.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1065.40(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 §1065.40(b)(1)) for which the handler fails to establish a disposition.

§ 1065.15 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
§ 1065.16 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.

§ 1065.17 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).

§ 1065.18 Cooperative association.

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

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

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

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

§ 1065.19 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 §§ 1065.13, 1065.41 and 1065.52.

§ 1065.30 Reports of receipts and utilization.

On or before the seventh day, excluding holidays, 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 described in § 1065.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1065.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or
§ 1065.40 Classes of utilization.

Except as provided in §1065.42, all skim milk and butterfat required to be reported by a handler pursuant to §1065.30 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 in bulk concentrated fluid milk products in inventory at the end of the month;

(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 fluid milk products in inventory at the end of the month, and 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;

(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
§ 1065.41  Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1065.30, the market administrator shall determine the following:

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

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

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form 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;

(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 §1065.15 and the fluid cream product definition pursuant to §1065.16; and

(7) In shrinkage assigned pursuant to §1065.41(a) to the receipts specified in §1065.41(a)(2) and in shrinkage specified in §1065.41(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.

of a bulk fluid milk product or a bulk fluid cream product;

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

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in §1065.9(c);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §1065.9(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 shall be zero;

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

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

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 §1065.9 (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.


§1065.42 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 §1065.44(a)(12) and the corresponding step of §1065.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1065.44(a)(7) or the corresponding step of §1065.44(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 § 1065.44(a) (11) or (12) or the corresponding step of § 1065.44(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 following forms from a pool plant to another 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 §1065.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:
(1) As Class I milk, if transferred 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 producer-handler’s utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his 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 or a producer-handler 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...
§ 1065.43 General classification rules.

In determining the classification of producer milk pursuant to § 1065.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports 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 § 1065.30 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 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(viii) In determining the nonpool plant's utilization for purposes of this 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 priorities at the second plant that are set forth in this subparagraph.

§ 1065.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1065.9(a) for each of his pool plants separately and of each handler described in §1065.9(b) and (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 §1065.41(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 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 products specified in §1065.40(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;

(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 §1065.9(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 §1065.44. Any remaining skim milk and butterfat in reconstituted receipts shall be assigned to uses under §1065.44 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.

pounds of skim milk in products specified in §1065.40(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 subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph 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 §1065.40(b)(2) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1065.40(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) that is used to produce, or added to any product specified in §1065.40(b)(2) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1065.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II;
   (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;
   (v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(ii) of this section; and
   (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;

(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)(ii) 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)(ii), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii)(a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler’s other pool plants shall be adjusted in the reverse direction by a like amount:
      (a) Multiply by 1.25 the 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 and diversions between pool plants of the handler); and
      (b) Subtract from the above result the sum of the pounds of skim milk in
receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, 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 §1065.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(i), (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 subtracted first from Class III and then 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 subparagraph 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)(i) of this section:  

(i) Subject to the provisions of paragraphs (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be prorata to the pounds of skim milk in
Agricultural Marketing Service, USDA

§ 1065.45

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 § 1065.45(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 and diversions 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 exceeding the pounds of skim milk remaining in Class II and Class III combined 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 I and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II 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 § 1065.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as “overage”; and

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.


§ 1065.45 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
§ 1065.50 Class and component prices.  

Subject to the provisions of §1065.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) Class I price. The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.75.

(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 32.5 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.

(e) Class I differential price. The Class I differential price shall be the difference between the current month’s Class I and Class III prices (this price may be negative).

(f) Class II differential price. The Class II differential price shall be the difference between the current month’s Class II and Class III prices (this price may be negative).

(g) Class III-A differential price. The Class III-A differential price shall be the difference between the current month’s Class III and Class III-A prices (this price may be negative).

(h) Skim milk price. The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.
(k) Other solids price. Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(1) Somatic cell adjustment. (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section; and

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

§ 1065.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1065.74 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.
§ 1065.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include the Nebraska counties of Adams, Boone, Buffalo, Butler, Cass, Chase, Clay, Colfax, Custer, Dawson, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Keith, Lancaster, Lincoln, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Valley, Webster, and York.

(2) Zone 2 shall include the Nebraska counties of Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux.

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

(d) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I, the 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 determined by the market administrator as follows:

(1) Subtract from the pounds of Class I remaining at the transferee-plant after the computations pursuant to §1065.44(a)(12) and (b) plus the pounds of skim milk in receipts of concentrated fluid milk products from other pool plants that are assigned to Class I use, the pounds of packaged fluid milk products from other pool plants;

(2) Multiply the remaining pounds of milk by 110 percent;

(3) Subtract the pounds of bulk fluid milk products received at the transferee-plant from the following sources:
§ 1065.60 Handler’s value of milk.

For the purpose of computing a handler’s obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1065.9(a) with respect to each of its pool plants and each handler described in § 1065.9(b) and (c).

(a) The handler’s obligation for producer milk shall be computed as follows:

1. Multiply the total hundredweight of milk in Class I as determined pursuant to § 1065.44(c) by the Class I differential price for the month;

2. Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1065.44(c) by the Class II differential price for the month;

3. Add an amount obtained by multiplying the total hundredweight of milk in Class III as determined pursuant to § 1065.44(c) by the Class III differential price for the month;

4. Add an amount obtained by multiplying the pounds of skim milk in Class I as determined pursuant to § 1065.44(a) by the skim milk price;

5. Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

6. Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

7. Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1065.30(a)(1) by the percentage of the total producer milk allocated pursuant to § 1065.44(c) that is allocated to Class II and Class III; and

8. Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III-A by the Class III-A differential price for the month;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1065.44(a)(14) and the corresponding step of § 1065.44(b) by the respective

§ 1065.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III-A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

§ 1065.54 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.
§ 1065.60 7 CFR Ch. X (1-1-99 Edition)

class prices, as adjusted by the butterfat differential specified in §1065.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) 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 for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1065.44(a)(9) and the corresponding step of §1065.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1065.44(a)(9) and the corresponding step of §1065.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to §1065.44(a)(12) and the corresponding step of §1065.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(3) of this section;

(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 §1065.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1065.44(a)(7)(i) through (iv) and the corresponding step of §1065.44(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 §1065.44(a)(7) (v) and (vi) and the corresponding step of §1065.44(b); and

(f) Add the amount obtained from multiplying the Class I differential 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 §1065.43(d) and §1065.44(a)(7)(ii) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1065.44(a)(11) and the corresponding steps of §1065.44(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 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 pursuant to §1065.43(d);

(h) 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 §1065.78(a)(5) or (c); and

(i) 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
Agricultural Marketing Service, USDA

§ 1065.71 Payments for milk

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1065.71, 1065.76, and 1065.77, and out of which he shall make all payments pursuant to §§ 1065.72 and 1065.77.

§ 1065.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1065.60.

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk by the “producer price differential.”

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk.

(b) Subtract an amount equal to not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be the “producer price differential.”

§ 1065.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1065.71(a)(2) exceeds the amount computed pursuant to §1065.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler.


§ 1065.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 27th day of the month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to §1065.62(g) for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to §1065.75;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to 1065.86;

(ix) If by such date the handler has not received full payment from the market administrator pursuant to §1065.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to paragraph (a) of this section next following receipt of the balance due from the market administrator.

(b) Each handler shall pay a cooperative association as follows for milk received from producers if the cooperative association has filed a written request for payment with the handler and if the market administrator has
determined that such cooperative association is authorized to collect payment:

(1) On or before the 26th day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 17th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section, less proper deductions authorized in writing by such cooperative association.

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in §1065.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to §1065.62(g) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;
(ii) The hundredweight of Class II milk received times the Class II differential price for the month;
(iii) The hundredweight of Class III-A milk received times the Class III-A differential price for the month;
(iv) The pounds of butterfat received times the butterfat price for the month;
(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;
(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;
(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and
(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;
(2) The daily and total pounds for each producer;
(3) The total pounds of butterfat contained in the producer's milk;
(4) The total pounds of protein contained in the producer's milk;
§ 1065.74  Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, 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 §1065.51 (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 57155, Nov. 14, 1995]

§ 1065.75  Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in §1065.52.

(b) For purposes of computations pursuant to §§1065.71 and 1065.72, the producer price differential shall be adjusted at the rates set forth in §1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

[60 FR 57155, Nov. 14, 1995]

§ 1065.76  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 §§1065.30(b) and 1065.31(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 amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; 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 §1065.60 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 §1065.60 shall be priced at the statistical 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 statistical 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 §1065.60 for such handler shall include, in lieu of the value of other source milk specified in §1065.60(f) less the value of such other source milk specified in §1065.71(a)(2)(v), a value of milk determined pursuant to §1065.60 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 §1065.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§1065.30(b) and 1065.31(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 §1065.60 for such nonpool supply plant shall be determined in the
§ 1065.77 Adjustment of accounts.

Adjustments of accounts shall be made as follows:

(a) Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or from the producer-settlement fund pursuant to §§1065.71 and 1065.72, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the account so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make such payment to such handler.

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association, discloses payments of less than is required by §1065.73, the handler shall make up such payment to the producer or cooperative association not later than the time of making payments next following such disclosure.

§ 1065.78 Charges on overdue accounts.

Any obligation of a handler pursuant to §§1065.71, 1065.76, 1065.77(a), 1065.85, and 1065.86, for which remittance has not been made (or, if mailed, postmarked) by the date specified for such payment, shall be increased one percent, and any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall include unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due...
§ 1065.110
Agency.

Agency means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to §1065.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and service shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him; and
(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1065.105 Dairy research and promotion order.


§ 1065.106 Qualified program.

Qualified program means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to §1150.153 of the Dairy Research and Promotion Order.

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(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

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(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

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other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1065.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under §1065.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to §1065.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group of participating producers, in total, pursuant to §1065.113(c), one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent but not less than 1 percent of the total participating producers it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under §1065.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives, but not less than five.

(b) [Reserved]

§ 1065.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1065.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of §1065.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more producers as Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual participating producers eligible to vote. Election to
membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1065.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1065.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1065.110; 
(b) Make rules and regulations to effectuate the purposes of Public Law 91-670; 
(c) Recommend amendments to the Secretary; and 
(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1065.110 and 1065.117.

§ 1065.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following: 
(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business; 
(b) Develop programs and projects pursuant to §§ 1065.110 and 1065.117; 
(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary; 
(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency; 
(e) When desirable, establish an advisory committee(s) of persons other than Agency members; 
(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties; 
(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and 
(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1065.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis; 
(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and 
(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1065.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1065.121(b)(1) shall be utilized for administrative expense of the Agency. 
(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and
§ 1065.119  Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1065.120  Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to §1065.121(b). Such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September was a producer under another order with an advertising and promotion program if the refund notification period under the other order was the same as under this order and if the funding rate under the other order was at least equal to the funding rate under this order.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refunds with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to §1065.121(b).

§ 1065.121  Duties of the market administrator.

Except as specified in §1065.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to §1065.113(c);

(b) Each month deposit into an advertising and promotion fund, separately accounted for, an amount equal to the funds received from handlers pursuant to §1065.107. The amount deposited shall be disbursed as follows:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraphs (b) (3) or (4) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit);

(2) [Reserved]

(3) As long as the Dairy Research and Promotion Order is in effect, paragraph (b)(4) of this section shall apply in lieu of this paragraph. After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to §1065.120. Such refund shall be that amount which was obtained pursuant to §1065.107 for each calendar quarter.

(4) As long as the Dairy Research and Promotion Order is in effect, remit to any qualified programs any refunds designated by producers to be paid to such programs no later than the last day of the month following the month in which the milk was marketed. If a refund request does not designate a qualified program to receive such money, the refund shall be remitted to the National Dairy Promotion and Research Board, which is defined in the Dairy Research and Promotion Order.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§1065.105 through 1065.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

(e) [Reserved]

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.


§1065.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of §1065.70.
§ 1068.1

1068.72 Payments from the producer-settlement fund.  
1068.73 Payments to producers and to cooperative associations.  
1068.74 Butterfat differential.  
1068.75 Plant location adjustments for producers and on nonpool milk.  
1068.76 Payments by handler operating a partially regulated distributing plant.  
1068.77 Adjustment of accounts.  
1068.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1068.85 Assessment for order administration.  
1068.86 Deduction for marketing services.

SOURCE: 41 FR 18057, Apr. 30, 1976, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1068.1 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

§ 1068.2 Upper Midwest marketing area.

Upper Midwest marketing area (referred to in this part as the “marketing area”) means all territory within the boundaries listed below including all territory that is now, or in the future, occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area:

(a) The State of Minnesota, except the counties of Lincoln, Nobles, Pipestone, and Rock.  
(b) In the State of Wisconsin, the counties of:
Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, Washburn.

(c) In the State of North Dakota, the counties of:
Barnes, Cass, Cavalier, Dickey, Grand Forks, Griggs, La Moure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Traill, Walsh.  
(d) In the State of South Dakota, the counties of:
(e) In the State of Iowa, the counties of:
Howard, Kossuth, Mitchell (except the city of Osage), Winnebago, Winneshiek, Worth.

§ 1068.3 Route disposition.

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

§ 1068.4 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 used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be “plant” under this definition.

§ 1068.7 Pool plant.

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

(a) Any plant (which, if qualified pursuant to this paragraph, shall be known as a “pool distributing plant”) from which during the month:
(1) The total route disposition (except filled milk) as a percent of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator is at least equal to the marketwide Class I utilization percentage for the same month of the preceding year; and
(2) Not less than 15 percent of such receipts are disposed of as route disposition (except filled milk) in the marketing area.
(3) A unit consisting of at least one pool distributing plant and one or more additional plants of a handler shall be considered as one plant for the purpose of meeting the requirements of this paragraph, subject to the following conditions:

(i) For each plant within the unit which does not qualify as a pool distributing plant pursuant to paragraphs (a) (1) and (2) of this section, the combined disposition of skim milk and butterfat in products specified in §1068.40(a), §1068.40(b)(1) in packaged form, and §1068.40(b)(4)(i) is 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator;

(ii) All plants within the unit are located within the marketing area; and

(iii) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(b) Any plant (which, if qualified pursuant to this paragraph, shall be known as a "pool supply plant") that is approved by a duly constituted regulatory agency for the handling of Grade A milk, subject to the following conditions:

(1) The volume of fluid milk products delivered to pool distributing plants as a percent of the total Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant) is not less than the marketwide Class I utilization percentage for the same month of the preceding year, subject to the following conditions:

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

(ii) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to §1068.9(c);

(iii) A proprietary handler may include as qualifying shipments milk diverted to pool distributing plants pursuant to §1068.13(d);

(2) In order to meet the requirements of this paragraph, two or more supply plants operated by one or more handler(s) may qualify for pooling as a unit during the following months of August through July by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant, provided that:

(i) The handler(s) file a request with the market administrator for such unit status no later than July 15 of each year. Such a request should specify the order in which plants would cease to be considered part of the unit if the unit fails to meet the applicable percentage requirements of this paragraph. Any plant that ceases to be part of a unit will not be eligible to rejoin a unit until the following August. No plant may become part of a unit after the unit is formed and the market administrator has been notified; and

(ii) Each handler operating supply plant(s) for which the shipping percentages are met as part of a unit must ship at least 5 percent of the Grade A milk received at its plant(s) from dairy farmers during the month (including milk delivered to the handler’s plant(s) from dairy farms for the account of a
cooperative association pursuant to §1068.9(c) and milk diverted from the plant(s) by the plant operator but excluding milk diverted to the plant(s) from another pool plant) to pool distributing plant(s) in one of the months of August through December in order for the handler’s plant(s) to be a supply plant(s) for the month of December; and

(iii) Each plant in the unit is located in the marketing area, or was a pool plant pursuant to §1068.7(b) for each of the three months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status.

(3) The quantity of fluid milk products moved from a supply plant to a pool distributing plant or pool distributing plant unit that shall count toward meeting the shipping requirements of paragraphs (b)(1) and (b)(2) of this section shall be a net quantity which shall exclude the pounds by which the quantity specified in paragraph (b)(3)(i) of this section exceeds the quantity specified in paragraph (b)(3)(ii) of this section:

(i) The pounds of bulk fluid milk products transferred from the pool distributing plant or pool distributing plant unit during the month that are not to another pool distributing plant or pool distributing plant unit or to a commercial food processing establishment pursuant to §1068.40(b)(3).

(ii) 1,000,000 pounds.

(c) Any plant that qualified as a pool plant in each of the immediately preceding three months on the basis of performance standards described in paragraphs (a) or (b) of this section.

(d) Any plant (which, if qualified pursuant to this paragraph, shall be known as a “pool reserve supply plant”) that is located in the marketing area and that is approved by a duly constituted regulatory agency for the handling of Grade A milk, subject to the following conditions:

(1) Any plant that qualified as a pool plant pursuant to §1068.9(c) and milk diverted from the plant(s) by the plant operator but excluding milk diverted to the plant(s) from another pool plant) to pool distributing plant(s) in one of the months of August through December in order for the handler’s plant(s) to be a supply plant(s) for the month of December; and

(2) The operator of the plant has filed a request with the market administrator for pool reserve supply status no later than July 15 of each year. Once qualified as a pool plant pursuant to this paragraph, such status shall be effective for August and continue through the following July unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all of the conditions of this paragraph, or the plant qualifies as a pool plant under another order;

(3) The volume of bulk fluid milk products shipped from the plant to pool distributing plants as a percent of the total Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association pursuant to §1068.9(c) and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant) is not less than 10 percent for each of the months of January through June and, for each of the months of July through December, is not less than the marketwide Class I utilization percentage for the same month of the preceding year, subject to the following conditions:

(i) These shipping percentages may be decreased by the market administrator on the basis that such revision is necessary to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator’s own initiative or at the request of interested persons. If the investigation shows that a revision of the shipping percentage might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective;

(ii) A cooperative association that operates a reserve supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to §1068.9(c);

(iii) A proprietary handler may include as qualifying shipments milk diverted to pool distributing plants pursuant to §1068.13(d);
Agricultural Marketing Service, USDA § 1068.7

(iv) Shipments from a reserve supply plant to a distributing plant regulated under another Federal order may count as if delivered to a pool distributing plant if the market administrator is notified of the amount of any such commitments to ship milk no later than the fifteenth day of the prior month. Total credit for shipments to plants regulated under other Federal orders shall be limited to the quantity of milk delivered from the plant to pool distributing plants during the month. Qualifying shipments to an other order plant may not be classified pursuant to §1068.42(b)(3).

(5) The operator of the plant supplies fluid milk products to pool distributing plants located within an area designated by the market administrator as the “call area” in compliance with any announcement by the market administrator requesting a minimum level of shipments, as further provided below:

(i) The market administrator may require such supplies of fluid milk products from operators of any pool reserve supply plants within the call area whenever he finds that milk supplies for Class I use at pool distributing plants within the call area are needed from plants qualifying under this paragraph. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative or at the request of interested persons. If his investigation shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement.

(ii) For the purpose of meeting any shipping requirement announced by the market administrator:

(A) Qualifying shipments to pool distributing plants within the call area may originate from any plant or producer milk supplies of the handler provided that shipments from sources other than the plant(s) subject to the call and milk supplies for which a cooperative association is the handler pursuant to §1068.9(c) must be in addition to the shipments already being made by the handler and may not result from shifting milk supplies from a pool distributing plant outside the call area to one within the call area; and

(B) Shipments from a reserve supply plant within the call area to a pool distributing plant outside the call area or to a comparable plant regulated under another Federal order may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to announcement of a shipping requirement pursuant to this paragraph. Total credit for shipments to plants regulated under other Federal orders shall be limited to the quantity of milk delivered from the plant to pool distributing plants during the month. Qualifying shipments to an other order plant may not be classified pursuant to §1068.42(b)(3); and

(iii) Failure of a handler to comply with any announced shipping requirement pursuant to §1068.7(d)(5), including making any significant change in his marketing operations that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of pool status for the plant pursuant to §1068.7(d). A plant losing pool status in this manner or a plant that requests nonpool status may not again qualify as a pool plant pursuant to §1068.7(d) until the following August;

(6) In order to meet the requirements of paragraphs (d)(4) and (d)(5) of this section, two or more reserve supply plants operated by one or more handler(s) may qualify for pooling as a unit during the following months of August through July by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant, provided that:

(i) The handler(s) file a request with the market administrator for such unit status no later than July 15 of each year. Such a request should specify the order in which the plants would cease to be considered part of the unit if the unit fails to meet the applicable percentage requirements of §1068.7(d) (4) and (5). Any plant that ceases to be part of a unit will not be eligible to rejoin a unit until the following August. No plant may become part of a unit
§ 1068.8 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 neither an other order plant nor a producer-handler plant, from which Grade A milk or filled milk is disposed of as route disposition in the marketing area during the month.

(d) Unregulated supply plant means a nonpool plant that is neither an other order plant nor a producer-handler plant.
plant, from which fluid milk products are shipped during the month to a pool plant.

(e) Governmental agency plant means a plant owned and operated by a government institution which disposes of Class I milk in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1068.9 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 in accordance with §1068.13;

(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 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;

(f) Any person in his capacity as the operator of an other order plant; and

(g) Any person in his capacity as the operator of an unregulated supply plant.

[41 FR 18057, Apr. 30, 1976, as amended at 47 FR 16614, Apr. 19, 1982]

§ 1068.10 Producer-handler.

Producer-handler means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distribution plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(b) Receives no milk or fluid milk products at his plant (or at any distribution facility, including routes, operated by him, an affiliate, or any person who controls or is controlled by him) from the farms of other dairy farmers nor from any other source, except receipts of not more than 50,000 pounds of fluid milk products during the month from pool plants of other handlers or from other order plants;

(c) Receives no nonfluid milk products from any source for use in reconstituting fluid milk products; and

(d) The maintenance, care, and management of the dairy animals and other resources necessary to produce such milk and the processing of such milk are the personal enterprise, and the personal risk, of such person.

§ 1068.12 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 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 §1068.9(c); or

(3) Diverted from a pool plant in accordance with §1068.13.

(b) “Producer” shall not include:

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

(2) 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 §1068.44(a)(8)(iii) and the corresponding step of §1068.44(b);

(3) 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; and
§ 1068.13 Producer milk.

Producer milk means the skim milk and butterfat 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 §1068.9(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 §1068.9(c), is the handler for such milk;

(d) Diverted from the pool plant of a proprietary handler for the account of the handler operating such plant to another pool plant or diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of a handler described in §1068.9(b), subject to the following conditions:

1. Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer is physically received as producer milk at a pool plant;

2. The total quantity of milk diverted by a cooperative association during the month as a percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month shall not exceed the market’s combined Class II and III utilization percentage for the same month of the prior year;

3. Diverted milk shall be priced at the location of the plant to which diverted.

(4) The diversion limitations specified in paragraphs (d)(2) and (d)(3) of this section may be increased or decreased by the market administrator on the basis that such revision is necessary to prevent uneconomic handling or shipments of milk. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator’s own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of diversion limitations shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective;

5. Any milk diverted in excess of the limits prescribed in paragraph (d)(2) and (3) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the milk last diverted—in lots of an entire day’s production—shall be excluded first in determining which milk should not be producer milk; and

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

[41 FR 18057, Apr. 30, 1976, as amended at 55 FR 26636, June 29, 1990]

§ 1068.14 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 §1068.40(b)(1) from any source other
§ 1068.19 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 §§ 1068.13, 1068.41 and 1068.52.

[58 FR 27852, May 11, 1993]
§ 1068.30  Handler Reports

§ 1068.30  Reports of receipts and utilization.

On or before the 10th 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 described in §1068.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in §1068.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in §1068.40(b)(1);

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to paragraph (a) of this section; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(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 not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

[41 FR 18057, Apr. 30, 1976, as amended at 60 FR 57155, Nov. 14, 1995]

§ 1068.31  Payroll reports.

(a) On or before the 22nd day of each month, each handler described in §1068.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in §1068.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1068.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

[41 FR 18057, Apr. 30, 1976, as amended at 60 FR 57155, Nov. 14, 1995]

§ 1068.32  Other reports.

In addition to the reports required pursuant to §§1068.30 and 1068.31, the following shall be reported to the market administrator:

(a) Each handler specified in §1068.9(g) who operates an unregulated supply plant shall report as required in §1068.30, except that the receipts of skim milk and butterfat in Grade A milk shall be reported in lieu of those in producer milk.

(b) Each handler shall report such other information as the market administrator deems necessary to verify or establish such handler’s obligation under the order.

§ 1068.40  Classes of utilization.

Except as provided in §1068.42, all skim milk and butterfat required to be reported by a handler pursuant to §1068.30 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 pro-
   vided 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 con-
   taining artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil)
   that resembles a fluid cream product, except as otherwise provided in para-
   graph (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 prod-
   ucts 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 proc-
   essor if the market administrator is
   permitted to audit the records of the
   commercial food processing establish-
   ment 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 des-
      sert 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, pan-
      cake mixes, buttermilk biscuit mixes,
      coatings, batter, and similar products;
      (v) Formulas especially prepared for
      infant feeding or dietary use (meal re-
     placement) that are packaged in her-
      metically sealed containers;
      (vi) Candy, soup, bakery products and
      other prepared foods which are proc-
      essed for general distribution to the
      public, and intermediate products, in-
      cluding sweetened condensed milk, to
      be used in processing such prepared
      food products; and
   (vii) Any product not otherwise spec-
   ified 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 para-
      graph (b)(4)(i) of this section;
      (ii) Butter, plastic cream, anhydrous
      milkfat and butteroil;
      (iii) Any milk product in dry form, ex-
      cept nonfat dry milk;
      (iv) Evaporated or sweetened con-
      densed milk in a consumer-type pack-
      age and evaporated or sweetened con-
      densed 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 sec-
   tion in bulk form;
   (3) In fluid milk products, products
   specified in paragraph (b)(1) of this sec-
   tion, and products processed by the dis-
   posing handler that are specified in
   paragraphs (b)(4) (i) through (iv) of this
   section, that are disposed of by a han-
   dler for animal feed;
   (4) In fluid milk products, products
   specified in paragraph (b)(1) of this sec-
   tion, and products processed by the dis-
   posing 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 han-
   dler 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 admin-
   istrator on the next business day fol-
   lowing such use;
   (5) In fluid milk products and prod-
   ucts specified in paragraph (b)(1) of
   this section that are destroyed or lost
   by a handler in a vehicular accident,
§ 1068.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1068.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraph (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 paragraph (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 §1068.9(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 subparagraph shall be 2 percent;

(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 §1068.9(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.

§ 1068.42 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 § 1068.44(a)(12) and the corresponding step of §1068.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1068.44(a)(7) or the corresponding step of §1068.44(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 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;

(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.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

§ 1068.40
§ 1068.42

(1) As Class I milk, if transferred 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 producer-handler’s utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his 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 or a producer-handler 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 paragraph (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 paragraph (d)(2)(ii) through (viii) of this section:
(a) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to §1068.30 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,
§ 1068.43 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 §1068.30 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 §1068.9 (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 §§1068.40, 1068.41, and 1068.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in §1068.9 (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;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1068.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§1068.40 through 1068.45, butterfat in skim milk either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.065 percent, unless the handler has adequate records of the actual butterfat content of such skim milk.

(e) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under §1068.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1068.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

(f) 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.

§ 1068.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in §1068.9(a) for each of his separate pool plants the classification of producer milk and milk received from a handler described in §1068.9(c) by multiplying the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:
(i) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in §1068.41(b);
(ii) 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;

(iii) Subtracts from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in:

(i) Bulk concentrated fluid milk products and 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 §1068.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1068.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II.

(ii) Subtracts 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:

(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 §1068.40(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 §1068.40(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 subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph 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 §1068.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1068.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II.

(7) Subtracts 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:

(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 §1068.40(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; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order
A 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;

(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 paragraph (a)(2)(i), (7)(v), and (8)(i) 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 paragraph (a)(2)(i), (7)(vi), and (8)(i) and (ii) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the 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 §1068.9(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 §1068.40(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 paragraph (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 paragraph (a)(2)(i), (7)(v), and (8)(i) and (ii) of this
§ 1068.44 7 CFR Ch. X (1-1-99 Edition)

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 each such pool plant shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class II pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class II 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.

(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 paragraph (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 prorata 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 §1068.45(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 each such plant at which Class I utilization is available;
(iv) Except as provided in paragraph (a)(12)(iii) of this section, should the computation 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 §1068.42(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 described in §1068.9(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 §1068.9(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.


§1068.50 Class and component prices.

Subject to the provisions of §1068.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $1.20.

(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.

(e) Class I differential price. The Class I differential price shall be the difference between the current month’s Class I and Class III prices (this price may be negative).

(f) Class II differential price. The Class II differential price shall be the difference between the current month’s Class II and Class III prices (this price may be negative).

(g) Class III-A differential price. The Class III-A differential price shall be the difference between the current month’s Class III and Class III-A prices (this price may be negative).

(h) Skim milk price. The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) Other solids price. Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(1) Somatic cell adjustment. (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section; and

(2) The somatic cell adjustment per hundredweight shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

§ 1068.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1068.74 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:

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

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

(2) Multiply the nonfat dry milk price by 8.07; and

(3) 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 18968, Apr. 14, 1995]
§ 1068.52 Plant location adjustments for handlers.
(a) The following zones are defined for the purpose of determining location adjustments:
   (1) Zone 1 shall include that territory, both inside and outside the marketing area, not included in Zones 2, 3, and 4.
   (2) Zone 2 shall include:
      (i) The Minnesota counties of Aitkin, Anoka, Becker, Benton, Big Stone, Carlton, Carver, Cass, Chippewa, Chisago, Crow Wing, Dakota, Dodge, Douglas, Fillmore, Goodhue, Grant, Houston, Hubbard, Isanti, Kanabec, Kandiyohi, Le Sueur, McLeod, Meeker, Mille Lacs, Morrison, Nicollet, Otter Tail, Pine, Pope, Renville, Rice, Scott, Sibley, Sherburne, Stearns, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Wilkin, Winona, and Wright;
      (ii) The Wisconsin counties of Burnett, Calumet, Columbia, Crawford, Douglas (except the city of Superior), Green Lake, Manitowoc, Pierce, Polk, Richland, St. Croix, Sauk, Vernon, and Winnebago;
      (iii) The Michigan counties of Dickinson, Gogebic, Iron, and Menominee; and
      (iv) The Iowa county of Allamakee.
   (3) Zone 3 shall include the Wisconsin counties of Adams, Ashland, Barron, Bayfield, Brown, Buffalo, Chippewa,
§ 1068.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;
(b) The Class II price for the following month;
(c) The Class III price for the preceding month;
(d) The Class III-A price for the preceding month;
(e) The skim milk price for the preceding month;
(f) The butterfat price for the preceding month;
(g) The protein price for the preceding month;
(h) The other solids price for the preceding month;
(i) The somatic cell adjustment rate for the preceding month; and
(j) The butterfat differential for the preceding month.

[60 FR 57156, Nov. 14, 1995]

§ 1068.54 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.

§ 1068.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in §1068.9(a), (b), and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to §1068.43(a) and §1068.44(c) by the Class I differential price for the month;
(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to §1068.43(a) and §1068.44(c) by the Class II differential price for the month;
(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to §1068.43(a) and §1068.44(c) by the skim milk price;
(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to §1068.43(a) and §1068.44(c) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;
(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to §1068.43(a) and §1068.44(c) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;
(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to

§ 1068.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in §1068.9(a), (b), and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to §1068.43(a) and §1068.44(c) by the Class I differential price for the month;
(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to §1068.43(a) and §1068.44(c) by the Class II differential price for the month;
(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to §1068.43(a) and §1068.44(c) by the skim milk price;
(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to §1068.43(a) and §1068.44(c) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;
(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to §1068.43(a) and §1068.44(c) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;
(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to...
§ 1068.60

§ 1068.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1068.43(a) and 1068.44(c); and

(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III-A by the Class III-A differential price for the month;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1068.44(a)(14) and the corresponding step of § 1068.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1068.74, 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 § 1068.44(a)(9) and the corresponding step of § 1068.44(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 § 1068.43(e) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(7)(i) through (iv) and the corresponding step of § 1068.44(b), excluding receipts of bulk fluid milk products from an other order plant 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 § 1068.44(a)(7)(v) and (vi) and the corresponding step of § 1068.44(b);

(f) Add the amount obtained from multiplying the Class I differential 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 § 1068.43(e) and § 1068.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(11) and the corresponding steps of § 1068.44(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 § 1068.9(c), the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

(h) 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 § 1068.43(e);

(i) 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 § 1068.76 (a)(5) or (c); and

(j) 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

577
For each month the market administrator shall compute a producer price differential per hundredweight of milk as follows:

(a) Combine into one total for all handlers:
   (1) The estimated values computed pursuant to §1068.60 (a)(1), (a)(2), (a)(7), and (b) through (j) for all handlers; and
   (2) Add the estimated values computed pursuant to §1068.60 (a)(3), (a)(4), (a)(5), and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment;

(b) Add an amount equal to the estimated value of the producer location adjustments;

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

(d) Divide the resulting amount by:
   (1) The estimated hundredweight of producer milk; and
   (2) The estimated hundredweight of other source milk for which a value is computed pursuant to §1068.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential" for milk received from producers.

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

[60 FR 57157, Nov. 14, 1995]

§ 1068.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§1068.71, 1068.76, and 1068.77 and out of which he shall make all payments due handlers pursuant to §§1068.72 and 1068.77. Provided, That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1068.71 Payments to the producer-settlement fund.

(a) On or before the 18th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:
   (1) The total value of milk of the handler for such month as determined pursuant to §1068.60.
   (2) The sum of:
      (i) The value of such handler's receipts of producer milk and milk received from a handler described in §1068.9(c). In the case of a handler described in §1068.9(c), less the amount due from other handlers pursuant to §1068.73(d). The value of producer milk shall be computed as follows:
         (A) An amount obtained by multiplying the total hundredweight of producer milk by the producer price differential as adjusted pursuant to §1068.75;
         (B) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;
         (C) An amount obtained by multiplying the total pounds of other solids
§ 1068.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers or cooperative associations as follows:

(a) On or before the 25th day of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a cooperative association:

(1) That is a handler pursuant to §1068.9(a), at not less than the Class I price for the month at the location of the transferee or transferor plant, whichever is higher, adjusted by the butterfat differential for the preceding month;

(2) That is a handler pursuant to §1068.9(c), at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month;

(3) That is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(b) On or before the 4th day after the end of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a producer for whom payment is not being made pursuant to paragraph (a) of this section and who has not discontinued shipping to such handler, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(c) On or before the 11th day after the end of the month, each handler shall pay for milk received and classified during the month from a cooperative association which is a handler pursuant to §1068.9(a) adjusted at the location of the transferee or transferor plant, whichever is higher, payment shall be determined as follows:

(1) The hundredweight of Class I milk received times the Class I differential

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1068.71(a)(2) exceeds the amount computed pursuant to §1068.71(a)(1): Provided, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1068.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1068.60(f) by the producer price differential as adjusted pursuant to §1068.52 for the location of the plant from which received.

(b) 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 (b)(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.

[41 FR 18057, Apr. 30, 1976, as amended at 60 FR 57157, Nov. 14, 1995]
§ 1068.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be $0.138$ times the current month's butterfat price less $0.0028$ times the preceding month's butterfat price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(2) The hundredweight of Class II milk received times the Class II differential price for the month;

(3) The hundredweight of Class III-A milk received times the Class III-A differential price for the month;

(4) The pounds of butterfat received times the butterfat price for the month;

(5) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(6) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(7) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(8) Less any payment made pursuant to paragraph (a)(1) of this section.

(d) On or before the 18th day after the end of the month, each handler shall make payment as described in paragraph (d)(4) of this section to:

(1) A cooperative association that is a handler pursuant to §1068.9(c);

(2) A cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate;

(3) A producer for whom payment is not being made pursuant to paragraphs (d)(1) and (2) of this section; and

(4) Payment shall be determined by:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to §1068.75;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (a) or (b) of this section.

(e) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom it received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

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

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

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

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this section;

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

(9) The amount, or the rate per hundredweight, or rate per pound of component, of each deduction claimed by the handler, including any deduction claimed under §1068.86, together with a description of the respective deductions; and

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

[60 FR 57157, Nov. 14, 1995]
§ 1068.76 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 §§1068.30(b) and 1068.31(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 partially regulated distributing plant;

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; 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 at the difference between the Class I price applicable under the other order at the location of the plant were 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...
§ 1068.76

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:

(i) Determine the value that would have been computed pursuant to §1068.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(ii) 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;

(iii) 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 plants 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 §1068.60 shall be priced at the statistical 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 statistical 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

(ii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to §1068.60 for such handler shall include, in lieu of the value of other source milk specified in §1068.60(f) less the value of such other source milk specified in §1068.71(a)(2)(iii), a value of milk determined pursuant to §1068.60 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 §1068.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§1068.30(b) and 1068.31(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 §1068.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(ii) 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 §1068.74, 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)(ii) 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 §1068.74, 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 §1068.43(e). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

§ 1068.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments by any handler discloses errors in payments to the producer-settlement fund pursuant to §1068.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within five days of such billing, pay the payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within five days, make payment to such handler.

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association discloses payment of less than is required by §1068.73, the handler shall pay the balance due such producer or cooperative association not later than the time for making payments next following such disclosure.

§ 1068.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§1068.71, 1068.76, and 1068.77(a), for which remittance has not been made by the close of business on the next day following the date specified for such payment shall be increased three-fourths of 1 percent for each month and any remaining amount due shall be increased at a similar rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and for the purpose of this section any obligation that was determined at a date later than 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 due when the report had been filed when due.

§ 1068.85 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 5 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:

(1) Receipts of producer milk by a handler described in §1068.9(c) that were delivered to pool plants of other handlers; and

(2) Receipts of producer milk that were transferred to pool plants of other handlers by a cooperative association in its capacity as a handler pursuant to §1068.9(a);

(b) Receipts from a handler described in §1068.9(c).
§ 1068.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers (other than himself) pursuant to § 1068.73, shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received from producers’ farms during the month, and shall pay such deductions to the market administrator on or before the 16th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made 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 16th 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 producer.

[41 FR 18057, Apr. 30, 1976, as amended at 60 FR 57158, Nov. 14, 1995]
Agricultural Marketing Service, USDA § 1076.5

PRODUCER PRICE DIFFERENTIAL

1076.60 Handler’s value of milk.
1076.61 Producer price differential.
1076.62 Announcement of producer prices.

PAYMENTS FOR MILK

1076.70 Producer-settlement fund.
1076.71 Payments to the producer-settlement fund.
1076.72 Payments from the producer-settlement fund.
1076.73 Payments to producers and to cooperative associations.
1076.74 Butterfat differential.
1076.75 Plant location adjustments for producers and on nonpool milk.
1076.76 Payments by handler operating a partially regulated distributing plant.
1076.77 Adjustment of accounts.
1076.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1076.85 Assessment for order administration.
1076.86 Deduction for marketing services.

SOURCE: 39 FR 16312, May 8, 1974, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1076.1 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

§ 1076.2 Eastern South Dakota marketing area.

Eastern South Dakota marketing area, hereinafter called the “marketing area,” means all of the territory within the counties listed below, including all territory within such counties which is occupied by government (municipal, State or Federal) reservations, installations, institutions, or other establishments:

IOWA COUNTY

Lyon.

MINNESOTA COUNTIES

Lincoln, Nobles, Pipestone, Rock.

SOUTH DAKOTA COUNTIES

Aurora, Beadle, Bon Homme, Brookings, Clark, Clay, Codington, Davison, Deuel, Douglas, Hamlin, Hanson, Hutchinson, Jerauld, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Spink, Turner, Union (except Jerauld Township and the city of North Sioux City and the unorganized territory adjacent thereto), Yankton.

[41 FR 18057, Apr. 30, 1976]

§ 1076.3 Route disposition.

Route disposition means a delivery (including delivery by a vendor or a sale from a plant store, or distribution center) of any fluid milk product classified as Class I milk to retail or wholesale outlets, except a delivery in bulk form to a milk (including filled milk) processing plant. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing plant.

§ 1076.4 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 used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a “plant” under this definition.

[46 FR 27905, May 22, 1981]

§ 1076.5 Distributing plant.

Distributing plant means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which there is route disposition during the month in the marketing area.
§ 1076.6 Supply plant.

Supply plant means a plant from which milk or skim milk acceptable to an appropriate health authority for distribution in the marketing area under a Grade A label, is shipped during the month to a pool plant qualified pursuant to §1076.7(a).

§ 1076.7 Pool plant.

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

(a) A distributing plant from which route disposition, except filled milk, equals not less than 35 percent of the Grade A milk received at such plant from dairy farmers, handlers described in §1076.9(c), and supply plants and not less than 15 percent of such receipts is disposed of as route disposition, except filled milk, in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, transferred to pool distributing plants is not less than the applicable percentage, specified in paragraph (b)(1)(i), (ii) or (iii) of this section, of Grade A milk received at such supply plant from dairy farmers (including milk diverted therefrom by the plant operator) and handlers described in §1076.9(c).

(1) The applicable percentage for the purpose of this paragraph shall be:
   (i) 35 percent for the current month;
   (ii) 35 percent for the 12-month period immediately preceding the current month; or
   (iii) One or more shipments in each of the months of March through July if shipments were not less than 50 percent during each of the immediately preceding months of September through November.

(c) Any plant located in the marketing area or in any county adjacent to the marketing area that meets an applicable shipping standard described in paragraph (b) of this section, subject to the following conditions:

(1) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to §1076.9(c).

(2) A proprietary handler may include as qualifying shipments milk delivered pursuant to §1076.13 to pool distributing plants.

(d) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified as a pool plant pursuant to this section:

   (i) From which a lesser volume of fluid milk products, except filled milk, is disposed of in the Eastern South Dakota marketing area either as route disposition or to pool plants qualified on the basis of route disposition than in the marketing area of another order issued pursuant to the Act or to other order plants qualified on the basis of route disposition; and

   (ii) Such milk would be subject to the class price and producer payment provisions of the other order upon being made exempt from this part;

(3) For the period of March through July, inclusive, if the operator of a plant qualified pursuant to paragraph (b)(1)(ii) of this section submits a request to the market administrator in writing that such plant not be a pool plant, such nonpool status will be effective the first month following such notice and such plant shall thereafter be a nonpool plant until it again qualifies as a pool plant on the basis of the shipping requirements of 35 percent or more as set forth in this section;

(4) That portion of a plant that is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for receiving, processing, or packaging of any fluid milk product for Grade A disposition; and

(5) A governmental agency plant.


§ 1076.8 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
§ 1076.12 Producer.

Producer-handler means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products from any source for use in reconstituting fluid milk products; and

(c) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging, and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

§ 1076.10 Producer-handler.

Producer-handler means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products from any source for use in reconstituting fluid milk products; and

(c) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging, and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

§ 1076.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to the milk of producers diverted by the association for the account of such association pursuant to § 1076.13;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer which is delivered to a pool plant in a tank truck owned and operated by, or under the control of, such cooperative association. If the milk is delivered to the pool plant of another handler, the plant operator may be the handler for such milk if 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 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 who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1076.7(d).


§ 1076.12 Producer.

Producer means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1076.13.

(b) “Producer” shall not include:

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

(2) Any person with respect to milk produced by him which 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 § 1076.44 (a)(8)(iii) and the corresponding step of § 1076.44 (b);

(3) Any person with respect to milk produced by him which 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; and

(4) Any government institution which produces milk in conjunction

§ 1076.12 Producer.

Producer means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1076.13.

(b) “Producer” shall not include:

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

(2) Any person with respect to milk produced by him which 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 § 1076.44 (a)(8)(iii) and the corresponding step of § 1076.44 (b);

(3) Any person with respect to milk produced by him which 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; and

(4) Any government institution which produces milk in conjunction

§ 1076.12 Producer.

Producer means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1076.13.

(b) “Producer” shall not include:

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

(2) Any person with respect to milk produced by him which 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 § 1076.44 (a)(8)(iii) and the corresponding step of § 1076.44 (b);

(3) Any person with respect to milk produced by him which 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; and

(4) Any government institution which produces milk in conjunction

§ 1076.12 Producer.

Producer means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1076.13.

(b) “Producer” shall not include:

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

(2) Any person with respect to milk produced by him which 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 § 1076.44 (a)(8)(iii) and the corresponding step of § 1076.44 (b);

(3) Any person with respect to milk produced by him which 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; and

(4) Any government institution which produces milk in conjunction

§ 1076.12 Producer.

Producer means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1076.13.

(b) “Producer” shall not include:

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

(2) Any person with respect to milk produced by him which 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 § 1076.44 (a)(8)(iii) and the corresponding step of § 1076.44 (b);

(3) Any person with respect to milk produced by him which 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; and

(4) Any government institution which produces milk in conjunction

§ 1076.12 Producer.

Producer means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1076.13.

(b) “Producer” shall not include:

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

(2) Any person with respect to milk produced by him which 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 § 1076.44 (a)(8)(iii) and the corresponding step of § 1076.44 (b);

(3) Any person with respect to milk produced by him which 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; and

(4) Any government institution which produces milk in conjunction
§ 1076.13 Producer milk.

Producer milk of each handler means the skim milk and butterfat 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 §1076.9(c); or
(c) Diverted from a pool plant, for the account of the handler operating such plant or for the account of a handler described in §1076.9(b), to another plant (other than a producer-handler plant) subject to the following conditions:
(1) Milk of a dairy farmer shall not be eligible for diversion under this section unless during the month at least one day's production of milk of such dairy farmer is physically received at the pool plant from which diverted;
(2)—(4) [Reserved]
(5) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1076.14 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 §1076.40(b)(1) from any source other than producers, handlers described in §1076.9(c), or pool plants;
(b) Receipts in packaged form from other plants of products specified in §1076.40(b)(1);
(c) Products (other than fluid milk products, products specified in §1076.40(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 §1076.40(b)(1)) for which the handler fails to establish a disposition.

§ 1076.15 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.

§ 1076.16 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.

§ 1076.17 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).

§ 1076.18 Cooperative association.

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

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

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

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

§ 1076.19 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 §§1076.13, 1076.41 and 1076.52.

§ 1076.30 Reports of receipts and utilization.

On or before the 8th day (excluding holidays) 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 described in §1076.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in §1076.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in §1076.40(b)(1);

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to paragraph (a) of this section; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as described 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 also the quantity of any reconstituted skim milk in route disposition in the marketing area.

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

§ 1076.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in §1076.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in §1076.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1076.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated, in the same manner as prescribed for reports required by paragraph (a) of this section.

[39 FR 16312, May 8, 1974, as amended at 60 FR 57158, Nov. 14, 1995]

§ 1076.32 Other reports.

In addition to the reports required pursuant to §§1076.30 and 1076.31, 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

§ 1076.40 Classes of utilization.

Except as provided in §1076.42, all skim milk and butterfat required to be reported by a handler pursuant to §1076.30 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 paragraphs (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) which 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;
§ 1076.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1076.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such 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 §1076.9(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 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 subparagraph 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;

(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 §1076.15 and the fluid cream product definition pursuant to §1076.16; and

(7) In shrinkage assigned pursuant to §1076.41(a) to the receipts specified in §1076.41(a)(2) and in shrinkage specified in §1076.41(b) and (c).

[58 FR 27866, May 11, 1993]
(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from other order plants, excluding milk received by diversion and 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 §1076.9(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.

§1076.42 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 §1076.44(a)(12) and the corresponding step of §1076.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1076.44(a)(7) or the corresponding step of §1076.44(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 §1076.44(a)(11) or (12) or the corresponding step of §1076.44(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 §1076.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

1) As Class I milk, if transferred 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 producer-handler’s utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his 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 or a producer-handler 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 §1076.30 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
§ 1076.43 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 §1076.30 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 §1076.9 (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 §§1076.40, 1076.41 and 1076.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in §1076.9 (b) or (c) shall be the classification of producer milk for such handler;

(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 §1076.9 (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 §1076.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1076.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1076.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in §1076.9(a) for each of its separate pool plants the classification of producer milk and milk received from a handler described in §1076.9(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 §1076.41(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 an other 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 §1076.40(b)(1) that were received in packaged form from other plants, but not in excess of the 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 §1076.40(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 §1076.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1076.40(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 §1076.40(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; and

(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;

(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)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in Class II and Class III combined, 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); and

(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 §1076.9(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 sequence beginning with Class III, the pounds of skim milk in fluid milk products and products specified in §1076.40(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)(ii) 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 bulk 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 I and 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 subparagraph 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 §1076.45(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
§ 1076.45 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 §1076.44(a)(12) and the corresponding step of §1076.44(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 §§1076.43(d) and 1076.44 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 12th day after the end of each month, report to each cooperative association, which so requests,
the percentage of the milk caused to be delivered by the cooperative association or its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.


CLASS PRICES

§ 1076.50 Class and component prices.
Subject to the provisions of §1076.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) Class I price. The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.50.
(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) [Reserved]
(e) Class I differential price. The Class I differential price shall be the difference between the current month Class I and Class III prices (this price may be negative).
(f) Class II differential price. The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).
(g) [Reserved]
(h) Skim milk price. The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.
(i) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.
(k) Other solids price. Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) Somatic cell adjustment. (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly Cheddar cheese price as defined in paragraph (j) of this section; and
(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.


§ 1076.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1076.74 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.
§ 1076.52
7 CFR Ch. X (1-1-99 Edition)

(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 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, 9.37, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the change 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 18969, Apr. 14, 1995]

§ 1076.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or from a handler described in §1076.9(c) at a plant located in Minnesota, North Dakota, or that portion of South Dakota north of U.S. Highway 90, and which is classified as Class I milk without movement in bulk form to a pool plant at which a higher Class I price applies, the price specified in §1076.50(a) shall be reduced 1.5 cents for each 10 miles or fraction thereof (by shortest hard-surfaced highway distance as measured by the market administrator) that such plant is located.
from the nearer of the Post Offices of Mitchell or Sioux Falls, South Dakota.

(b) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I, the 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 determined by the market administrator as follows:

(1) Subtract from the pounds of Class I remaining at the transferee-plant after the computations pursuant to §1076.44(a)(12) and (b) plus the pounds of skim milk and butterfat in receipts of concentrated fluid milk products from other pool plants that are assigned to Class I use, the pounds of packaged fluid milk products from other pool plants;

(2) Multiply the remaining pounds of milk by 110 percent;

(3) Subtract the pounds of bulk fluid milk products physically received at the transferee-plant from the following sources:

(i) Producers;
(ii) Handlers described in §1076.9(c);
(iii) Pool plants at which the same or a higher Class I price applies; and
(iv) Receipts of diverted milk from pool plants;

(4) Assign any pounds remaining pro rata to bulk receipts of fluid milk products from each transfer or plant at which a lower Class I price applies; and

(5) Multiply the pounds computed for each transferor-plant in paragraph (b)(4) of this section by the difference in the Class I prices applicable at the transferee-plant and transferor-plant.

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

§ 1076.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;
(b) The Class II price for the following month;
(c) The Class III price for the preceding month;
(d) [Reserved];
(e) The skim milk price for the preceding month;
(f) The butterfat price for the preceding month;
(g) The protein price for the preceding month;
(h) The other solids price for the preceding month;
(i) The somatic cell adjustment rate for the preceding month; and
(j) The butterfat differential for the preceding month.

[60 FR 57159, Nov. 14, 1995]

§ 1076.54 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.

§ 1076.60 Handler’s value of milk.

For the purpose of computing a handler’s obligation for milk, the market administrator shall determine for each month the value of milk of each handler described in §1076.9(a) with respect to each of its pool plants and each handler described in §1076.9(b) and (c).

(a) The handler’s obligation for producer milk and milk received from a handler described in §1076.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to §1076.43(a) and §1076.44(c) by the Class I differential price for the month;
(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to §1076.43(a) and §1076.44(c) by the Class II differential price for the month;
(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to
§ 1076.43(a) and § 1076.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.43(a) and § 1076.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.43(a) and § 1076.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price; and

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1076.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1076.43(a) and 1076.44(c);

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1076.44(a)(14) and the corresponding step of § 1076.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1076.74, 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 § 1076.44(a)(9) and the corresponding step of § 1076.44(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 § 1076.43(d) and the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1076.44(a)(7)(i) through (iv) and the corresponding step of § 1076.44(b), excluding receipts of bulk fluid milk products assigned to Class I pursuant to § 1076.44(a)(7)(v) and (vi) and the corresponding step of § 1076.44(b); and

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plant 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 § 1076.43(d) and § 1076.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1076.44(a)(11) and the corresponding steps of § 1076.44(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 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 § 1076.43(d);

(h) 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 § 1076.76(a)(5) or (c); and

(i) 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.

§ 1076.61 Producer price differential.
For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers as follows:
(a) Combine into one total for all handlers:
(1) The values computed pursuant to §1076.60 (a)(1), (a)(2), and (b) through (i) for all handlers; and
(2) Add values computed pursuant to §1076.60(a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment;
(b) Add an amount equal to the total value of the location adjustments computed pursuant to §1076.75;
(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;
(d) Divide the aggregate value computed pursuant to paragraphs (a), (b), and (c) of this section 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 §1076.60(f); and
(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential."

§ 1076.71 Payments to the producer-settlement fund.
(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:
(1) The total hundredweight of producer milk; and
(2) The total hundredweight for which a value is computed pursuant to §1076.60(f); and
(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential."
§ 1076.62 Announcement of producer prices.
On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:
(a) The producer price differential;
(b) The protein price;
(c) The other solids price;
(d) The butterfat price;
(e) The somatic cell adjustment rate;
(f) The average butterfat, protein and other solids content of producer milk and milk received from a handler described in §1076.9(c); and
(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

§ 1076.70 Producer-settlement fund.
The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§1076.71, 1076.76, and 1076.77 and out of which he shall make all payments to handlers pursuant to §§1076.72 and 1076.77: Provided, That the market administrator shall offset the payment due to a handler against payments due from each handler.

§ 1076.71 Payments to the producer-settlement fund.
(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:
(1) The total value of milk of the handler for such month as determined pursuant to §1076.60.
(2) The sum of:
(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in §1076.9(c) by the producer price differential as adjusted pursuant to §1076.75;
§ 1076.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1076.71(a)(2) exceeds the amount computed pursuant to §1076.71(a)(1): Provided, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1076.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

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

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to §1076.52 for the location of the plant from which received.

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to §1076.86; and
(ix) If by such date the handler has not received full payment from the market administrator pursuant to §1076.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to paragraph (a) of this section next following receipt of the balance due from the market administrator.

(b) Except as provided in paragraph (c) of this section each handler shall make payment to a cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 28th day of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section; and

(2) On or before the 15th day after the end of each month, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section.

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in §1076.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to §1076.62(g) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler’s plant;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by the cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to §1076.62(g) adjusted by the butterfat differential, both for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) [Reserved];

(iv) The pounds of butterfat received times the butterfat price for the month;

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and
(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

1. The month and the identity of the producer;
2. The daily and total pounds for each producer;
3. The total pounds of butterfat contained in the producer’s milk;
4. The total pounds of protein contained in the producer’s milk;
5. The total pounds of other solids contained in the producer’s milk;
6. The somatic cell count of the producer’s milk;
7. The minimum rate or rates which payment to the producer is required pursuant to this order;
8. The rate that is used in making payment if such rate is other than the applicable minimum rate;
9. The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and
10. The net amount of payment to such producer or cooperative.


§ 1076.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, 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 §1076.51 (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 57161, Nov. 14, 1995]

§ 1076.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in §1076.52; and

(b) For the purpose of computations pursuant to §§1076.71 and 1076.72 the producer price differential shall be adjusted at the rates set forth in §1076.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

[60 FR 57161, Nov. 14, 1995]

§ 1076.76 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 §§1076.30(b) and 1076.31(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
(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 amount by which the Class I differential price exceeds the producer price differential, both price to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; 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. If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to §1076.60 for such handler shall include, in lieu of the value of other source milk specified in §1076.60(f), the value of such other source milk specified in §1076.71(a)(2)(v), a value of milk determined pursuant to §1076.60 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 §1076.7(b), subject to the following conditions:

(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)(3)(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 §1076.60 shall be priced at the statistical 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 statistical 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 §1076.60 for such handler shall include, in lieu of the value of other source milk specified in §1076.60(f) less the value of such other source milk specified in §1076.71(a)(2)(v), a value of milk determined pursuant to §1076.60 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 §1076.7(b), subject to the following conditions:

(1) Determine the value that would have been computed pursuant to §1076.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:
§ 1076.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports of payments of any handler discloses errors made in payments to or from the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days of such billing make payments to the market administrator of the amount so billed and whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days make such payment to such handler.

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association discloses payment of less than is required by §1076.73, the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

§ 1076.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§1076.71(a), 1076.77(a), 1076.85 or 1076.86 shall be increased 1 percent beginning on the day after the due date, and on the same day of each
succeeding month until such obligation is paid.

[46 FR 27908, May 22, 1981]

**ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION**

§ 1076.85 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 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk, including such handler’s own production;

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I pursuant to §1076.43(d) and other source milk allocated to Class I pursuant to §1076.44(a)(7) and (a)(11) and the corresponding steps of §1076.44(b), except such other source milk that is excluded from the computations pursuant to §1076.60(d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to §1076.76(a)(2).


§ 1076.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer (other than himself) pursuant to §1076.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received from the producer’s farm during the month, and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions 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 15th 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 producer.

[46 FR 27908, May 22, 1981]

**PART 1079—MILK IN THE IOWA MARKETING AREA**

Subpart—Order Regulating Handling

**GENERAL PROVISIONS**

Sec.

1079.1 General provisions.

1079.2 Iowa marketing area.

1079.3 Route disposition.

1079.4 Plant.

1079.7 Pool plant.

1079.8 Nonpool plant.

1079.9 Handler.

1079.10 Producer-handler.

1079.12 Producer.

1079.13 Producer milk.

1079.14 Other source milk.

1079.15 Fluid milk product.

1079.16 Fluid cream product.

1079.17 Filled milk.

1079.18 Cooperative association.

1079.19 Commercial food processing establishment.

**HANDLER REPORTS**

1079.30 Reports of receipts and utilization.

1079.31 Payroll reports.

1079.32 Other reports.

**CLASSIFICATION OF MILK**

1079.40 Classes of utilization.

1079.41 Shrinkage.

1079.42 Classification of transfers and diversions.

1079.43 General classification rules.

1079.44 Classification of producer milk.
§ 1079.1

1079.45 Market administrator’s reports and announcements concerning classification.

1079.50 Class and component prices.
1079.51 Basic formula price.
1079.52 Plant location adjustments for handlers.
1079.53 Announcement of class and component prices.
1079.54 Equivalent price.

PRODUCER PRICE DIFFERENTIAL
1079.60 Handler’s value of milk.
1079.61 Producer price differential.
1079.62 Announcement of producer prices.

PAYMENTS FOR MILK
1079.70 Producer-settlement fund.
1079.71 Payments to the producer-settlement fund.
1079.72 Payments from the producer-settlement fund.
1079.73 Payments to producers and to cooperative associations.
1079.74 Butterfat differential.
1079.75 Plant location adjustments for producers and on nonpool milk.
1079.76 Payments by handler operating a partially regulated distributing plant.
1079.77 Adjustment of accounts.
1079.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION
1079.85 Assessment for order administration.
1079.86 Deduction for marketing services.


SOURCE: 42 FR 17423, Apr. 1, 1977, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1079.1 General provisions.

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

DEFINITIONS

§ 1079.2 Iowa marketing area.

Iowa marketing area (referred to in this part as the “marketing area”) are listed below, including all territory that is now, or in the future, occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area:


(c) The Missouri counties of: Grundy, Harrison, Mercer, Putnam, Schuyler.

(d) The Wisconsin counties of: Crawford and Grant.


§ 1079.3 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 bulk fluid milk products transferred to other plants.

§ 1079.4 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 used only as a distribution point for storing packaged fluid milk products in transit or separate facilities at which milk is only reloaded from one
tank truck to another for trans-
shipment shall not be a “plant” under
this definition.

§ 1079.7 Pool plant.

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

(a) Any plant (which, if qualified pur-
suant to this paragraph, shall be
known as a “pool distributing 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:

(1) The total route disposition (ex-
cluding packaged fluid milk products
received from other plants and filled
milk) as a percent of the total Grade A
fluid milk products received in bulk
form at such plant or diverted there-
from by the plant operator is equal to
40 percent or more during each of the
months of September through Novem-
ber and 35 percent or more during all
other months;

(2) Not less than 15 percent of such
receipts are disposed of as route dis-
position (except filled milk) in the
marketing area; and

(3) A unit consisting of at least two
plants operated by a handler shall be
considered as one distributing plant for
the purpose of meeting the require-
ments of this paragraph if:

(i) Fluid milk products are processed
and packaged at each plant;

(ii) Each plant meets the require-
ments of paragraph (a)(2) of this sec-
tion; and

(iii) The handler notified the market
administrator in writing before the
first day of the month that the plants
should be considered as a unit. The
unit shall continue from month to
month thereafter without further noti-
ification. To add plants to the unit, to
drop them, or to discontinue the unit,
the handler shall notify the market ad-
ministrator in writing on or before the
first day of the month such change is
to be made.

(b) Any plant (which, if qualified pur-
suant to this paragraph, shall be
known as a “pool supply plant”) that is
approved by a duly constituted regu-
latory agency for the handling of Grade
A milk and from which during the
month the volume of bulk fluid milk
products transferred to pool distrib-
uting plants during each of the months
of September through November is 35
percent or more and during each of the
months of December through August is
30 percent or more of the total Grade A
milk received at the plant from dairy
farmers and handlers described in
§1079.9(c), including milk diverted
therefrom by the plant operator pursu-
ant to §1079.13, subject to the following
conditions:

(1) The shipping percentages of this
paragraph may be increased or de-
creased up to 10 percentage points by
the Director of the Dairy Division if he
finds that such revision is necessary to
result in needed shipments to pool dis-
tributing plants for Class I use, or to
prevent uneconomic shipments, subject
to the following conditions:

(i) Before making such a finding, the
Director shall investigate the need for
revision either on his own initiative or
at the request of interested persons. If
the investigation shows that a revision
of the shipping percentage might be ap-
propriate, he shall issue a notice stat-
ing that the revision is being consid-
ered and invite data, views, and argu-
ments; and

(ii) No plant may qualify as a pool
plant due to a reduction in the ship-
ping percentage pursuant to this sub-
paragraph unless it had been a pool
supply plant during each of the imme-
diately preceding three months.

(2) For plants located within the
States of Iowa, Minnesota, Wisconsin,
or that portion of Illinois north of
Interstate 80, the shipping require-
ments of this paragraph may also be
met in the following ways:

(i) A cooperative association that op-
erates a supply plant may include as
qualifying shipments its deliveries to
pool distributing plants directly from
farms of producers pursuant to
§1079.9(c);

(ii) A proprietary handler may in-
clude as qualifying shipments milk di-
verted pursuant to §1079.13(d) to pool
distributing plants;

(iii) The operator of a supply plant
may include as qualifying shipments
transfers of fluid milk products to dis-
tributing plants regulated under other
Federal orders, except that credit for
such transfers shall be limited to the
amount of milk, including milk
§ 1079.8 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

and from which during the month a greater quantity of fluid milk products, except filled milk, was disposed of as route disposition, in such other marketing area and to pool plants qualified on the basis of route disposition in such other marketing area than was so disposed of in such other Federal order marketing area as route disposition, or to pool plants qualified on the basis of route disposition, except that if such plant was subject to all the provisions of this paragraph in the immediately preceding month, it shall continue to be subject to all the provisions of this paragraph in the immediately preceding month in which a greater proportion of its fluid milk products disposition, except filled milk, is made in the described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated by such other order;

§ 1079.12

Producer-handler means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distributing plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(b) Receives no milk or fluid milk products at his plant (or at any distribution facility, including routes, operated by him, an affiliate, or any person who controls or is controlled by him) from the farms of other dairy farmers nor from any other source, except receipts of not more than 50,000 pounds of fluid milk products during the month from pool plants or from other order plants;

(c) Receives no nonfluid milk products from any source for use in reconstituting fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.
§ 1079.13 Producer milk.

Producer milk means the skim milk and butterfat 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 §1079.9(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 §1079.9(c), is the handler for such milk;

(d) Diverted from the pool plant of a proprietary handler for the account of the handler operating such plant to another pool plant or diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in §1079.9(b), subject to the following conditions:

1. Milk of a dairy farmer shall not be eligible for diversion under this section unless during the month at least one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

2. The total quantity of milk diverted by a cooperative association during the month may not exceed 50 percent in the months of September through November and 70 percent in other months, of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month.

3. The operator of a pool plant (other than a cooperative association) may divert for his account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity so diverted during the month may not exceed 50 percent in the months of September through November, and 70 percent in other months, of the milk received at or diverted from 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 paragraph (d)(2) and (3) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the milk last diverted—in lots of an entire day's production—shall be excluded first in determining which milk should not be producer milk;

5. Diverted milk shall be priced at the location of the plant to which diverted.

[42 FR 17423, Apr. 1, 1977]

Effective Date Note: At 55 FR 41182, Oct. 10, 1990, §1079.13(d)(2) and (3), the words "50 percent in the months of September through November and," and the words "in other months," as they appear in each such paragraph are suspended for the months of September through November for an indefinite period.
§ 1079.14 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 §1079.40(b)(1) from any source other than producers, handlers described in §1079.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1079.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1079.40(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 §1079.40(b)(1)) for which the handler fails to establish a disposition.

§ 1079.15 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, stabilized, 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 27868, May 11, 1993]

§ 1079.16 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 27868, May 11, 1993]

§ 1079.17 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 milk fat, 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).

§ 1079.18 Cooperative association.

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

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

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

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

§ 1079.19 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
§ 1079.30
commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including but not limited to, provisions in §§1079.13, 1079.41 and 1079.52.

[58 FR 27868, May 11, 1993]

HANDLER REPORTS

§ 1079.30 Reports of receipts and utilization.

On or before the eighth 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 described in §1079.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in §1079.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in §1079.40(b)(1);

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to paragraph (a) of this section and bulk fluid cream products from any source.

(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 not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

[42 FR 17423, Apr. 1, 1977, as amended at 60 FR 57161, Nov. 14, 1995]

§ 1079.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler described in §1079.9 (a), (b), or (c) shall report to the market administrator its producer payroll for such month in the detail prescribed by the market administrator, showing for each producer the information described in §1079.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1079.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

[42 FR 17423, Apr. 1, 1977, as amended at 60 FR 57161, Nov. 14, 1995]

§ 1079.32 Other reports.

In addition to the reports required pursuant to §§1079.30 and 1079.31, 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

§ 1079.40 Classes of utilization.

Except as provided in §1079.42, all skim milk and butterfat required to be reported by a handler pursuant to §1079.30 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.
§ 1079.41  Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1079.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such 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 §1079.9(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 shall be 2 percent;

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

(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 §1079.30, but not in excess of 0.5 percent of the skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5), and (6) of this section; 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

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

bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1079.42 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 §1079.44(a)(12) and the corresponding step of §1079.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

2. If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1079.44(a)(7) or the corresponding step of §1079.44(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 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 the pool plant, 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 §1079.40.

(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 paragraphs (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 §1079.40.

(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 shall be classified:

1. As Class I milk, if transferred or diverted 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 producer-handler's utilization of skim milk and butterfat in each class in series beginning with Class III shall be assigned to the extent possible to his 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 or a producer-handler 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 §1079.30 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 of fluid milk products 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 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;
Agricultural Marketing Service, USDA

§ 1079.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in §1079.9(a) for each of his separate pool plants the classification of producer milk and milk received

§ 1079.43 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 §1079.30 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 §1079.9 (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 §§1079.40, 1079.41, and 1079.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in §1079.44

(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 §1079.9 (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 §1079.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1079.44 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.

§ 1079.44

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

from a handler described in §1079.9(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 §1079.41(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 an order plant, except that to be subtracted pursuant to paragraph (a)(4), (a)(5) and (a)(6) of this section:
   (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 §1079.40(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. For a pool plant that was subject to §1079.40(b)(1) or comparable provisions of another Federal order in the immediately preceding month, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in §1079.40(b)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the begin-

ning of the month, but not in excess of the pounds of skim milk remaining in Class II.

6. Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in 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 §1079.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1079.40(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 sequence 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 §1079.40(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; and
   (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;

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 paragraph (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 paragraph (a)(2)(i), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler’s other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the 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 sums of the pounds of skim milk in receipts at all pool plants of the handler of fluid milk products from other 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 §1079.40(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 paragraph (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 paragraph (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 paragraph
(a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(b) 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 (a)(8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be prorata 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 §1079.45(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 §1079.42(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 described in §1079.9(c) in each class subtracted 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 §1079.9(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.

§1079.45 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 §1079.44(a)(12) and the corresponding step of §1079.44(b), estimate and publicly announce on or before the 12th day of the month the Class I utilization (to the nearest whole percentage) during the previous 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 §§1079.43(d) and 1079.44 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 class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

§1079.50 Class and component prices.

Subject to the provisions of §1079.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) Class I price. The Class I price for the month per hundredweight of milk
containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.55.

(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.

(e) Class I differential price. The Class I differential price shall be the difference between the current month Class I and Class III prices (this price may be negative).

(f) Class II differential price. The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) Class III-A differential price. The Class III-A differential price shall be the difference between the current month's Class III and Class III-A prices (this price may be negative).

(h) Skim milk price. The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by .965 and dividing the resulting amount by one hundred.

(j) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) Other solids price. Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) Somatic cell adjustment. (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section; and

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.


§ 1079.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1079.74 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 18970, Apr. 14, 1995]

§ 1079.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include that territory both inside and outside the marketing area, not included in Zones 2 and 3.

(2) Zone 2 shall include:
   (i) The Iowa counties of Benton, Cedar, Clinton, Iowa, Johnson, Jones, Keokuk, Linn, Louisa, Marshall, Muscatine, Poweshiek, Scott, Tama, and Washington; and

(3) Zone 3 shall include:
   (i) The Iowa counties of Alamakee, Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Clay,
Clayton, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Jackson, Kossuth, Mitchell, Palo Alto, Pocahontas, Webster, Winnebago, Winneshiek, Worth and Wright; and 
(ii) The States of Minnesota and Wisconsin and that portion of Illinois that is north of Interstate 80. (b) For milk received at a plant from producers or from a handler described in § 1079.9(c) and which is classified as Class I milk without movement in bulk form to a pool plant at which a higher Class I price applies, the price specified in §1079.50(a) shall be adjusted as follows:
(1) In Zone 1, no adjustment;
(2) In Zone 2, minus 7 cents; and
(3) In Zone 3, the price shall be reduced by 7 cents and by an additional 1.7 cents for each 10 miles or fraction thereof (by shortest hard-surfaced highway distance as measured by the market administrator) that such plant is located from the nearer of the Post Offices of Ames, Marshalltown, or Cedar Rapids, Iowa.
(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.
(d) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I, the 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 determined by the market administrator as follows:
(1) Subtract from the pounds of Class I remaining at the transferee-plant after the computations pursuant to §1079.44 (a)(12) and (b) plus the pounds of skim milk and butterfat in receipts of concentrated fluid milk products from other pool plants that are assigned to Class I use, the pounds of packaged fluid milk products from other pool plants;
(2) Multiply the remaining pounds of milk by 110 percent;
(3) Subtract the pounds of bulk fluid milk products physically received at the transferee-plant from the following sources:
(i) Producers;
(ii) Handlers described in §1079.9(c);
(iii) Pool plants at which the same or a higher Class I price applies; and
(iv) Receipts of diverted milk from pool plants;
(4) Assign any pounds remaining pro rata to bulk receipts of fluid milk products from each transferor-plant at which a lower Class I price applies; and
(5) Multiply the pounds computed for each transferor-plant in paragraph (d)(4) of this section by the difference in the Class I prices applicable at the transferee-plant and transferor-plant.
§ 1079.53 Announcement of class and component prices.
On or before the 5th day of the month, the market administrator shall announce the following prices:
(a) The Class I price for the following month;
(b) The Class II price for the following month;
(c) The Class III price for the preceding month;
(d) The Class III-A price for the preceding month;
(e) The skim milk price for the preceding month;
(f) The butterfat price for the preceding month;
(g) The protein price for the preceding month;
(h) The other solids price for the preceding month;
(i) The somatic cell adjustment rate for the preceding month; and
(j) The butterfat differential for the preceding month.
§ 1079.54 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.
§ 1079.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in §1079.9(a) with respect to each of its pool plants, and each handler described in §1079.9 (b) and (c).

(a) The handler's obligation for producer milk and milk received from a handler described in §1079.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to §1079.43(a) and §1079.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to §1079.43(a) and §1079.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to §1079.43(a) and §1079.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to §1079.43(a) and §1079.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to §1079.43(a) and §1079.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to §1079.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§1079.43(a) and 1079.44(c); and

(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III-A by the Class III-A differential price for the month;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to §1079.44(a)(14) and the corresponding step of §1079.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1079.74, 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 §1079.44(a)(9) and the corresponding step of §1079.44(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 §1079.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1079.44(a)(7)(i) through (iv) and the corresponding step of §1079.44(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 §1079.44(a)(7)(v) and (vi) and the corresponding step of §1079.44(b); and

(f) Add the amount obtained from multiplying the Class I differential 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 §1079.43(d) and §1079.44(a)(7)(ii) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1079.44(a)(11) and the corresponding steps of §1079.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply.
§ 1079.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1, if the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to §1079.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to §1079.60 (a)(1), (a)(2), (a)(7), and (b) through (j) for all handlers; and

(2) Add values computed pursuant to §1079.60 (a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of somatic cell adjustments;

(b) Add an amount equal to the sum of the location adjustments computed pursuant to §1079.75;

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

(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;

(2) The total hundredweight for which a value is computed pursuant to §1079.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the “producer price differential.”

§ 1079.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;
§ 1079.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all payments made by handlers pursuant to §§ 1079.71, 1079.76, and 1079.77, and out of which he shall make all payments due handlers pursuant to §§ 1079.72 and 1079.77. Provided, That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1079.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1079.60.

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1079.9(c) by the producer price differential as adjusted by § 1079.75.

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1079.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1079.9(c) by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk and milk received from handlers described in § 1079.9(c); and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1079.60(f) by the producer price differential as adjusted pursuant to § 1079.52 for the location of the plant from which received.

(b) [Reserved]

§ 1079.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1079.71(a)(2) exceeds the amount computed pursuant to § 1079.71(a)(1). Provided, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1079.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.60(g) for the preceding month and adjusted pursuant to § 1079.75, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

...
§ 1079.73

(i) The hundredweight of producer milk received times the producer price differential adjusted pursuant to §1079.75;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper authorized deductions authorized in writing by such cooperative association;

(viii) Less deductions for marketing services pursuant to §1079.86 and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to §1079.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to paragraph (a) of this section next following receipt of the balance due from the market administrator.

(b) Each handler shall pay a cooperative association as follows for milk received from producers if the cooperative association has filed a written request for payment with the handler and if the market administrator has determined that such cooperative association is authorized to collect payment:

(1) On or before the last day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 18th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section, less proper deductions authorized in writing by such cooperative association.

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in §1079.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to §1079.62(g), applicable at the location of the receiving handler’s plant, for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler’s plant;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price applicable at the transferee plant as computed pursuant to §1079.62(g) and adjusted by the butterfat differential, both for the preceding month; and

(2) For milk received and classified during the month the handler shall pay
the cooperative association on or before the 18th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;
(ii) The hundredweight of Class II milk received times the Class II differential price for the month;
(iii) The hundredweight of Class III-A milk received times the Class III-A differential price for the month;
(iv) The pounds of butterfat received times the butterfat price for the month;
(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;
(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;
(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and
(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;
(2) The daily and total pounds for each producer;
(3) The total pounds of butterfat contained in the producer’s milk;
(4) The total pounds of protein contained in the producer’s milk;
(5) The total pounds of other solids contained in the producer’s milk;
(6) The somatic cell count of the producer’s milk;
(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;
(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;
(9) The amount, rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and
(10) The net amount of payment to such producer or cooperative.

§ 1079.74 Butterfat differential.
The butterfat differential, rounded to the nearest one-tenth cent, 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 §1079.51 (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.

§ 1079.75 Plant location adjustments for producers and on nonpool milk.
(a) The producer price differential for producer milk pursuant to §1079.61 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in §1079.52.
(b) For purposes of computations pursuant to §§1079.71 and 1079.72 the producer price differential shall be adjusted at the rates set forth in §1079.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

§ 1079.76 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 §§1079.30(b) and 1079.31(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 of fluid milk products 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 amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; 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 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 §1079.60 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 §1079.60 shall be priced at the statistical 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 statistical 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 §1079.60 for such handler shall include, in lieu of the value of other source milk specified in §1079.60(f) less the value of such other source milk specified in §1079.71(a)(2)(v), a value of milk determined pursuant to §1079.60 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 §1079.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§1079.30 and 1079.31 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 §1079.60 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 §1079.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(ii) 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 §1079.43(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.

§1079.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments by any handler discloses errors in payments pursuant to §§1079.71, 1079.85 and 1079.86, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing,
§ 1079.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1079.71, 1079.76, 1079.77(a), 1079.85, and 1079.86, for which remittance has not been made (or, if mailed, postmarked) by the date specified for such payment, shall be increased three-fourths of 1 percent, and any remaining amount due shall be increased at a similar rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include unpaid charges previously made pursuant to this section; and for the purpose of this section any obligation that was determined at a date later than 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

§ 1079.85 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 15th 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:

(1) Receipts of producer milk by a handler described in §1079.9(c) that were delivered to pool plants of other handlers; and

(2) Receipts of producer milk that were transferred to pool plants of other handlers by a cooperative association in its capacity as a handler pursuant to §1079.9(a);

(b) Receipts from a handler described in §1079.9(c);

(c) Receipts from a cooperative association in its capacity as a handler pursuant to §1079.9(a);

(d) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1079.43(d) and other source milk allocated to Class I pursuant to §1079.44 (a)(7) and (a)(11) and the corresponding steps of §1079.44(b), except such other source milk that is excluded from the computations pursuant to §1079.60 (d) and (f); and

(e) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat specified in §1079.76(a)(2).


§ 1079.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer (other than himself) pursuant to §1079.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to all milk received from the producers’ farms during the month, and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in...
paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made 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 15th 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 producer.

PARTS 1093-1097 [RESERVED]

PART 1106—MILK IN THE SOUTH-WEST PLAINS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec. 1106.1 General provisions.

DEFINITIONS

§ 1106.2 Southwest Plains marketing area.

The Southwest Plains marketing area, hereinafter called the “marketing area”, means all territory within the
§ 1106.3

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

boundaries of the following counties, 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 I—IN THE STATE OF OKLAHOMA
Caddo
Canadian
Cleveland
Coal
Garvin
Grady
Haskell
Hughes
Latimer
LeFlore

ZONE II—IN THE STATE OF OKLAHOMA
Atoka
Bryan
Choctaw
Comanche
Cotton
Greer
Harmon
Jackson
Johnston

ZONE III—IN THE STATE OF OKLAHOMA
Adair
Alfalfa
Beaver
Belaine
Cherokee
Cimarron
Craig
Creek
Custer
Delaware
DeBary
Ellis
Garfield
Grant
Harper
Kay
Kingfisher
Logan

ZONE IV—IN THE STATE OF KANSAS
Allen
Barber
Barton
Bourbon
Butler

ZONE V—IN THE STATE OF MISSOURI
Barton
Jasper

ZONE VI—IN THE STATE OF ARKANSAS
Benton
Boone
Carroll

ZONE VII—IN THE STATE OF MISSOURI
Barry
Cedar
Christian
Clay
Christian
Dade
Dekalb
Douglas
Greene
Howard
Johnson
Lawrence
Monroe
Newton
Ozark
Poinsett
Polk
Pulaski (Fort<br>Leonard Wood)<br>

§ 1106.3 Route disposition.

Route disposition means any delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of any fluid milk product classified as Class I milk.

Effective Date Note: At 59 FR 1274, Jan. 10, 1994, §1106.3 was amended by suspending indefinitely the phrase “(except to a plant)”.

638
Agricultural Marketing Service, USDA

§ 1106.4 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 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.

§ 1106.5 Distributing plant.

Distributing plant means any plant:
(a) Approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption;
(b) In which fluid milk products are processed or packaged; and
(c) From which there is route disposition in the marketing area during the month, except that this requirement shall not apply to a distributing plant described in §1106.7(e).

§ 1106.6 Supply plant.

Supply plant means a plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption from which fluid milk products are transferred or diverted to a distributing plant(s) during the month.


§ 1106.7 Pool plant.

Except as provided in paragraph (f) of this section, pool plant means:
(a) A distributing plant (other than one described in paragraph (e) of this section), from which during the month there is:
1. Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from the plant; and
2. Route disposition (except filled milk) in the marketing area in an amount not less than 10 percent of such receipts.
(b) A supply plant from which during the month not less than 50 percent of the total quantity of milk that is received from dairy farmers (including producer milk diverted from the plant pursuant to §1106.13, but excluding milk diverted to such plant) and handlers described in §1106.9(c) is transferred or diverted pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section, subject to the following:
1. A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through January shall continue to so qualify in each of the following months of February through August until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and deversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified.
2. The operator of a supply plant that is located in the marketing area or in a county adjacent to the marketing area may include milk diverted pursuant to §1106.13(c) from such plant to plants described in paragraph (a) or (e) of this section as qualifying shipments in meeting the supply plant's monthly shipping percentages. The diverted milk used in meeting such qualifying shipments shall be limited to the milk of dairy farmers from whom at least one day's production is physically received during the month.
at such supply plant. Diversions in excess of three-fifths of the shipping requirement shall not be included as qualifying shipments.

(c) Any plant located in the marketing area or in a county adjacent to the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the cooperative association and during the month, or the 12-month period ending with the immediately preceding month, 35 percent or more of the producer milk of members of the cooperative association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at plants specified in paragraph (a) or (e) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (e) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(d) The shipping standards in paragraphs (b) and (c) of this section may be increased or decreased temporarily up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a reduction in shipping standards pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to §1106.30.

(e) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant has route disposition (except filled milk) during the month in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from such plant; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed fluid milk products.

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

(1) A producer-handler plant or governmental agency plant;

(2) A distributing 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 unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section
Agricultural Marketing Service, USDA § 1106.9

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 this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part;

(5) A plant qualified pursuant to paragraph (b) of this section which has automatic pooling status under an other Federal order; or

(6) That portion of a plant that is not approved by a duly constituted regulatory agency for the receiving, processing or packaging of any fluid milk product for fluid disposition and is physically separated from the portion of the plant having such approval.


§ 1106.9 Handler.

Handler means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to §1106.13 for the account of such cooperative association;

(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 who operates a partially regulated distributing plant;

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

§ 1106.8 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 distributing plant that does not qualify as pool plant and is not an other order plant, a governmental agency plant, or a producer-handler plant.

(d) Unregulated supply plant means a nonpool plant, except an other order plant, a governmental agency plant, or a producer handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to §1106.7.

(e) Governmental agency plant means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from all provisions of this part.
§ 1106.10 Producer-handler.

Producer-handler means any person:
(a) Who operates a dairy farm and a processing plant from which there is route distribution in the marketing area;
(b) Who receives no fluid milk products from sources other than his own farm production, pool plants, and other order plants;
(c) Who disposes of no other source milk as Class I milk except receipts from other order plants and by increasing the nonfat milk solids content of the fluid milk products received from his own farm production, pool plants, or other order plants; and
(d) 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.

§ 1106.11 [Reserved]

§ 1106.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk approved for fluid consumption by a duly constituted regulatory agency and whose milk is:
(1) Received at a pool plant directly from such producer. Any milk 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, 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. The paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with §1106.9(c), is the handler for such milk.
(b) Diverted by the operator of a pool plant or by a cooperative association from a pool plant to a nonpool plant (other than a producer-handler plant), subject to the following conditions:
(1) In any month, milk of a producer shall not be eligible for diversion from a pool plant under this section unless at least one day's production from such producer is physically received at a pool plant during the month;
(2) The total quantity of milk diverted by a cooperative association in any month shall not exceed the total quantity of producer milk that the cooperative association caused to be delivered to and was physically received at pool plants during the month.
(3) The operator of a pool plant other than a cooperative association may divert any milk that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted in any month shall not exceed the total quantity of milk that was physically received at pool plant(s) as producer milk for which the plant operator is the handler;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d) (2) and (3) of this section shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to so designate, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limits are accounted for;

(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. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to so designate, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for;

(6) If a dairy farmer loses his producer status under this order (except as a result of temporary loss of approval from a duly constituted regulatory agency for the production of milk for fluid consumption), 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; and

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


§ 1106.14 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 §1106.40(b)(1) from any source other than producers, handlers described in §1106.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1106.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1106.40(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 §1106.40(b)(1)) for which the handler fails to establish a disposition.

§ 1106.15 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
§ 1106.16 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 27880, May 11, 1993]

§ 1106.17 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).

§ 1106.18 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";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales or marketing milk or milk products for its members.

§ 1106.19 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 establishment will be subject to the same provisions relating to diversions to plants, including but not limited to, provisions in §§1106.13, 1106.41 and 1106.52.

[58 FR 27880, May 11, 1993]

§ 1106.30 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 §1106.9(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 §1106.40(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 §1106.9(b) and (c) shall report:

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

(2) The utilization or disposition of all such receipts.
(d) Each handler not specified in paragraphs (a) through (c) of this section shall report for each of the handler's plants with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1106.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in §1106.9(a), (b) and (c) who pays producers pursuant to §1106.73 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 amount 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 §1106.76(b) shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the 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 pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

§ 1106.32 Other reports.

(a) On or before the 21st day of each month, each handler described in §1106.9(a) who is required pursuant to §1106.71(c) to make payments to the market administrator for milk received from producers and cooperative associations shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

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

(2) The total pounds of 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 §1106.9(c); and

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

(b) On or before the 7th day after the end of each month, each handler described in §1106.9(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, its average butterfat content and the total pounds of milk diverted to each plant that is not a pool plant;

(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 and butterfat received from a handler described in §1106.9(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 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 and to the market administrator 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 §1106.30 and 1106.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler’s obligation under the order.

(e) Each handler who causes milk to be diverted shall, prior to such diversion, report to the market administrator his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

CLASSIFICATION OF MILK

§ 1106.40 Classes of utilization.

Except as provided in §1106.42, all skim milk and butterfat required to be reported by a handler pursuant to §1106.30 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;
Agricultural Marketing Service, USDA

§ 1106.41

(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 §1106.15 and the fluid cream product definition pursuant to §1106.16, and

(7) In shrinkage assigned pursuant to §1106.41(a) to the receipts specified in §1106.41(a)(2) and in shrinkage specified in §1106.41(b) and (c).

(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;

(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 §1106.9(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 measurements at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph 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 subparagraph 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 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.

§ 1106.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1106.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;
§ 1106.42 Classification of transfers and diversions.

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

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to §1106.44(a)(12) and the corresponding step of §1106.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1106.44(a)(7) or the corresponding step of §1106.44(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 §1106.44(a) (11) or (12) or the corresponding steps of §1106.44(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...
§ 1106.42

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 §1106.40.

(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 divertor-handler claims such classification in his report of receipts and utilization filed pursuant to §1106.30 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 plants 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
§ 1106.43 General classification rules.

In determining the classification of producer milk pursuant to §1106.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1106.30 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 §1106.9(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 §§1106.40, 1106.41, and 1106.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in §1106.9(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 §1106.9(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...
§ 1106.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in §1106.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in §1106.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in §1106.41(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 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 an other 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 §1106.40(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 §1106.40(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 I the pounds of skim milk in:

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form...
§ 1106.44

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

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 §1106.40(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 §1106.12(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)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler’s other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the 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 §1106.9(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

652
products specified in §1106.40(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, 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 transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(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 such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk remaining in each class 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
§ 1106.45 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 §1106.44(a)(12) and the corresponding step of §1106.44(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 §1106.43(d) and §1106.44 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
§ 1106.50 Class prices.

Subject to the provisions of § 1106.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

(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.


§ 1106.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1106.74 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
§ 1106.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1106.9(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 § 1106.50(a) shall be adjusted by the amount stated in paragraphs (a)(1) through (7) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1106.2, the adjustment shall be as follows:

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<thead>
<tr>
<th>Zone</th>
<th>Adjustment per hundredweight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone I</td>
<td>No Adjustment</td>
</tr>
<tr>
<td>Zone II</td>
<td>Plus 23 cents</td>
</tr>
<tr>
<td>Zone III</td>
<td>Minus 18 cents</td>
</tr>
<tr>
<td>Zone IV</td>
<td>Minus 47 cents</td>
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<tr>
<td>Zone V</td>
<td>Minus 27 cents</td>
</tr>
<tr>
<td>Zone VI</td>
<td>Minus 22 cents</td>
</tr>
<tr>
<td>Zone VII</td>
<td>Minus 58 cents</td>
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</tbody>
</table>

(2) For a plant located in any of the following Kansas counties, the adjustment shall be as follows:


(ii) Minus 47 cents. Elk, Greenwood and Woodson.


(3) For a plant located in the State of Missouri, the adjustment shall be as follows:


(ii) Minus 76 cents. In the county of Jefferson, St. Charles, or St. Louis or in the city of St. Louis.

(iii) Minus 85 cents. In any other county that is outside the marketing area and also outside the designated pricing area described in paragraph (a)(3)(i) or (a)(3)(ii) of this section.

[60 FR 18974, Apr. 14, 1995]
(4) For a plant located in the State of Arkansas but outside the marketing area, the adjustment shall be the difference (plus or minus) between the applicable Class I price effective at such plant location under the Central Arkansas order (Part 1108) and the Class I price specified in §1106.50(a).

(5) 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 (Part 1096) and the Class I price specified in §1106.50(a).

(6) For a plant located in any of the following territory in the States of Texas, New Mexico and Colorado, the adjustments shall be as follows:

(i) In the Texas marketing area, the plus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas order (7 CFR part 1126) and the Class I price specified in §1106.50(a).

(ii) In Bowie or Cass Counties, Texas, the adjustment shall be plus 31 cents.

(iii) In any other Texas territory that is outside the marketing area of any Federal order, the adjustment shall be plus 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is from the City Hall in Oklahoma City, Oklahoma, (based on the shortest hard-surfaced highway distance as determined by the Market Administrator.)

(iv) 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 (Part 1138) and the Class I price specified in §1106.50(a).

(v) In the Eastern Colorado marketing area or in the Colorado counties of Baca, Bent or Powers, the adjustment shall be the difference (plus or minus) between the applicable Class I price effective at such plant location under the Eastern Colorado order (7 CFR part 1137) and the Class I price specified in §1106.50(a).

(vi) In any other Colorado territory that is outside the designated pricing areas described in paragraphs (a) (6) (iv) and (v), the adjustment shall be minus 77 cents.

(7) For a plant located outside the designated pricing areas described in paragraphs (a) (1) through (6) of this section, the adjustment shall be minus 18 cents plus an additional reduction of 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the City Hall in Tulsa or Ponca City, Oklahoma (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 §1106.44(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, the pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Multiply the remaining pounds of skim milk in Class I by 105 percent;

(3) Subtract the pounds of skim milk in receipts of milk at the transferee-plant from producers, handlers described in §1106.9(c), and diverted milk from other pool plants;

(4) 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;

(5) 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)(4) 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;

(6) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(5) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to §1106.42(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)(5) 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)(5) of this section exceeds the credits that are available to those plants, such credits shall be pro-rated to the volume of skim milk in Class I transfers from such plants; and

(7) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b)(1) through (6) of this section.

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


§ 1106.53 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 6611, Feb. 2, 1995]

§ 1106.54 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.

UNIFORM PRICE

§ 1106.60 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 §1106.9(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 §1106.9(c) that were classified in each class pursuant to §§1106.43(a) and 1106.44(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 §1106.44(a)(14) and the corresponding step of §1106.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1106.74, 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 §1106.44(a)(9) and the corresponding step of §1106.44(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 §1106.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1106.44(a)(7) (i) through (iv) and (vii), and the corresponding step of §1106.44(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 §1106.44(a)(7)(v) and (vi) and the corresponding step of §1106.44(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 §§1106.43(d) and 1106.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1106.44(a)(11) and the corresponding steps of §1106.44(b), excluding such skim milk and 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 §1106.9(c) the amount obtained from multiplying the Class III price for the preceding month 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) 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 §1106.43(d);

(i) 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 §1106.76 (a)(5) or (c); and

(j) 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.


§ 1106.61 Computation of uniform price.

The market administrator shall compute for each month the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to §1106.60 for all handlers who filed the reports prescribed in §1106.30 for the month and who made the payments pursuant to §1106.71 for the preceding month;

(b) Add not less than one-half 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 computed pursuant to §1106.75;

(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 §1106.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents. The result shall be the “uniform price” for milk received from producers.

§ 1106.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:
§ 1106.70

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

(b) The 11th day after the end of each month the applicable uniform price pursuant to §1106.61 for such month.

§ 1106.71 Payments to the producer-settlement fund.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of the month the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

1. The total value of milk of the handler for such month as determined pursuant to §1106.60.

2. The sum of:
   (i) The value at the uniform price, as adjusted pursuant to §1106.75, of such handler's receipts of producer milk and milk received from handlers pursuant to §1106.9(c). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to §1106.73(d), exclusive of differential butterfat values; and
   (ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to §1106.60(f).

(b) Subject to paragraph (d) of this section, each person who operated a plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator on or before the 25th day after the end of each month 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 (b)(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.

(c) Any handler who the market administrator determines was more than 3 days late in making any payment obligation under part 1106 shall pay to the market administrator the amount the handler would have otherwise been required to pay to producers and cooperative associations pursuant to §1106.73. Payment shall be made to the market administrator on or before the day prior to the dates specified in §1106.73 and such payments shall continue until the handler has met all payment obligations for 3 consecutive months.

(d) The following conditions shall apply with respect to payments prescribed in paragraphs (a), (b) and (c) 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.

2. If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day 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.

3. Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator.
§ 1106.72 Payments from the producer-settlement fund.

(a) On or before the 15th day after the end of each month the market administrator shall pay to each handler except one making payment pursuant to §1106.71(c) the amount, if any, by which the amount computed pursuant to §1106.71(a)(2) exceeds the amount computed pursuant to §1106.71(a)(1).

(b) If the market administrator received payment from a handler(s) pursuant to §1106.71(c), he shall distribute such amount plus any amount due such handler(s) pursuant to paragraph (a) of this section to producers and to cooperative associations in the same manner as provided in §1106.73. In the event the handler fails to transmit the total amount due, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

(c) If at any time the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

§ 1106.73 Payments to producers and to cooperative associations.

(a) Except as provided in §1106.71(c) and paragraphs (b), (d) and (f) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(i) On or before the last day of each month of March through July to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the previous month's Class III price multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer from whom the handler received milk, except that the amount deducted shall not exceed the value of the milk received during the partial payment period and provided that the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(ii) On or before the 17th day of the following month, an amount equal to not less than the appropriate uniform price adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to §1106.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer, provided that the deductions do not exceed the value of the milk received during the final payment period and the handler has paid such deductions to assignees by the date payment is otherwise due to the producer. Provided, That if by such date such handler has not received full payment from the market administrator pursuant to §1106.72(a) for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following...
§ 1106.73
7 CFR Ch. X (1-1-99 Edition)

after the receipt of the balance due from the market administrator.

(b) Except as provided in paragraph (f) of this section, in the case of a cooperative association which the market administrator determines is authorized by those producers for whom it markets milk to collect payment for their milk and which has so requested any handler in writing, such handler other than one specified in §1106.71(c) shall on or before the 2nd day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from those producers for whom it markets milk as determined by the market administrator an amount equal to not less than the amount due such producers as determined pursuant to paragraph (a) of this section.

(c) In making payments to producers pursuant to paragraph (a) of this section, or to a cooperative association pursuant to paragraph (b) of this section, each handler shall furnish such producer or cooperative association with respect to each of the producers for whom it markets milk and from whom the handler received milk during the month, a written statement showing:

(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.

(d) Except as provided in §1106.71(c) and paragraph (f) of this section, each handler pursuant to §1106.9(a) who receives milk from a cooperative association as a handler pursuant to §1106.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the 2nd day prior to the last day of the month for milk received during the first 15 days of the month, not less than the applicable partial payment rate specified for such month in paragraph (a)(1) of this section; and
(2) On or before the 15th day of the following month for milk received during the month, not less than the uniform price as adjusted pursuant to §§1106.74 and 1106.75, less any payments made pursuant to paragraph (a)(1) of this section.

(e) Except as provided in §1106.71(c), each handler who received bulk fluid milk or bulk fluid cream products from a pool plant operated by a cooperative association shall pay the following amounts for such products to the cooperative association:

(1) On or before the 2nd day prior to the last day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate specified for such month in paragraph (a)(1) of this section. If the handler so elects, such price may be adjusted by the butterfat differential specified in §1106.74 for the preceding month.
(2) On or before the 15th 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 §1106.42(a) by the applicable class price, as adjusted by the butterfat differential specified in §1106.74, less any payments made by the handler pursuant to paragraph (e)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant including the applicable administrative assessment rate.

(f) If the application of §1106.71(d)(2) results in a delay in payment by the market administrator to handlers, the payments prescribed in paragraphs (a), (b) and (d) of this section may be delayed by the same number of days.

(g) If the market administrator does not receive the full payment required of a handler pursuant to §1106.71(c), he
shall reduce uniformly per hundred-weight the payments due producers and cooperative associations 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.

§ 1106.74 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 §1106.51 (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 18974, Apr. 14, 1995]

§ 1106.75 Plant location adjustments for producers and on nonpool milk.
(a) In making payments required pursuant to §1106.73, the uniform price computed pursuant to §1106.61 shall be adjusted by the amounts set forth in §1106.52 according to the location of the plant where the milk being priced was received.

(b) For the purpose of computations pursuant to §§1106.71 and 1106.72, the uniform price shall be adjusted by the amount set forth in §1106.52 that is applicable at the location of the nonpool plant from which the milk was received (except that the adjusted uniform price shall not be less than the Class III price).

§ 1106.76 Payments by a 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 §1106.30(b) and §1106.31(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 uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and uniform 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 milk 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 §1106.60 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 §1106.60 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 requests, the value of milk determined pursuant to §1106.60 for such handler shall include, in lieu of the value of other source milk specified in §1106.60(f) less the value of such other source milk specified in §1106.71(a)(2)(ii), a value of milk determined pursuant to §1106.60 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 §1106.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§1106.30(b) and 1106.31(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 §1106.60 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 §1106.74, 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 the nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in §1106.74, 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 §1106.43(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.


§ 1106.77 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 results 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 date for making payment set forth in the provision under which the 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. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required pursuant to §1106.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1106.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§1106.71, 1106.73, 1106.76, 1106.77, 1106.85, or 1106.86 shall be increased 1 percent beginning on the first day after the due date, and on the same day of each subsequent month until such obligation is paid, 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 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 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
§ 1106.85

have been due if the report had been filed when due.

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1106.85 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 15th day after the end of the month 6 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 §1106.9(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 §1106.9(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 §1106.43(d) and other source milk allocated to Class I pursuant to §1106.44 (a)(7) and (a)(11) and the corresponding steps of §1106.44(b), except such other source milk that is excluded from the computations pursuant to §1106.60 (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 §1106.76(a)(2).


§ 1106.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to §1106.73, shall deduct 7 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. Each handler making such deductions shall pay the deductions to the market administrator on or before the 15th day after the end of the month. The monies shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide 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, 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 15th day after the end of each month, pay such deduction to the cooperative association rendering such services accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

PARTS 1108-1120 [RESERVED]

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1124.1 General provisions.
1124.2 Pacific Northwest marketing area.
1124.3 Route disposition.
1124.4 Plant.
1124.5 Distributing plant.
1124.6 Supply plant.
1124.7 Pool plant.
1124.8 Nonpool plant.
1124.9 Handler.
1124.10 Producer-handler.
1124.11 Cooperative reserve supply unit.
1124.12 Producer.
1124.13 Producer milk.
1124.14 Other source milk.
1124.15 Fluid milk product.
Agricultural Marketing Service, USDA  
§ 1124.3  
Subpart—Order Regulating Handling  
GENERAL PROVISIONS  
§ 1124.1 General provisions.  
The terms, definitions, and provisions in part 1000 of this chapter are hereby referenced and made a part of this order.  
DEFINITIONS  
§ 1124.2 Pacific Northwest marketing area.  
Pacific Northwest Marketing Area (hereinafter called the “Marketing Area”) means all territory geographically within the places listed below, including all territory fully or partly therein occupied by government (municipal, state or federal) reservations, facilities, installations, or institutions:  
Idaho Counties:  
Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.  
Washington counties:  
Oregon Counties:  
§ 1124.3 Route disposition.  
Route disposition means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point as provided by this section, by a vendor, from
§ 1124.4

Plant means the buildings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment, which is maintained and operated primarily for the receiving, handling and/or processing of milk or milk products (including filled milk). Separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a “plant” under this definition.

§ 1124.5

Distributing plant means a plant in which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is processed or packaged and that has route disposition in the marketing area during the month.

§ 1124.6

Supply plant means a plant from which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption or filled milk, is transferred during the month to a pool distributing plant.

§ 1124.7

Pool plant.

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

(a) A distributing plant from which there is route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of receipts of Grade A milk at such plant (exclusive of transfers of packaged fluid milk products from plants qualifying as pool plants pursuant to this paragraph, filled milk, and milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted therefrom pursuant to §1124.13;

(b) A supply plant from which during any month not less than 20 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to §1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to §1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products (except filled milk) processed and packaged at such plant; Provided, That:

(1) With respect to a supply plant operated by a cooperative association, the producer milk of its members which it caused to be delivered directly from their farms to pool distributing plants, shall for the purpose of this paragraph, be considered as a receipt at the cooperative’s supply plant and as a shipment from the supply plant to pool distributing plants;

(2) A plant which qualified as a pool plant pursuant to this paragraph in each month of September through February shall be a pool plant in each of the following months of March through August unless a written application is filed with the Market Administrator.
§ 1124.8 Nonpool plant.

Nonpool plant means any 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 neither an order plant nor a producer-handler plant, from which during the month an average of more than 300 pounds daily of fluid milk products is disposed of as route disposition in the marketing area.

(d) Unregulated supply plant means a nonpool plant that is neither an order plant nor a producer-handler plant, from which fluid milk products are moved to a pool plant during the month.

(c) The Director of the Dairy Division may reduce or increase up to 10 percentage points from the levels set forth therein the pool plant performance standards in paragraphs (a) or (b) of this section, if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(d) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal Order and from which, the Secretary determines, there is a greater quantity of route disposition in this marketing area than in such other marketing area but which plant maintains pooling status for the month under such other Federal Order;

(3) A plant qualified pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal Order and from which greater shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order;

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal Order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition in this marketing area than in such other marketing area but which plant maintains pooling status for the month under such other Federal Order;

(5) A distributing plant from which total route disposition (except filled milk) in the marketing area during the month averages 300 pounds or less per day; or

(6) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk products for Grade A disposition.

§ 1124.9 Handler.  
Handler means:  
(a) The operator of one or more pool plants;  
(b) Any cooperative association with respect to producer milk which it caused to be diverted for the account of such cooperative association to another plant or pursuant to § 1124.40(b)(3);  
(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 and nonfat milk solids 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 who operates a plant defined in § 1124.8(a) through (e).  

§ 1124.10 Producer-handler.  
Producer-handler means a person who is engaged in the production of milk and also operates a plant from which during the month an average of more than 300 pounds daily of fluid milk products, except filled milk, is disposed of as route disposition within the marketing area and who has been so designated by the market administrator upon determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section. Any state institution shall be a producer-handler exempt from the provisions of this section and §§ 1124.30 and 1124.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant.

(a) Requirements for designation.  
(1) The producer-handler has and exercises (in its capacity as a handler) complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in its capacity as a dairy farmer).

(2) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of its milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) pool plants within the limitation specified in paragraph (c)(2) of this section, or (iii) non-fat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.
(4) Designation of any person as a producer-handler following a cancellation of its prior designation shall be preceded by performance in accordance with paragraph (a) (1), (2), and (3) of this section for a period of 1 month.

(b) Resources and facilities. Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply for the producer-handler’s operation as such shall not be considered a part of the producer-handler’s milk production resources and facilities; and

(2) As milk handling, processing and distributing resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk product:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) Cancelation. The designation as a producer-handler shall be canceled under any of the conditions set forth in paragraph (c) (1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraph (a) (1), (2), and (3) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products from sources other than the milk production facilities and resources specified in paragraph (b) of this section, except as specified as follows:

(i) A producer-handler, other than a State institution, may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 100 pounds during the month; and

(ii) A State institution that otherwise qualifies as a producer-handler, but which processes or receives milk for consumption outside of a State institution, may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 1,000 pounds per day during the month.

(d) Public announcement. The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been canceled and the effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) Burden of establishing and maintaining producer-handler status. The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to §1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section have been and are continuing to be met.
§ 1124.11 Cooperative reserve supply unit.

Cooperative reserve supply unit means any cooperative association or its agent that is a handler pursuant to §1124.9 (b) or (c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to §1124.73 and has been a handler of producer milk under this or its predecessor order(s) during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a pool distributing plant. A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section;

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as further provided below:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use at pool distributing plants are needed for plants defined in §1124.7(a). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to §1124.9 (b) and (c) for at least 12 consecutive months.

§ 1124.12 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 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 §1124.9(c); or

(3) Diverted in accordance with §1124.13;

(b) “Producer” shall not include:

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

(2) Any person with respect to milk produced by such person 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 §1124.44(a)(9)(iii) and the corresponding step of §1124.44(b);

(3) Any person with respect to milk produced by such person 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 order;

(4) Any person who during the month has disposed of as route disposition or to consumers at the farm an average of more than 110 pounds daily of fluid milk or fluid cream products; and

672
Agricultural Marketing Service, USDA

§ 1124.13 Producer milk.

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

(a) Received or diverted by a handler defined in § 1124.9(a) under one of the following conditions:

(1) Received at such handler’s pool plant directly from the farm of such producer;

(2) Received at such handler’s plant from a handler defined in § 1124.9(c) for all purposes other than those specified in paragraph (b)(2)(i) of this section; and

(3) Diverted for the account of the operator of the pool plant, subject to the conditions set forth in paragraph (c) of this section.

(b) Received or diverted by a cooperative defined in § 1124.9(b) or (c) under one of the following conditions:

(1) Milk diverted for the account of the cooperative association. Except for milk moved by a cooperative reserve supply unit defined in § 1124.11, such diversions shall be subject to the conditions set forth in paragraph (c) of this section;

(2) Milk for which the cooperative association is a handler pursuant to § 1124.9(c) to the following extent:

(i) For purposes of reporting pursuant to §§ 1124.30(c) and 1124.31(a) and making payments to producers pursuant to § 1124.73(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler.

(c) The following conditions shall apply to diverted producer milk:

(1) A cooperative association or its agent may divert for its account the milk of any producer. The total quantity of milk diverted may not exceed 80 percent during the months of September through April of the total quantity of producer milk which the association or its agent causes to be delivered to pool distributing plants or diverted. No percentage limit shall apply during the months of May through August. The percentage limits on diversions specified in this paragraph shall not apply to a cooperative reserve supply unit defined in § 1124.11;

(2) A handler other than a cooperative association that operates a pool plant may divert milk for its account to other plants or pursuant to § 1124.40(b)(3). The total quantity of milk so diverted may not exceed 80 percent during the months of September through April of the milk received at such handler’s pool plant or diverted by such handler from any producer other than a member of a cooperative association which markets milk under paragraph (c)(1) of this section and for which the operator of such plant is the handler during the month. No percentage limit shall apply during the months of May through August;

(3) Milk diverted in excess of the limits specified shall not be considered producer milk, except for milk diverted by a cooperative reserve supply unit. The diverting handler shall specify the producers whose milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by the handler during the month;

(4) Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of producer milk which the associations cause to be delivered to pool plants or diverted during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning overdiverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(5) Diverted milk shall be priced at the location of the plant or commercial food processing establishment to which diverted; and

(d) In the case of any bulk tank load of milk originating at farms and subsequently divided among plants, the proportion of the load received at each plant shall be prorated among the individual producers involved on the basis
§ 1124.14 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 §1124.40(b)(1) from any source other than producers, handlers described in §1124.9(c), or pool plants;
(b) Receipts in packaged form from other plants of products specified in §1124.40(b)(1);
(c) Products (other than fluid milk products, products specified in §1124.40(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 §1124.40(b)(1)) for which the handler fails to establish a disposition.

§ 1124.15 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.

§ 1124.16 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.

§ 1124.17 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).

§ 1124.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers, which the Secretary determines, after application by the cooperative association:
(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the “Capper-Volstead Act”, and any amendments thereto;
(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and
(c) To have its entire activities under the control of its members.

§ 1124.19 [Reserved]

§ 1124.20 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
§ 1124.30 Reports of receipts and utilization.

On or before the 9th day of each month each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for the preceding month:

(a) Each handler operating a pool plant(s) shall report separately for each pool plant:

(1) The quantities of skim milk and butterfat contained in:
   (i) Milk received directly from producers (including such handler's own production), and the pounds of protein and pounds of solids-not-fat other than protein (other solids) contained therein;
   (ii) Milk received from a cooperative association pursuant to §1124.9(c), and the pounds of protein and pounds of solids-not-fat other than protein (other solids) contained therein;
   (iii) Fluid milk products and bulk fluid cream products received from other pool plants showing filled milk separately;
   (iv) Other source milk showing filled milk separately; and
   (v) Inventories at the beginning and end of the month of fluid milk products and products specified in §1124.40(b)(1).

(b) Each producer-handler shall report:

(1) The quantities of skim milk and butterfat contained in:
   (i) Milk of own-farm production;
   (ii) Receipts of fluid milk products and fluid cream products from pool plants, showing separately receipts in packaged form and in bulk; and
   (iii) Other source milk, showing separately any receipts from another dairy farmer.

(c) Each cooperative association shall report with respect to milk for which it is the handler pursuant to either §1124.9(b) or (c):

(1) The pounds of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) received from producers;

(2) The utilization of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) for which it is the handler pursuant to §1124.9(b); and

(3) The quantities of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) delivered to each pool plant pursuant to §1124.9(c).

(d) Each handler who operates a partially regulated distributing plant shall report as specified in paragraph (a)(1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include separate statements, respectively, showing the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

(e) Each handler who operates an other order plant with route disposition of fluid milk products in the marketing area shall report the quantities of skim milk and butterfat in such disposition.

(f) Each handler who operates an exempt plant or an unregulated supply plant shall report as specified in paragraph (a)(1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk.

§ 1124.31 Payroll reports.

On or before the 22nd day of each month handlers shall report to the market administrator as follows:
§ 1124.32

(a) Each handler with respect to each of its pool plants and each cooperative association which is a handler pursuant to §1124.9(b) or (c) shall submit its producer payroll for deliveries (other than own-farm production) in the preceding month which shall show:

(1) The total pounds of milk received from each producer, the pounds of butterfat, protein and solids-not-fat other than protein (other solids) contained in such milk, and the number of days on which milk was delivered by the producer during the month;

(2) The amount of payment to each producer and cooperative association; and

(3) The nature and amount of any deductions or charges involved in such payments; and

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to §1124.75(a) to be considered in the computation of its obligation pursuant to §1124.75 shall submit its payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk received from each producer and the pounds of butterfat, protein and solids-not-fat other than protein (other solids) contained in such milk;

(2) The amount of payment to each dairy farmer (or to a cooperative association on behalf of such dairy farmer); and

(3) The nature and amount of any deductions or charges involved in such payments.

§ 1124.32 Other reports.

In addition to the reports required pursuant to §§1124.30 and 1124.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under the order.

[59 FR 15320, Apr. 1, 1994]
(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 §1124.15 and the fluid cream product definition pursuant to §1124.16; and

(7) In shrinkage assigned pursuant to §1124.41(a) to the receipts specified in §1124.41(a)(2) and in shrinkage specified in §1124.41(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.

§1124.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1124.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraph (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 paragraph (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 producers milk (excluding milk diverted by the...
§ 1124.42

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

plant operator to another plant or pursuant to §1124.40(b)(3) and milk received from a handler described in §1124.9(c));

2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §1124.9(c) and in milk diverted to such plant by the operator of another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, and butterfat tests and nonfat milk solids 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 by the plant operator to another plant or pursuant to §1124.40(b)(3), except that if the operator of the plant or establishment 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 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 operator 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 paragraph (b) (1), (2), (4), (5), and (6) of this section.

(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 §1124.9 (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 a plant or a commercial food processing establishment pursuant to §1124.20 purchases such milk on the basis of weights determined from its measurement at the farm, and butterfat tests and nonfat milk solids determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1124.42 Classification of transfers and diversions.

(a) Transfers and diversions to pool plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The classification of such transfers and 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 receiving handler’s plant after the computation pursuant to §1124.44(a)(13) and the corresponding step of §1124.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1124.44(a)(8) or the corresponding step of §1124.44(b), the skim milk or butterfat so transferred 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 §1124.44(a)(12) or (13) or the corresponding steps of §1124.44(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 adjustments 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 § 1124.40.

(c) Transferor and diversions to producer-handlers. Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk if transferred or diverted 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 the transferee's 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 or a producer-handler 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 paragraph (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 paragraph (d)(2) (ii) through (viii) of this section:
(A) The transferor-handler or diverter-handler claims such classification in its report of receipts and utilization filed pursuant to § 1124.30 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;
(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and
(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.


§ 1124.43 General classification rules.

In determining the classification of producer milk pursuant to § 1124.44, the following rules shall apply:
(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1124.30 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 § 1124.9 (b) or (c) the pounds of skim milk and butterfat,
§ 1124.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1124.9(a) for each of the handler's pool plants separately and of each handler described in §1124.9(b) or (c) by allocating the handler's receipts of skim milk and butterfat to its 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 §1124.41(b);

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

(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 other plants, but not in excess of the pounds of skim milk remaining in Class II;

(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;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1124.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§1124.40 through 1124.45, butterfat in skim milk, either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.060 percent unless the handler has adequate records of the actual butterfat content of such skim milk.

(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 use at the plant.

(f) 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 §1124.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1124.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1124.44

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in §1124.40(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;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1124.40(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;

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

(i) Bulk concentrated fluid milk products and 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 §1124.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1124.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II;

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

(iii) Receipts of fluid milk products received or acquired for distribution from a producer-handler as defined under this or any other Federal Order;

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

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that was not subtracted pursuant to paragraph (a)(2) and (8)(v) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(9)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II) 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
(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(8)(vi) of this section; and

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

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

(10) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in §1124.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(4), (a)(6) and (a)(8)(i) of this section;

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

(12) Subject to the provisions of paragraph (a)(12) (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 pro rated, 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), (8)(v), (9) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph 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;

(13) 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
§ 1124.44

to such plant and that were not sub-
tracted pursuant to paragraphs (a)(8)(vi) and (9)(iii) of this section:

(i) Subject to the provisions of para-
graphs (a)(13) (ii), (iii), and (iv) of this
section, such subtraction shall be pro-
rata to the pounds of skim milk in
Class I and in Class II and Class III
combined, with the quantity prorated
to Class II and Class III combined being
subtracted first from Class III and then
from Class II, with respect to which-
ever of the following quantities rep-
resents the lower proportions of Class I
milk:

(A) The estimated utilization of skim
milk of all handlers in each class as an-
nounced for the month pursuant to
§ 1124.45(a); or

(B) The total pounds of skim milk re-
aining in each class at this allocation
step at all pool plants of the handler
(excluding any duplication of utiliza-
tion in each class resulting from trans-
fers between pool plants of the handler);

(ii) Should the proration pursuant to
paragraph (a)(13) (i) of this section re-
sult 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 com-
bined 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)(13)(ii) of this section, should the com-
putations pursuant to paragraph (a)(13)
(i) or (ii) of this section result in a
quantity of skim milk to be sub-
tracted 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 sub-
tracted, and the pounds of skim milk in
Class II and Class III combined shall
be decreased by a like amount (de-
creasing as necessary Class III and
then Class II). In such case, the pounds
of skim milk remaining in each class
at this allocation step at the handler’s
other pool plants shall be adjusted in
the reverse direction by a like amount
beginning with the nearest plant at
which Class I utilization is available;

(14) Subtract from the pounds of
skim milk remaining in each class the
pounds of skim milk in receipts of fluid
milk products and bulk fluid cream
products from another pool plant ac-
cording to the classification of such
products pursuant to §1124.42(a); and

(15) If the total pounds of skim
milk remaining in all classes exceed the
pounds of skim milk in producer milk,
subtract such excess from the pounds
of skim milk remaining in each class
in series beginning with Class III. Any
amount so subtracted shall be known
as “overage”;

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

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

[53 FR 52976, Dec. 30, 1988; 54 FR 3557, Jan. 24,
1989; 54 FR 5587, Feb. 6, 1989; 58 FR 27887, May
11, 1993]
§ 1124.45 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 §1124.44(a)(13) and the corresponding step of §1124.44(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 §1124.43(f) and §1124.44 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 producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

§ 1124.50 Class and component prices.

The class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The Class I price, subject to the provisions of §1124.52, shall be the basic formula price defined in §1124.51 for the second preceding month plus $1.90.

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

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

(d) The Class III±A price for the month shall be the average Western 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.

(e) The Class I price per hundredweight shall be the basic formula price for the month pursuant to §1124.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to paragraph (f)(3) of this section by 35.

(f) The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the total of:

(1) The skim price computed in paragraph (e) of this section divided by 100; and

(2) The butterfat differential computed pursuant to paragraph (f)(3) of this section multiplied by 10.

(3) Compute a butterfat differential rounded to the nearest one-tenth cent, by multiplying the current month’s butter price by 0.138, and subtract from the result an amount determined by multiplying 0.0028 by the preceding month’s average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the “base month” series, adjusted pursuant to §1124.51 (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.
§ 1124.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1124.50(f)(3) 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

(g) The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(h) The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of producer milk pooled under Part 1124 for the month, as determined by the Market Administrator. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

§ 1124.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include:
   (i) The Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone;
   (ii) The Oregon counties of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Morrow, Sherman, Umatilla, Wallowa, Wasco and Wheeler;

(b) For milk received at a plant from producers and which is classified as Class I milk, the price specified in §1124.50(a) shall be adjusted by the amount stated in paragraphs (b) (1) and (2) of this section for the location of such plant:

(1) For a plant located within one of the zones described in paragraphs (a) (1) through (4) of this section, the adjustment shall be as follows:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Adjustment per Hundredweight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone 1</td>
<td>No adjustment</td>
</tr>
<tr>
<td>Zone 2</td>
<td>Minus 6 cents</td>
</tr>
<tr>
<td>Zone 3</td>
<td>Minus 8 cents</td>
</tr>
<tr>
<td>Zone 4</td>
<td>Minus 15 cents</td>
</tr>
</tbody>
</table>

(2) For a plant located outside of one of the zones described in paragraphs (a) (1) through (4) of this section, the adjustment shall be minus 1.5 cents per hundredweight for each 10 miles or fraction thereof by shortest hard-surfaced highway distance that the plant is located from the nearer of the county courthouse in Spokane, Washington, the Multnomah County Courthouse in Portland, Oregon, or the city hall in Eugene, Oregon;

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the price when adjusted for location shall not be less than the Class III price.

(d) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I, the 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 determined by the market administrator as follows:

(1) Subtract from the pounds of Class I remaining at the transferee-plant

687
§ 1124.53 Announcement of class and component prices.

On or before the 5th day of each month, the market administrator shall announce publicly the following prices:

(a) The Class I price for the following month;
(b) The Class II price for the following month;
(c) The Class III price for the preceding month;
(d) The Class III-A price for the preceding month;
(e) The skim milk price for the preceding month;
(f) The butterfat price for the preceding month;
(g) The protein price for the preceding month;
(h) The other solids price for the preceding month; and
(i) The butterfat differential for the preceding month.

§ 1124.54 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 pricing constituent that is required.

§ 1124.60 Handlers’ value of milk.

The market administrator shall compute each month for each handler defined in §1124.9(a) with respect to each of the handler’s pool plants, and for each handler described in §1124.9(b) and (c), an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the pounds of producer milk in Class I pursuant to §1124.44 by the difference between the Class I price, adjusted pursuant to §1124.52, and the Class III price;
(b) Multiply the pounds of producer milk in Class II pursuant to §1124.44 by the difference between the Class II price and Class III price;
(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III-A by the amount that the Class III-A price is more or less, respectively, than the Class III price;
(d) Multiply the pounds of skim milk in Class I producer milk pursuant to §1124.44 by the skim milk price for the month;
(e) Multiply the protein price for the month by the pounds of protein associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of protein shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of protein in the handler’s receipts of producer skim milk during the month for each report filed separately;
(f) Multiply the other solids price for the month by the pounds of other solids associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of other solids shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of other solids in the handler’s receipts of producer skim milk during the month for each report filed separately;
(g) With respect to skim milk and butterfat overages assigned pursuant to §1124.44(a)(15), (b) and paragraph (g)(6) of this section:

1. Multiply the total pounds of butterfat by the butterfat price;
2. Multiply the skim milk pounds assigned to Class I by the skim milk price;
3. Multiply the pounds of protein and other solids associated with the skim milk pounds assigned to Class II and III by the protein and other solids prices, respectively;
4. Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price, adjusted for location, and the Class III price;
5. Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and
6. Subtract the Class III value of the milk at the previous month’s protein, other milk solids, and butterfat prices;

(i) Multiply the difference between the Class I price, adjusted for the location of the pool plant, and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to §1124.43(f) and subtracted from Class I pursuant to §1124.44(a)(8)(i) through (iv), (vii), and §1124.44(b), excluding:
1. Receipts of bulk fluid cream products from an other order plant;
2. Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and
3. 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 §1124.75(b)(4) or (c);

(j) Multiply the combined pounds of skim milk and butterfat subtracted from Class I pursuant to §1124.44(a)(8)(v) and (vi) and §1124.44(b) by the difference between the Class I price at the transferor plant and the Class III price;

(k) Multiply the difference between the Class I and Class III prices, applicable at the location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to §1124.43(f) and §1124.44(a)(8)(v) and the combined pounds of skim milk and butterfat in receipts from an unregulated supply plant assigned pursuant to §1124.44(a)(12) and (b), excluding such skim milk or butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(l) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the
§ 1124.61  Producer price differential.

A producer price differential per hundredweight of milk for each month shall be computed by the market administrator as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to §1124.60 (a) through (c) and (g) through (n) for all handlers who filed the reports prescribed by §1124.30 for the month and who made the payments pursuant to §1124.71 for the preceding month; and

(2) Add the values computed pursuant to §1124.60 (d), (e) and (f); and subtract the values obtained by multiplying the handlers’ total pounds of protein and total pounds of other solids contained in such milk by their respective prices;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to §1124.74;

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

(d) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which a value is computed pursuant to §1124.60(k); and

(e) Subtract not less than 4 cents per hundredweight nor more than 5 cents per hundredweight. The result shall be the producer price differential.


§ 1124.62  Announcement of the producer price differential and a statistical uniform price.

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Agricultural Marketing Service, USDA § 1124.73

(1) The total handler's value of milk for such month as determined pursuant to §1124.60; and
(2) For a cooperative association handler, the amount due from other handlers pursuant to §1124.73(d).

(b) The sum of:
(1) The value of milk received by the handler from producers at the applicable prices pursuant to §1124.73(a)(2)(ii) through (iv);
(2) The amount to be paid by the handler to cooperative associations pursuant to §1124.73(d); and
(3) The value at the producer price differential adjusted for the location of the plant(s) from which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed or such handler pursuant to §1124.60(k).

(c) On or before the 25th day after the end of the month, each handler operating a plant specified in §1124.7(d) (2) and (3), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund an amount computed as follows:

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

(2) Compute the value of the quantity assigned in paragraph (c)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and subtract its value at the Class III price.

§ 1124.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1124.71(b) exceeds the amount computed pursuant to §1124.71(a), less any unpaid obligations of such handler to the market administrator pursuant to §§1124.71, 1124.75, 1124.85, and 1124.86. However, if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payment pursuant to this paragraph or paragraph (b) of this section to each producer from whom milk is received during the month:

(1) On or before the last day of the month, to each producer who did not discontinue shipping milk to such handler before the 18th day of the month at not less than the Class III price for the preceding month per hundredweight of milk received from the producer during the first 15 days of the month, subject to adjustment for proper deductions authorized in writing by the producer;
(2) On or before the 19th day after the end of each month, an amount computed as follows:

(i) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;
(ii) Add the amount that results from multiplying the protein price for the month by the total pounds of protein in the milk received from the producer;
(iii) Add the amount that results from multiplying the other solids price for the month by the total pounds of other solids in the milk received from the producer;

(iv) Add the amount that results from multiplying the total hundred-weight of milk received from the producer by the producer price differential for the month as adjusted pursuant to §1124.74(a);

(v) Subtract payments made to the producer pursuant to paragraph (a)(1) of this section;

(vi) Subtract proper deductions authorized in writing by the producer; and

(vii) Subtract any deduction required pursuant to §1124.86 or by statute; and

(3) If by the 19th day after the end of the month a handler has not received full payment from the market administrator pursuant to §1124.72, the payments to producers required pursuant to paragraph (a)(2) of this section may be reduced uniformly as a percentage of the amount due each producer by a total sum not in excess of the remainder due from the market administrator. The handler shall pay the balance due producers on or before the date for making payments pursuant to such paragraph next following receipt of the full payment from the market administrator.

(b) The payments required in paragraph (a) of this section shall, upon the request of a cooperative association qualified under §1124.18, be made to the association or its duly authorized agent for milk received from each producer who has given such association authorization by contract or other written instrument to collect the proceeds from the sale of the producer’s milk. All payments required pursuant to this paragraph shall be made on or before the second day prior to the dates specified for such payment in paragraph (a)(2) of this section.

(c) Each handler shall pay to each cooperative association which operates a pool plant, or to the cooperative’s duly authorized agent, for butterfat, protein and other solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat, protein, and other milk solids prices, respectively, for the preceding month; and

(2) On or before the 15th day after the end of the month, an amount of money determined in accordance with computations made on the same basis as those specified in paragraphs (a)(2)(i) through (iv) of this section, minus any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler pursuant to §1124.9(a) that received milk from a cooperative association that was a handler pursuant to §1124.9(c) shall pay the cooperative association for such milk as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of each month, for milk received during the month an amount of money determined in accordance with the computations specified in paragraphs (a)(2)(i) through (iv) of this section, minus any payment made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler shall provide each producer, on or before the 19th day of each month, with a supporting statement for milk received from the producer during the previous month in such form that it may be retained by the producer, which shall show:

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

(2) The total pounds of milk delivered by the producer, the pounds of butterfat, protein and other solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

(3) The minimum rates at which payment to the producer is required under the provisions of this section;

(4) The rate and amount of any premiums or of payments made in excess
§ 1124.75 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler’s election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§1124.30(d) and 1124.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, the handler shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to §1124.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and be valued at the uniform price or estimated uniform price or statistical uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(ii) of this section; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with reports filed pursuant to §§1124.30(d) and 1124.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant,
by shipments to such plant during the month equivalent to the requirements of §1124.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of:

(i) The gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant adjusted to a 3.5 percent butterfat basis by the butterfat differential pursuant to §1124.50(f)(3), and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Any payments to the producer-settlement fund of an other order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition of Class I milk within the marketing area;

(2) Deduct the respective amount of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of an other order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other 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) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the statistical uniform price applicable at such location (not to be less than the Class III price), and add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (b)(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.

(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 §1124.43(f). 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.

§ 1124.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than with respect to milk of such handler’s own production) pursuant to §1124.73(a)(2), shall make a deduction of 5 cents per hundredweight of milk or have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the fund to which the account was due immediately after the charge has been collected.


§ 1124.76 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred following the 5th day after such notice.


§ 1124.77 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to §§1124.71, 1124.76, 1124.75, 1124.85 or 1124.86 shall be increased 1 percent 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:

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

(2) 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.

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 therefor 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.
§ 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.

(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 of 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...
(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 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 (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 obtains 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.

§ 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 a 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.

§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;

701
§ 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.
§ 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.

[58 FR 27888, May 11, 1993]

§ 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
§ 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 hundredweight 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 each 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 each 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;
§ 1126.41

(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.


§ 1126.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1126.30, the market administrator shall determine the following:

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

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

706
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 butterfat 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 step 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) through (viii) 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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(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 priorities 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.


§ 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 of 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
§ 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 an other 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)(3) 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:

(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)(7)(vi) (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 an 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 (excluding any duplication of Class I utilization resulting from reported Class I transfers between 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 sequence 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 are in excess of fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(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 Class II and in Class III combined at this allocation step at all 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, 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; and

(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 combined 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

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);
Agricultural Marketing Service, USDA

§ 1126.45

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)(ii) 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)(ii) 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 in Class I, 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 described 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.


§ 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 the 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.

\[\text{Class Prices}\]

\section*{§ 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.

\[\text{Basic formula price.}\]

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 butterfat 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.

\begin{enumerate}
\item[(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:
\begin{enumerate}
\item[(i)] The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:
\begin{enumerate}
\item[(1)] Multiply the Grade AA butter price by 4.27;
\item[(2)] Multiply the nonfat dry milk price by 8.07; and
\item[(3)] Multiply the dry buttermilk price by 0.42.
\end{enumerate}
\item[(ii)] Multiply the Cheddar cheese price by 9.87; and
\item[(iii)] Multiply the Grade A butter price by 0.38.
\end{enumerate}
\item[(b)] The following product prices shall be used pursuant to paragraph (a) of this section:
\begin{enumerate}
\item[(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.
\item[(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.
\item[(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.
\item[(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.
\end{enumerate}
\end{enumerate}
(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:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Adjustment per hundredweight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone 1</td>
<td>No adjustment.</td>
</tr>
<tr>
<td>Zone 1A</td>
<td>Minus 25 cents.</td>
</tr>
<tr>
<td>Zone 2</td>
<td>No adjustment.</td>
</tr>
<tr>
<td>Zone 3</td>
<td>Plus 15 cents.</td>
</tr>
<tr>
<td>Zone 4</td>
<td>Plus 18 cents.</td>
</tr>
<tr>
<td>Zone 5</td>
<td>Plus 20 cents.</td>
</tr>
<tr>
<td>Zone 6</td>
<td>Minus 21 cents.</td>
</tr>
<tr>
<td>Zone 7</td>
<td>Plus 30 cents.</td>
</tr>
<tr>
<td>Zone 8</td>
<td>Plus 54 cents.</td>
</tr>
<tr>
<td>Zone 9</td>
<td>Plus 42 cents.</td>
</tr>
<tr>
<td>Zone 10</td>
<td>Plus 53 cents.</td>
</tr>
<tr>
<td>Zone 11</td>
<td>Plus 66 cents.</td>
</tr>
<tr>
<td>Zone 12</td>
<td>Plus 75 cents.</td>
</tr>
</tbody>
</table>

(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
§ 1126.52

(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 transferror-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.

§ 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(c) that was classified in each class pursuant to
§ 1126.60

§§ 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 corresponding step of §1126.44(b), excluding 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.

§ 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);

(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.

§ 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.

§ 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 an amount determined by multiplying the handler’s receipts during the first 18 days of such month an amount determined by multiplying the handler’s receipts during the first 18 days of such month an amount determined by multiplying the handler’s receipts during the first 18 days of such month an amount determined by multiplying the handler’s receipts during the first 18 days of such month

(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 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;
(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 which 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 and 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.

§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...
Agricultural Marketing Service, USDA

§ 1126.73

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 payments 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 hundredweight 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
§ 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 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.


§ 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
§ 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.
§ 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).

§ 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 provide 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.
§ 1131.1 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.
pool plant) in the current month during the period of July through October or 20 percent in the current month during the period of November through June to a plant specified in paragraph (a) of this section. If a plant qualifies in each of the months of July through October in the manner prescribed in this section, such plant shall upon written application to the market administrator on or before October 31 following such compliance be designated as a pool plant until the end of the following June.

(c) A milk manufacturing plant located within the marketing area at which milk may be received from the farms of dairy farmers holding permits or authorization issued by a duly constituted regulatory agency having jurisdiction in the marketing area and which is operated by a cooperative association qualified under §1131.18 which has 50 percent or more of its member producer milk (including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant) received at the pool plants of other handlers during the current month or the previous 12-month period ending with the current month. Milk received by such cooperative, in a truck owned or under contract to the cooperative, from a pool plant and transferred in such truck to another pool plant for the account of the cooperative shall be considered a receipt at the cooperative's plant and a transfer from such plant.

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

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Central Arizona marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period November through June, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of an other order issued pursuant to the Act and the Secretary determines that such plant should be exempt from this part.


Effective Date Note: At 62 FR 26736, May 15, 1997, in §1131.7(c), the words "50 percent or more of", "(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)" and "or the previous 12-month period ending with the current month" were suspended, effective Apr. 1, 1997, through Mar. 31, 1999.

§ 1131.8 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 neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages in the marketing area during the month.

(d) Unregulated supply plant means a nonpool plant from which fluid milk products are moved during the month to a pool plant and which is not an other order plant nor a producer-handler plant.

§ 1131.9 Handler.

Handler means:

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

(b) A cooperative association with respect to milk of any producer which such cooperative association causes to
be diverted pursuant to §1131.13 for the
account of such association;
(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 op-
erated by, or under contract to, such
cooporative association, unless both
the cooperative association and the op-
erator of the pool plant notify the mar-
et administrator in writing prior to
the first day of the month in which
such milk is delivered to the pool plant
that the plant operator will be the han-
der for such milk and will purchase
such milk on the basis of weights de-
termined from its measurement at the
farm and butterfat tests determined
from farm bulk tank samples;
(d) Any person in his capacity as the
operator of a partially regulated dis-
tributing plant;
(e) A producer-handler; and
(f) Any person in his capacity as the
operator of an other order plant de-
scribed in §1131.9(b).

§ 1131.10 Producer-handler.
Producer-handler means:
(a) Any person who is both a dairy
farmer and the operator of a plant from
which fluid milk products are disposed
of as route disposition in the mar-
keting area and who:
(1) Receives at his plant, or acquires
for route disposition fluid milk prod-
ucts only from:
(i) His own farm production; and
(ii) Fluid milk products obtained by
transfer or diversion from pool plants,
other order plants, or from a handler
described in §1131.9(b), in an amount
not to exceed 5 percent of its fluid milk
product disposition for the month or
5,000 pounds, whichever is less;
(2) Does not reprocess or convert
fluid milk products into a fluid milk product
except to increase the nonfat milk sol-
ids content above that of the fluid milk
product received;
(3) Does not distribute fluid milk
products to a wholesale customer who
also is serviced by a handler described
in §1131.9(a) or (d) that supplied the
same product in the same-sized pack-
age with a similar label to the whole-
sale customer during the month; and
(4) Furnishes proof satisfactory to
the market administrator that:
(i) The maintenance, care, and man-
agement of all the dairy animals and
other resources necessary to produce
the entire amount of milk handled
(other than that received from regu-
lated plants) is the personal enterprise
of and at the personal risk of such per-
son in his capacity as a producer; and
(ii) The operation of such plant is the
personal enterprise of and at the per-
sonal risk of such person in his capac-
ity as a handler.
(b) The governmental agency that op-
erates a milk plant, except that a plant
operated by such agency shall be a pool
plant if bulk milk is delivered during
the month by such governmental agen-
cy to another plant that is a pool plant
and a written request is filed by the
agency with the market administrator
asking that its plant be considered a
pool plant. If such a plant is made a
pool plant at the request of the govern-
mental agency for 1 month and there-
after resumes the status of a nonpool
plant, it shall not be eligible for pool
plant status again until it has been a
nonpool plant for 12 consecutive
months.

§ 1131.11 [Reserved]
§ 1131.12 Producer.
(a) Except as provided in paragraph
(b) of this section, producer means any
person who produces milk pursuant to
the requirements specified in para-
graph (a)(1) or (2) of this section, and
whose milk is received directly from
the farm at a pool plant or is diverted
as producer milk pursuant to §1131.13.
(1) Produces milk on a dairy farm
subject to the regular inspection by a
duly constituted regulatory agency
under a dairy farm permit or rating
issued by such agency for the produc-
tion of milk to be disposed of for fluid
consumption.
(2) Produces milk which is acceptable
to an agency of the Federal Govern-
ment for fluid consumption in its insti-
tutions or bases.
(b) “Producer” shall not include:
§ 1131.15 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
§ 1131.16 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 27891, May 11, 1993]

§ 1131.17 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).

§ 1131.18 Cooperative association.

Cooperative association means any cooperative association of producers which the Secretary determines:

(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 and to be exercising full authority in the sale of milk for its members.

[58 FR 27891, May 11, 1993]
§ 1131.40 Classes of utilization.

Except as provided in §1131.42, all skim milk and butterfat required to be reported by a handler pursuant to §1131.30 shall be classified as follows:

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

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

(2) The utilization or disposition of all such receipts.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1131.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1131.32 Other reports.

(a) Each handler, except a producer-handler or a handler making payment pursuant to §1131.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month, the payments made to a cooperative association pursuant to §1131.73(d);

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to §1131.13 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§1131.30 and 1131.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.
§ 1131.40  

(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.
§ 1131.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1131.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such 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 §1131.9(c), except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent; and

(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 shrinkage of milk from producers for which a cooperative association is the handler pursuant to §1131.9(b) or (c), but not in excess of 0.5 percent of the 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 §1131.9(b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6), of this section; and

(d) Class III-A milk. Class III-A milk shall be all skim milk and butterfat used to produce nonfat dry milk.
§ 1131.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in §1131.9(c) to another handler's 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 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 after the computations pursuant to §1131.44(a)(12) and the corresponding step of §1131.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

2. If the transferor-plant received during the month other source milk to be allocated pursuant to §1131.44(a)(7) or the corresponding step of §1131.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk;

3. If the transferor-handler received during the month other source milk to be allocated pursuant to §1131.44(a)(11) or (12) or the corresponding steps of §1131.44(b), the skim milk or butterfat so transferred, 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; and

4. Unless a different utilization is claimed by both handlers, skim milk and butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as a handler pursuant to §1131.9(c) or as the operator of a pool plant described in §1131.7(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class for such month at the pool plant(s) of the receiving handler after the computations pursuant to §1131.44(a)(13)(i) and the corresponding step of §1131.44(b).

(b) Transfers or 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 another 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 another 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 §1131.40.

(c) Transfers and diversions to producer-handlers. Skim milk or butterfat transferred or diverted from a pool plant or diverted from a handler described in §1131.9(b) to a producer-handler under this or any other order shall be classified:

(1) As Class I milk, if transferred or diverted 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 producer-handler’s utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his 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 another order plant or a producer-handler 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)(ii) 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 divertor-handler claims such classification in his report of receipts and utilization filed pursuant to §1131.30 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 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 disposal 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 the 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 disposal from the nonpool plant shall be assigned to the extent possible in the following sequence:
§ 1131.43  General classification rules.

In determining the classification of producer milk pursuant to §1131.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1131.30 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 §1131.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1131.40, 1131.41, and 1131.42;

(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 §1131.9(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 §1131.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1131.44 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.


§ 1131.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1131.9(a) for each of his pool plants separately and of each handler described in §1131.9(b) and (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 §1131.41(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 §1131.40(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 §1131.40(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 §1131.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1131.40(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 sequence 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 §1131.40(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;

(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; and

(vi) Receipts of reconstituted skim milk in filled milk from another 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;

(vii) Receipts of milk from a dairy farmer pursuant to §1131.12(b)(4);

(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:

§1131.44
§ 1131.44

(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 paragraph (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)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes 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 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 §1131.9(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 §1131.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(iii), (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)(ii), (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 paragraph exceed the pounds of skim milk remaining in Class II and Class III combined at this allocation step at all pool plants 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 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 §1131.9(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
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 prorata 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 §1131.45(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 paragraphs (a)(12)(i) and (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 paragraphs (a)(12)(i) and (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

739
§ 1131.45

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

(13) Subtract in the following order 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:

(i) Another pool plant or a handler described in §1131.9(c) according to the classification of such products pursuant to §1131.42(a); and

(ii) A cooperative association in its capacity as a handler pursuant to §1131.9(c) or as the operator of a pool plant described in §1131.7(c) according to the classification of such products pursuant to §1131.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1131.50

Subject to the provisions of §1131.52, the class prices for the months per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) The Class I price shall be the basic formula price for the second preceding month plus $2.52.

§ 1131.45

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 §1131.44(a)(12) and the corresponding step of §1131.44(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 §1131.43(d) and §1131.44 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 another 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 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

(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 Western 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.

§ 1131.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1131.74 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) 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.

(4) 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]

§ 1131.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside Pima County and more than 30 miles by shortest highway distance as measured by the market administrator, from the nearer of the Courthouses in Maricopa and Graham Counties, Ariz., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to §1131.50(a) shall be reduced by 10 cents if such plant is located not more than 130 miles from the nearer courthouse and by an additional cent for each 10 miles or fraction thereof that such distance exceeds 130 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in §1131.9(c), plus the pounds assigned as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to §1131.50(a) shall be reduced by 10 cents if such plant is located not more than 130 miles from the nearer courthouse and by an additional cent for each 10 miles or fraction thereof that such distance exceeds 130 miles.

(c) For other source milk to which a location adjustment is applicable and for milk received from producers at a plant located in Pima County, Ariz., and which is classified as Class I milk, the price computed under §1131.50(a) shall be increased 12 cents.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (c) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1131.53 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]

§ 1131.54 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.

UNIFORM PRICE

§ 1131.60 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 §1131.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to §1131.44 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 §1131.44(a)(14) and the corresponding step of §1131.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1131.74, that are applicable at the location of the pool plant;

(c) Add the following:
(1) 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 for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1131.44(a)(9) and the corresponding step of §1131.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1131.44(a)(9) and the corresponding step of §1131.44(b) for the current month; or

(ii) The hundred weight of skim milk and butterfat remaining in Class III after the computations pursuant to §1131.44(a)(12) and the corresponding step of §1131.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section:

(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 §1131.43(d) and the corresponding step of §1131.44(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 §1131.44(a)(7) (i) through (iv) and (vii), and the corresponding step of §1131.44(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;

(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 §1131.43(d) and §1131.44(a)(7)(i) and the hundreds of skim milk and butterfat subtracted from Class I pursuant to §1131.44(a)(11) and the corresponding steps of §1131.44(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 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 §1131.43(d);

(h) 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 §1131.76 (a)(5) or (c); and

(i) 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.

§ 1131.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to §1131.60 for all handlers who filed the reports prescribed by §1131.30 for the month and who made the payments pursuant to §§1131.71 and 1131.73 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to §1131.75;

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

(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 §1131.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

The result shall be the “uniform price” for milk received from producers.

[39 FR 16084, May 7, 1974, as amended at 60 FR 55990, Nov. 6, 1995]

§ 1131.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 11th day after the end of each month the uniform price for such month.

§ 1131.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all payments made by handlers pursuant to §1131.71 and 1131.76 and out of which he shall make all payments pursuant to §1131.72: Provided, That payments due to any handler shall be offset by any payments due from such handler.

§ 1131.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of each month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:
   (1) The total value of milk of the handler for such month as determined pursuant to §1131.60.
   (2) The sum of:
      (i) The value at the uniform price, as adjusted pursuant to §1131.75, of such handler’s receipts of producer milk; and
      (ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to §1131.60(f).

(b) On or before the 25th day after the end of each 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 (b)(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.
§ 1131.72 Payments from the producer-settlement fund.

(a) On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1131.71(a)(2) exceeds the amount computed to §1131.71(a)(1).

(b) If the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section the market administrator shall reduce uniformly such payments and shall make such payments as soon as the appropriate funds are available.

[39 FR 16084, May 7, 1974, as amended at 60 FR 55991, Nov. 6, 1995]

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the 27th day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount not less than 1.3 times the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price as adjusted pursuant to §§1131.74 and 1131.75, multiplied by the hundredweight of milk received from such producer during the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(b) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the seventh day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) the amount or rate and nature of any authorized deductions to be made from payments, and (iii) the amount and nature of payments due pursuant to §1131.77; and

(d) Each handler who receives milk from a cooperative association in its capacity as a handler pursuant to §1131.9(c) or as the operator of a pool plant shall, or on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:
§ 1131.74

(1) A partial payment for milk received from such cooperative association during the first 15 days of the month at not less than 1.3 times the Class III price for the preceding month; and

(2) In final settlement, the value of such milk as classified pursuant to §1131.44 at the class prices, as adjusted by the butterfat differential specified in §1131.74, that are applicable at the location of the receiving handler’s pool plant, less payment made pursuant to paragraph (d)(1) of this section.

§ 1131.74 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 §1131.51 (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 18977, Apr. 14, 1995]

§ 1131.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant, at the rates set forth in §1131.52; and

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price shall not be less than the Class III price.

§ 1131.76 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 §§1131.30(b) and 1131.31(b) the information necessary for making the computations, such handler may 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 uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to 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
Agricultural Marketing Service, USDA § 1131.76

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 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 § 1131.60 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 such products were classified at the fully regulated plant;

(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
§ 1131.77 Adjustment of accounts.

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


§ 1131.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §1131.71 or §1131.77 relative to payments to the producer-settlement fund shall be increased one-half of 1 percent on the second day following the due date of such obligation and on the 15th day of each month thereafter until such obligation is paid.

[39 FR 16084, May 7, 1974, as amended at 58 FR 55991, Nov. 6, 1995]

§ 1131.85 Assessment for order administration.

(a) 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 15th day of the month a sum equal to 4 cents per hundredweight of producer milk (including such handler’s own production); (2) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1131.43(d) and other source milk allocated to Class I pursuant to §1131.44(a)(7) and (a)(11) and the corresponding steps of §1131.44(b), except such other source milk that is excluded from the computations pursuant to §1131.60(d) and (f); and (3) Class I milk disposed of from a partially regulated distributing plant as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to §1131.76(a)(2).
§1131.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to §1131.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make 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 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1132 [RESERVED]

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec. 1134.1 General provisions.
§ 1134.1

1134.76 Payments by a handler operating a partially regulated distributing plant.
1134.77 Adjustment of accounts.
1134.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1134.85 Assessment for order administration.
1134.86 Deduction for marketing services.

SOURCE: 47 FR 42991, Sept. 30, 1982, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1134.1 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

§ 1134.2 Western Colorado marketing area.

Western Colorado marketing area, hereinafter called the “marketing area”, means all the territory within the outer boundaries of the following counties in the State of Colorado:
Delta, Garfield, Mesa, Montrose.

§ 1134.3 Route disposition.

Route disposition means any delivery to retail or wholesale outlets (including a delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk, other than a delivery to a pool plant or a delivery in bulk to a nonpool plant.

§ 1134.4 [Reserved]

§ 1134.5 Distributing plant.

Distributing plant means any plant at which fluid milk products are pasteurized or packaged and from which there is route disposition of Grade A fluid milk products in the marketing area.

§ 1134.6 Supply plant.

Supply plant means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a pool distributing plant.

§ 1134.7 Pool plant.

Except as provided in paragraph (c) of this section, pool plant means:
(a) Any plant, hereinafter referred to as a “distributing pool plant”, in which during the month fluid milk products are processed or packaged and from which:
(1) An amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as route disposition, except filled milk; and
(2) Ten percent or more of such receipts, or 2,000 pounds per day, whichever is less, are disposed of as route disposition, except filled milk, in the marketing area.
(b) Any plant, hereinafter referred to as a “supply pool plant” from which during the month 50 percent of its dairy farm supply of Grade A milk is moved in the form of fluid milk products, except filled milk, to distributing pool plants. Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant in each of the following months of March through August, unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any of the following months of March through August unless it fulfills the shipping requirements of this paragraph for such month(s).
(c) The term “pool plant” shall not apply to the following plants:
(1) A producer-handler plant;
(2) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (a) of this section and there is more route disposition (except filled milk) in this marketing area than in the marketing area defined under such other order;
(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of March through August, inclusive, that the milk at such plant is
subject to the classification and pricing provisions of another order issued pursuant to the Act; and
(4) Any distributing plant from which there is less than an average of 200 pounds of route disposition per day, except filled milk, in the marketing area during the month.

§ 1134.8 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 neither an other order plant nor a producer-handler plant, 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 that is neither an other order plant nor a producer-handler plant from which fluid milk products are moved during the month to a pool plant.

§ 1134.9 Handler.

Handler means:
(a) Any person in his capacity as the operator of one or more pool plants;
(b) A cooperative association with respect to the milk of its member producers which it causes to be diverted for its account pursuant to §1134.12;
(c) A cooperative association with respect to milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by the association or by a hauler under contract to the association;
(d) Any person who operates a partially regulated distributing plant;
(e) A producer-handler;
(f) Any person who operates an other order plant described in §1134.7(c); and
(g) A vendor (any person who does not operate a plant described in paragraph (a), (d), (e) or (f) of this section but who engages in the business of receiving fluid milk products for resale and distributes to retail and wholesale outlets, via a mobile delivery vehicle, packaged fluid milk products received from such a plant).

§ 1134.10 Producer-handler.

Producer-handler means any person who is an individual, partnership or corporation and who meets all the following conditions:
(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:
(1) The full maintenance of milk-producing cows on such farm(s) is his sole risk and under his complete and exclusive management and control;
(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control; and
(3) Only he and no other person (except a member of his immediate family, or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;
(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which the is route disposition during the month in the marketing area; Provided, That:
(1) No fluid milk products are received at such plant or by him at any other location except:
(i) From dairy farm(s) as specified in paragraph (a) of this section; and
(ii) From pool plants or other order plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;
(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process,
§ 1134.11

package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of as route disposition or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

§ 1134.11 [Reserved]

§ 1134.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk in compliance with the inspection requirements for fluid consumption of a duly constituted health authority, whose milk is received at a pool plant or diverted to a nonpool plant that is not a producer-handler plant within the limits set forth in paragraphs (a)(1) and (2) of this section:

(1) A cooperative association may divert for its account the milk of any member-producer from whom not less than 3 days' production was received during the month at a distributing pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of March, April, May, June, July, and August and 30 percent in other months of the milk received at such distributing pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler, at a time and in a manner approved by the market administrator, shall specify the dairy farmers whose milk is ineligible as producer milk.

(3) For the purpose of the requirements of §1134.7, milk diverted for the account of the operator of a distributing pool plant, except an operator who is also a cooperative association diverting milk in the same month pursuant to paragraph (a)(1) of this section, shall be included in the receipts of the pool plant from which diverted.

(4) For purpose of location adjustments pursuant to §§1134.52 and 1134.75, milk diverted to a nonpool plant shall be considered to have been received at the location of the pool plant from which diverted.

(b) “Producer” shall not include:

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

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to §1134.44(a)(iii) and the corresponding step of §1134.44(b); and
(3) Any person with respect to milk produced by him which 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.

§ 1134.13 Producer milk.
Producer milk means all skim milk and butterfat in milk produced by a producer.

(a) With respect to receipts at a pool plant for which the handler operating such plant is to be responsible pursuant to § 1134.60:
(1) Received directly from such producer; and
(2) Diverted from such pool plant to a nonpool plant for the account of the operator of the pool plant, subject to the limitations and conditions provided in § 1134.12;

(b) With respect to the additional receipts of a cooperative association:
(1) For which the cooperative association is the handler pursuant to § 1134.9(b), subject to the limitations and conditions provided in § 1134.12; and
(2) For which the cooperative association is the handler pursuant to § 1134.9(c). If the milk received at a pool plant from a handler described in § 1134.9(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1134.9(c) at the location of the pool plant.

§ 1134.14 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 § 1134.40(b)(1) from any source other than producers, handlers described in § 1134.9(c), or pool plants;
(b) Receipts in packaged form from other plants of products specified in § 1134.40(b)(1);
(c) Products (other than fluid milk products, products specified in § 1134.40(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 § 1134.40(b)(1)) for which the handler fails to establish a disposition.

§ 1134.15 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 27893, May 11, 1993]

§ 1134.16 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 27894, May 11, 1993]

§ 1134.17 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).

§ 1134.18 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”;
(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of, or marketing milk or its products for its members; and (c) Has its entire activities under the control of its members.

§ 1134.19 [Reserved]

§ 1134.20 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 §§1134.12, 1134.13, 1134.41 and 1134.52.

§ 1134.30 Reports of receipts and utilization.
On or before the seventh day after the end of each month, each handler shall report for the 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 §1134.9(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 §1134.40(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 §1134.9(b) and (c) shall report:
(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and
(2) The utilization or disposition of all 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.

§ 1134.31 Payroll reports.
(a) On or before the 23rd day after the end of each month, each handler described in §1134.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:
(1) His name and address;
(2) The total pounds of milk received from such producer;
§ 1134.40 Classes of utilization.

Except as provided in §1134.42, all skim milk and butterfat required to be reported by a handler pursuant to §1134.30 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

(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.

§ 1134.42 Other reports.

(a) On or before the seventh day after the end of each month, each handler described in §1134.9(a) and (b) who diverted milk to nonpool plants shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(1) The name of the plant to which diverted;

(2) The name of the individual dairy farmers so diverted;

(3) The pounds of skim milk and butterfat from each dairy farmer contained in the milk so diverted; and

(4) The number of days milk of the dairy farmer was received at a pool plant of the diverting order.

(b) In addition to the reports required pursuant to §§1134.30 and 1134.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler’s obligation under the order.
§ 1134.41  

(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;
   (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 §1134.15 and the fluid cream product definition pursuant to §1134.16; and

(7) In shrinkage assigned pursuant to §1134.41(a) to the receipts specified in §1134.41(a)(2) and in shrinkage specified in §1134.41 (b) and (c).

[58 FR 27894, May 11, 1993]

§ 1134.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1134.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section, the maximum pounds computed pursuant to such paragraph divided by 0.02; 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, 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 §1134.9(c), 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 subparagraph 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
§ 1134.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Except as provided in paragraph (e) of this section, skim milk or butterfat transferred 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 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 after the computations pursuant to §1134.44(a)(12) and the corresponding step of §1134.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to §1134.44(a)(7) or the corresponding step of §1134.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1134.44(a)(11) or (12) or the corresponding steps of §1134.44(b), the skim milk or butterfat so transferred 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.

(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

§ 1134.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Except as provided in paragraph (e) of this section, skim milk or butterfat transferred 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 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 after the computations pursuant to §1134.44(a)(12) and the corresponding step of §1134.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to §1134.44(a)(7) or the corresponding step of §1134.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1134.44(a)(11) or (12) or the corresponding steps of §1134.44(b), the skim milk or butterfat so transferred 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.

(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

§ 1134.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Except as provided in paragraph (e) of this section, skim milk or butterfat transferred 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 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 after the computations pursuant to §1134.44(a)(12) and the corresponding step of §1134.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to §1134.44(a)(7) or the corresponding step of §1134.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1134.44(a)(11) or (12) or the corresponding steps of §1134.44(b), the skim milk or butterfat so transferred 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.

(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 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 §1134.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order 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 §1134.30 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 transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler 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 §1134.30 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;
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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(viii) In determining the nonpool plant’s utilization for purposes of this 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 priorities at the second plant that are set forth in this paragraph.

(e) Transfers by a cooperative association to pool plants. Skim milk and butterfat transferred in the form of bulk milk by a handler described in §1134.9(c) and from a pool plant operated by a cooperative association to another handler’s pool plant shall be classified pursuant to §1134.44 pro rata with producer milk received at the transferee-plant and the value thereof at the class prices shall be included in his value of milk pursuant to §1134.60.

§ 1134.43 General classification rules.

In determining the classification of producer milk pursuant to §1134.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1134.30 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 §1134.9 (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 §§ 1134.40, 1134.41, and 1134.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in §1134.9 (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 §1134.9
§ 1134.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in §1134.9(a) for each of his pool plants separately the classification of producer milk and milk subject to the provisions of §1134.42(e) 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 §1134.41(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 an other 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 §1134.40(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 §1134.40(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;

(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 §1134.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1134.40(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 or a fluid cream product) that is used to produce, or added to any product specified in §1134.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1134.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II;
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 §1134.40(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;

(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; and

(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;

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

(a) Multiply by 1.25 the 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 subject to the provisions of §1134.42(e), 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 another 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 §1134.40(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)(ii) 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) 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 Class I shall be increased by an amount equal to 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;

(ii) Should 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 §1134.45(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 remaining in each class at this allocation step 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 I 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
Agricultural Marketing Service, USDA

§ 1134.45

(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 class, 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;

(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 subject to the provisions of §1134.42(e) 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.


§ 1134.45 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 §1134.44(a)(12) and the corresponding step of §1134.44(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 §1134.43(d) and §1134.44 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 from an other order plant, the class to which such receipts are allocated pursuant to §1134.43(d) and §1134.44 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.
arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1134.50 Class prices.

Subject to the provisions of §1134.52, the class prices per hundredweight for the month shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.00.

(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.

§ 1134.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1134.74 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.
Agricultural Marketing Service, USDA

§ 1134.60

(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 18977, Apr. 14, 1995]

§ 1134.52

Plant location adjustments for handlers.

(a) For milk received from producers and from handlers described in §1134.9(c) at a pool plant, located more than 100 miles by shortest highway distance as measured by the market administrator, from the courthouse in Grand Junction, Colorado, and which is classified as Class I milk or assigned Class I location adjustment credit under paragraph (b) of this section, the price computed pursuant to §1134.50(a) shall be reduced by 15 cents if such plant is located more than 100 miles but not more than 110 miles from such courthouse, and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers and handlers described in §1134.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

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

[60 FR 6612, Feb. 2, 1995]

§ 1134.53

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 price for the preceding month.

[60 FR 18977, Apr. 14, 1995]

§ 1134.54

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.

Uniform Price

§ 1134.60

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 §1134.9 (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 subject to the provisions of §1134.42(e) that were classified in each class pursuant to §§1134.43(a) and 1134.44(c) by the applicable class prices, and add the resulting amounts;
§ 1134.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to §1134.60 for all handlers who filed the reports prescribed in §1134.30 for the month and who made the payments pursuant to...
§ 1134.71 and 1134.73 for the preceding month;
(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to §1134.75;
(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;
(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 §1134.60(f); and
(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the “uniform price” for milk received from producers.

§ 1134.62 Announcement of uniform price and butterfat differential.
The market administrator shall announce publicly on or before:
(a) The fifth day after the end of each month the butterfat differential for such month; and
(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1134.70 Producer-settlement fund.
The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all payments made by handlers pursuant to §§1134.71, 1134.76, and 1134.77, subject to the provision of §1134.78 and out of which he shall make all payments pursuant to §§1134.72 and 1134.77: Provided, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1134.71 Payments to the producer-settlement fund.
(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:
(1) The total value of milk of the handler for such month as determined pursuant to §1134.60.
(2) The sum of:
(i) The value at the uniform price, as adjusted pursuant to §1134.75, of such handler’s receipts of producer milk and milk subject to the provisions of §1134.42(e). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to §1134.73(a), exclusive of differential butterfat values; and
(ii) The value at the uniform price applicable at the location of the plant from which received (not to be less than the Class III price) of other source milk for which a value is computed pursuant to §1134.60(f).
(b) On or before the 25th day after the end of the month each person who operated an 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 (b)(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 to the location of the other order plant (but not to be less than the Class III price) and the Class III price.
(c) Each vendor shall pay the market administrator on or before the 25th day after the end of the month at the difference between the value of the skim milk and butterfat in fluid milk products received from a producer-handler during the month at the Class I price applicable at the location of the producer-handler’s plant (but not less than the Class III price) and its value at the
§ 1134.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1134.71(a)(2) exceeds the amount computed pursuant to §1134.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available.

§ 1134.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer from whom milk is received as follows:

(a) Not later than the last day of the month, to each producer from whom he received milk during the first 18 days of the month, a partial payment for the milk received during the first 15 days of the month, at the Class III price for the preceding month.

(b) Not later than the 16th day of the month, for milk received during the preceding month, an amount computed at not less than the uniform price, per hundredweight, pursuant to §1134.61, as adjusted by the butterfat differential specified in §1134.74, location adjustment specified in §1134.75 and adjustments for errors made in previous payments minus:

(1) Payments made pursuant to paragraph (a) of this section;

(2) Deductions for marketing services pursuant to §1134.86; and

(3) Deductions approved by the market administrator and authorized in writing by the producer. If the handler has not received full payment for the delivery period from the market administrator pursuant to §1134.72, he may reduce his total payments to all producers uniformly by the amount owing to him by the market administrator. The handler shall, however, complete all payments not later than the 16th day of the month following receipt of the balance from the market administrator.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk, and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim by the cooperative association, each handler shall pay to the cooperative association on or before the second day preceding the dates set out in paragraphs (a) and (b) of this section an amount equal to the sum of the individual payments otherwise payable to the producer members of such organization. This payment shall be made for all milk of such producer certified by the cooperative association as a member, beginning the first day of the month following receipt of the certification and ending the last day of the month next preceding the date on which a written notice from the cooperative association terminating the membership was received.

(2) A copy of the request for payment, promise to reimburse, and certified list of members, shall be filed simultaneously with the market administrator. He may verify the information by auditing the records of the cooperative association. Exceptions to the accuracy of the membership certification, by a producer or by a handler, shall be made in writing to the market administrator for his determination.

(d) In making the payments to producers under paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk,
a supporting statement which shall show for each month:

1. The month and the identity of the handler and of the producer;
2. The total pounds and the average butterfat content of milk received from such producer;
3. The minimum rate or rates at which payment to such producer is required under this part;
4. The rate which is used in making the payment if such rate is other than the applicable minimum rate;
5. The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and
6. The net amount of payment to such producer.

(e) For milk received from a pool plant operated by a cooperative association or from a handler described in §1134.9(c), each handler shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for milk as follows:

1. A partial payment for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and
2. A final settlement equal to the value of such milk at the uniform price, as adjusted pursuant to §§1134.74 and 1134.75, less payment made pursuant to paragraph (e)(1) of this section.

§ 1134.74 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 §1134.51 (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.

§ 1134.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price to be paid for milk received at a pool plant from producers, in bulk from a pool plant operated by a cooperative association, and from a handler described in §1134.9(c) may be reduced by the amount of the location adjustment applicable at the location of the pool plant at which such milk was first physically received from producers, and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of the pool plant from which diverted, each at the rates set forth in §1134.52;

(b) For purposes of computations pursuant to §§1134.71 and 1134.72 the uniform price shall be adjusted at the rates set forth in §1134.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1134.76 Payments by a 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 §§1134.30(b) and 1134.31(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
§ 1134.76

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 uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform 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 order at the location of the partially regulated distributing plant 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 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 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 §1134.60 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 §1134.60 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 §1134.60 for such handler shall include, in lieu of the value of other source milk specified in §1134.60(f) less the value of such other source milk specified in §1134.71(a)(2)(ii), a value of milk determined pursuant to §1134.60 for each nonpool plant that is not an other order plant which serves as a supply
§ 1134.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§1134.71, 1134.76, 1134.77, 1134.85 and 1134.86 shall be increased 1 percent for each month or portion thereof beginning with the third day following the date by which such obligation was payable. Provided, That:

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

(b) For the purpose of this section, any obligation that was determined at
§ 1134.85

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

§ 1134.85 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 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including milk subject to the provisions of §1134.42(e) but excluding such milk in the case of a cooperative association which is a handler of milk subject to the provisions of §1134.42(e)) and such handler's own production;

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1134.43(d) and other source milk allocated to Class I pursuant to §1134.44 (a)(7) and (a)(11) and the corresponding steps of §1134.44(b), except such other source milk that is excluded from the computations pursuant to §1134.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to §1134.76(a)(2).


§ 1134.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to §1134.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 13th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association.

(b) For producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 14th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deductions from each producer was computed.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1135.1 General provisions.
1135.2 Southwestern Idaho-Eastern Oregon marketing area.
1135.3 Route disposition.
1135.4 Plant.
1135.5 Distributing plant.
1135.6 Supply plant.
1135.7 Pool plant.
1135.8 Nonpool plant.
1135.9 Handler.
1135.10 Producer-handler.
1135.11 [Reserved]
1135.12 Producer.
1135.13 Producer milk.
1135.14 Other source milk.
1135.15 Fluid milk product.
1135.16 Fluid cream product.
1135.17 Filled milk.
1135.18 Cooperative association.
1135.19 [Reserved]
1135.20 Commercial food processing establishment.
Hander Reports
1135.30 Reports of receipts and utilization.
1135.31 Payroll reports.
1135.32 Other reports.

Classification of Milk
1135.40 Classes of utilization.
1135.41 Shrinkage.
1135.42 Classification of transfers and diversions.
1135.43 General classification rules.
1135.44 Classification of producer milk.
1135.45 Market administrator’s reports and announcements concerning classification.

Class and Component Prices
1135.50 Class and component prices.
1135.51 Basic formula price.
1135.52 [Reserved]
1135.53 Announcement of class and component prices.
1135.54 Equivalent price.

Differential Pool and Handler Obligations
1135.60 Computation of handlers’ obligations to pool.
1135.61 Computation of weighted average differential price.
1135.62 Computation of producer protein price.
1135.63 Announcement of the weighted average differential price, the producer protein price, and an estimated uniform price.

Payments for Milk
1135.70 Producer-settlement fund.
1135.71 Payments to the producer-settlement fund.
1135.72 Payments from the producer-settlement fund.
1135.73 Payments to producers and to cooperative associations.
1135.74 Payments by a handler operating a partially regulated distributing plant.
1135.75 Adjustments of accounts.
1135.76 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction
1135.85 Assessment for order administration.
1135.86 Deduction for marketing services.


Source: 46 FR 28612, May 28, 1981, unless otherwise noted.
§ 1135.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1135.6 Supply plant.

Supply plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1135.7 Pool plant.

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

(a) A distributing plant from which there is:

(1) Route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of the Grade A fluid milk products received at such plant (including milk diverted from such plant by the plant operator pursuant to §1135.13); and

(2) Total route disposition (except filled milk) during the month equal to not less than 25 percent of such receipts. A unit consisting of two or more distributing plants operated by a handler shall be considered as one distributing plant for the purpose of meeting this requirement if the handler notifies the market administrator in writing before the first day of the month that the plants should be considered as a unit. The unit shall continue from month to month thereafter without further notification. If, however, there is any change in the composition of the unit, the handler shall notify the market administrator in writing on or before the first day of the month such change is to be made.

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred to pool distributing plants is 25 percent or more of the Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant by the plant operator but excluding producer milk diverted to the plant pursuant to §1135.13), subject to the following conditions:

(1) Any supply plant that has qualified as a pool plant in each of the immediately preceding months of September through February shall be a pool plant in each of the following months of March through August unless written request for nonpool status for any such month is filed by the plant operator with the market administrator prior to the first day of any such month. In such case, nonpool status will be effective until the plant again qualifies as a pool plant by meeting the transfer requirements; and

(2) The volume of fluid milk products included as qualifying shipments to a distributing plant pursuant to this paragraph shall be reduced by the volume of any fluid milk products transferred or diverted by such pool distributing plant operator to the supply plant or to any other plant under the control of the supply plant operator.

(c) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was disposed of as route disposition during the month in such other Federal marketing area than was disposed of as route disposition in this marketing area and which is fully subject to the classification and pricing provisions of such other order;

(3) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order on the basis of route disposition in such other marketing area, and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in this marketing area than is disposed of in such other marketing area but which plant is,
nevertheless, fully regulated under such other Federal order:

(4) A supply plant qualified pursuant to paragraph (b) of this section that also meets the pool plant requirements of another Federal order and from which greater qualifying transfers are made during the month to plants regulated under this order, unless during the months of March through August the transfers to the other order plant are classified as Class II or Class III milk and the operator of the supply plant elects to retain automatic pooling under this part;

(5) A distributing plant from which less than an average of 300 pounds of Class I milk per day, except filled milk, is disposed of in the marketing area during the month; or

(6) Milk receiving and storage facilities that are on the same premises as a pool plant and are not approved by any regulatory agency for the receiving, processing or packaging of any fluid milk product for Grade A disposition.

§ 1135.8 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 distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) Unregulated supply plant means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) Exempt distributing plant means a distributing plant defined in §1135.7(c)(5).

§ 1135.9 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 pursuant to §1135.13 for the account of the cooperative association;

(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 on the basis of weights determined from its measurement at the farm and butterfat and protein tests determined from farm bulk tank samples;

(d) Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to §1135.13, subject to the following conditions:

(1) Such person (who, if qualified pursuant to this paragraph, shall be known as a “proprietary bulk tank handler”) must operate a plant located in the marketing area at which milk is processed only into Class II or Class III products; and

(2) Prior to operating as a handler pursuant to this paragraph, such person must submit to the market administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk;

(e) Any person in his capacity as the operator of a partially regulated distributing plant;
§ 1135.10 Producer-handler.

Producer-handler means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distributing plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(b) Receives no milk or fluid milk products from any source other than pool plants, other order plants, and bulk tank handlers described in §1135.9 (b) and (d);

(c) Such receipts do not exceed the lesser of 5 percent of his Class I utilization during the month or 5,000 pounds;

(d) Does not reconstitute or convert milk products into fluid milk products except to increase by the addition of nonfat dry milk the nonfat milk solids content of its own farm production or of fluid milk products received from other sources, and

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

§ 1135.11 [Reserved]

§ 1135.12 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 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 §1135.9 (b), (c) or (d); or

(3) Diverted from a pool plant in accordance with §1135.13.

(b) “Producer” shall not include:

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

(2) Any person who produces milk 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 §1135.44(a)(8)(iii) and the corresponding step of §1135.44(b); or

(3) Any person who produces milk 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 the other order designates such person as a producer under such order.

§ 1135.13 Producer milk.

Producer milk means the skim milk and butterfat 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 at a pool plant from a handler described in §1135.9(c);

(c) Received by a handler described in §1135.9(c) in excess of the quantity delivered to pool plants;

(d) Received by a handler described in §1135.9(d) that is not diverted pursuant to paragraph (f) of this section;

(e) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(f) Diverted from a pool plant to a nonpool plant by a pool plant operator or a handler described in §1135.9 (b) or (d), subject to the following conditions:

(1) Milk of a dairy farmer who was not a “producer” in the preceding two months shall not be eligible for diversion until one day’s production of milk is physically received at a pool plant;

(2) During each of a dairy farmer’s first three months as a “producer” under this order, and after any period of two months or longer that a dairy farmer is not a “producer” under this order, milk of the dairy farmer shall...
not be eligible for diversion unless during the month one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(3) The total quantity of milk diverted by a cooperative association during any month may not exceed 80 percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in §1135.9(d) may not exceed 80 percent of the producer milk that the handler causes to be delivered to or diverted from pool plants during the month;

(5) The operator of a pool plant may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraphs (f)(3) and (4) of this section. The total quantity so diverted during any month may not exceed 80 percent of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

(6) Any milk diverted in excess of the limits prescribed in paragraphs (f)(3), (4), and (5) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the total milk diverted by the handler on the last day of the month, then the second-to-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for.


§ 1135.14 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 fluid cream products from any source other than producers, handlers described in §1135.9(c) and (d), pool plants;

(b) Receipts in packaged form from other plants of products specified in §1135.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1135.40(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;

(d) Receipts of any milk product (other than a fluid milk product or a product specified in §1135.40(b)(1)) for which the handler fails to establish a disposition.

§ 1135.15 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
§ 1135.16

(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 27896, May 11, 1993]

§ 1135.16 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 27896, May 11, 1993]

§ 1135.17 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).

§ 1135.18 Cooperative association.

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

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the “Capper-Volstead Act”;

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

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

§ 1135.19 [Reserved]

§ 1135.20 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 §§ 1135.13, and 1135.41.

[58 FR 27896, May 11, 1993]

§ 1135.30 Reports of receipts and utilization.

On or before the 9th day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler qualified pursuant to § 1135.9(a) shall report for each pool plant operated by the handler the quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk received at such plants or diverted by the handler to other plants, and the protein content of such milk;

(2) Producer milk received at such plants from handlers qualified pursuant to § 1135.9(c) and (d), and the protein content of such milk; and

(3) Fluid milk products and bulk fluid cream products from other pool plants and other source milk received at such plants.

(b) Each handler qualified pursuant to § 1135.9(b), (c), or (d) shall report the quantities of producer milk received and the butterfat and protein contained therein.

(c) Each handler submitting reports pursuant to paragraphs (a) and (b) of this section shall report the utilization or disposition of all milk, filled milk, and milk products required to be reported, and inventories on hand at the beginning and end of each month in the form of fluid milk products and products specified in § 1135.40(b)(1).

(d) 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.

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


§ 1135.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler described in §1135.9 (a), (b), (c), and (d) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer for such month:

(1) His/her name and address;

(2) The number of days on which milk was received from such producer;

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

(4) The average butterfat and protein content of his/her milk;

(5) In the case of cooperative associations, the identity of producers for whom the cooperative association is authorized to collect payment pursuant to §1135.73; and

(6) The amount and nature of any deductions authorized in writing by the producer to be made from payments due such producer for milk delivered.

(b) Each handler operating a partially regulated distributing plant who elects to make payments pursuant to §1135.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.


§ 1135.32 Other reports.

In addition to the reports required pursuant to §§1135.30 and 1135.31, 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

§ 1135.40 Classes of utilization.

Except as provided in §1135.42, all skim milk and butterfat required to be reported by a handler pursuant to §1135.30 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 fluid milk products in inventory at the end of the month; and

(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
§ 1135.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1135.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such 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 and milk received from handlers described in §1135.9 (c) and (d));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from handlers described in §1135.9 (c) and (d) and in milk diverted to such plant from another pool plant, except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

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

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

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk 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 handlers; 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 §1135.9 (b) or (c) or a proprietary bulk tank handler is the handler pursuant to §1135.9 (d), 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 protein and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or the proprietary bulk tank handler shall be zero.


§1135.42 Classification of transfers and diversions.

(a) Transfers and diversions (including deliveries by a handler described in §1135.9(d)) 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 or from a handler described in §1135.9(d) to a 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 computation pursuant to §1135.44(a)(12) and the corresponding step of §1135.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1135.44(a)(7) and the corresponding step of §1135.44(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
§ 1135.42

(3) If the transferor-handler or diver-
tor-handler received during the month other source milk to be allocated pur-
suant to § 1135.44(a) (11) or (12) or the corresponding steps of § 1135.44(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 transferred in the form of 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, respec-
tively, 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, classi-
fication shall be in the classes to which allocated under the other order (includ-
ing allocation under the conditions set forth in paragraph (b)(3) of this sec-
tion);

(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 admin-
istrator for the purpose of establish-
ing classification under this para-
graph, classification shall be as Class I, subject to adjustments when such in-
formation 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 con-
sisting primarily of fluid milk products shall be classified as Class I 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 para-
graph shall be in accordance with the provisions of § 1135.40.

(c) Transfers and diversions to pro-
ducer-handlers and to exempt distributing plants. Skim milk or butterfat in the following forms that is transferred or diverted by a handler described in § 1135.9 (a), (b), or (d) to a producer-han-
dler under this or any other Federal order or to an exempt distributing plant shall be classified:

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

(2) In accordance with the utilization assigned to it by the market admin-
istrator, if transferred in the form of a bulk fluid cream product. For this pur-
pose, 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, re-
spectively, in bulk fluid cream prod-
ucts, pro rata to each source.

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

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

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of 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
Agricultural Marketing Service, USDA

§ 1135.43 General classification rules.

In determining the classification of producer milk pursuant to §1135.44, the following rules shall apply:

(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, then to Class II utilization, and then to Class III utilization at such nonpool plant;
(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class II utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and
(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1135.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1135.9(a) for each of the handler’s pool plants separately and of each handler described in §1135.9(b), (c), and (d) by allocating the handler’s receipts of skim milk and butterfat to its 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 §1135.41(b);
2. Subtract from the total pounds of skim milk in Class I the pounds of:
   - skim milk in shrinkage specified in §1135.41(b);
   - skim milk in Class III milk in Class I milk and is not used as an offset for any other payment obligation under any order;
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:
   - from Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and
   - from Class I milk, the remainder of such receipts;
4. 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 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

(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 of a handler pursuant to §1135.9(b), (c), or (d) shall be determined separately from the operations of any pool plant operated by such handler.

(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 §1135.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1135.44 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.

§ 1135.44

pounds of skim milk in products specified in §1135.40(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 §1135.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1135.40(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:

(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 §1135.40(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 an exempt distributing plant;

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

(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;

(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)(ii) 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)(ii), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) 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 I and Class III combined shall be increased 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, 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 §1135.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(i), (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 paragraph (a)(1) 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 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;

(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 §1135.45(a)}
(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 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 computation 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;

(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 and from §(d) handlers according to the classification of such products pursuant to §1135.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as “overage”;

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.


§1135.45 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 §1135.44(a)(12) and the corresponding step of §1135.44(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 §1135.43(d) and
§ 1135.44 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 as described in §1135.9 (a), (b) and (d) who has shipped fluid milk products or bulk fluid cream products to an 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) Report to each cooperative association that so requests, on or before the 12th day after the end of each month, the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handlers.


CLASS AND COMPONENT PRICES

§ 1135.50 Class and component prices.

The class prices for the month per hundredweight of milk shall be as follows:

(a) The Class I price shall be the basic formula price pursuant to §1135.51(a) for the second preceding month plus $1.50.

(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 Western 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.

(e) The skim milk price per hundredweight shall be the basic formula price for the month pursuant to §1135.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to paragraph (f)(3) of this section by 35.

(f) The butterfat price per pound shall be the total of:

(1) The skim milk price computed in paragraph (e) of this section divided by 100; and

(2) The butterfat differential computed pursuant to paragraph (f)(3) of this section multiplied by 10.

(3) Compute a butterfat differential rounded to the nearest one-tenth cent, by multiplying the current month’s butter price by 0.138, and subtract from the result an amount determined by multiplying 0.0028 by the preceding month’s average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the “base month” series, adjusted pursuant to §1135.51(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.

(g) The milk protein price per pound shall be computed by subtracting the butterfat price, multiplied by 3.5, from the basic formula price and dividing the result by the percentage of protein in the milk on which the basic formula price is based, as announced by the Dairy Division. The resulting price shall be rounded to the nearest whole cent.


§ 1135.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1135.50(f)(3) and rounded to the nearest cent, plus or
minus the change in gross value yield-ed 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 divided 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 18978, Apr. 14, 1995]

§ 1135.52 [Reserved]

§ 1135.53 Announcement of class and component prices.

The market administrator shall announce publicly:

(a) On or before the 5th 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.

789
7 CFR Ch. X (1-1-99 Edition)

§ 1135.43 Differential pool and handler obligations

§ 1135.54 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.

§ 1135.60 Computation of handlers’ obligations to pool.

The market administrator shall compute each month for each handler described in §1135.9(a) with respect to each of the handler’s pool plants and for each handler qualified pursuant to §1135.9(b), (c), or (d) an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the hundredweight of producer milk assigned to Class I milk pursuant to §1135.44(c) by the difference between the Class I price and the Class III price;

(b) Multiply the hundredweight of producer milk assigned to Class II milk pursuant to §1135.44(c) by the difference between the Class II price and the Class III price;

(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III-A by the amount that the Class III-A price is more or less, respectively, than the Class III price;

(d) Multiply the skim milk price by the hundredweight of producer skim milk assigned to Class I milk pursuant to §1135.44(a);

(e) Multiply the milk protein price by the pounds of protein in producer skim milk assigned to Class II and Class III pursuant to §1135.44(a). The pounds of protein shall be computed by multiplying the hundredweight of skim milk so assigned by the average percentage of protein in all producer skim milk received by the handler during the month;

(f) With respect to skim milk and butterfat overages assigned pursuant to §1135.44(a)(14) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price; and

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price.

(g) With respect to skim milk and butterfat assigned to shrinkage pursuant to §1135.44(a)(9) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price;

(6) Subtract the Class III value of the milk at the previous month’s protein and butterfat prices;

(h) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to §1135.43(d) and subtracted from Class I pursuant to §1135.44(a)(7)(i) through (iv) and (b), excluding:

(1) Receipts of bulk fluid cream products from an other order plant;

(2) Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and
(3) 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 §1135.76(a)(5) or (c); 

(i) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat subtracted from Class I pursuant to §1135.44(a)(7)(v) and (vi) and §1135.44(b); 

(j) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to §1135.44(d) and §1135.44(a)(7)(i) and by the pounds of skim and butterfat subtracted from Class I pursuant to §1135.44(a)(11) and (b), excluding the skim milk and butterfat in receipts of bulk fluid milk products from unregulated supply plants to the extent an equivalent quantity of skim milk and butterfat disposed of to any such plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; 

(k) 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 and the Class III price) by the combined pounds of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to §1135.43(d); and 

(l) 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 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.

§1135.61 Computation of weighted average differential price.

A weighted average differential price for all milk received from producers shall be computed by the market administrator as follows:

(a) Combine into one total the values computed pursuant to §1135.60 (a) through (c) and (f) through (l) for all handlers who filed reports pursuant to §1135.30 for the month and who made the payments pursuant to §1135.71 for the preceding month; 

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

(c) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which values were computed pursuant to §1135.60(j)); and 

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight of milk included under paragraph (c) of this section. The result shall be the weighted average differential price.

§1135.62 Computation of producer protein price.

A producer protein price shall be computed by the market administrator each month as follows:

(a) Combine into one total the values computed pursuant to §1135.60(d) and (e) for all handlers who filed reports pursuant to §1135.30 and who made payments pursuant to §1135.71 for the preceding month; 

(b) Divide the resulting amount by the total pounds or protein contained in producer milk; and 

(c) Round to the nearest whole cent. The result shall be the producer protein price.
§ 1135.63 Announcement of the weighted average differential price, the producer protein price, and an estimated uniform price.

The market administrator shall announce on or before the 14th day after the end of each month the following prices for such month:

(a) The weighted average differential price;
(b) The producer protein price; and
(c) An estimated uniform price per hundredweight of milk computed by adding the weighted average differential price to the basic formula price.

[59 FR 15326, Apr. 1, 1994]

§ 1135.70 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 appropriate payments made by handlers pursuant to §§ 1135.71, 1135.74, 1135.75, and 1135.76 and out of which he shall make all payments due handlers pursuant to §§ 1135.72 and 1135.75.

[59 FR 15327, Apr. 1, 1994]

§ 1135.71 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total obligation of the handler for such month as determined pursuant to §1135.60.
(b) The sum of:
(1) The value computed by multiplying the weighted average differential price by the hundredweight of producer milk received from handlers qualified pursuant to §§ 1135.9(c) and from producers during the month;
(2) The value computed for the protein contained in the producer milk included under paragraph (b)(1) of this section at the producer protein price; and
(3) The value at the weighted average differential price of the hundredweight of skim milk and butterfat for which a value is computed pursuant to §1135.60(j).

[59 FR 15327, Apr. 1, 1994]

§ 1135.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed for such handler pursuant to §1135.71(b) exceeds the amount computed pursuant to §1135.71(a). If at such time the balance in the producer-settlement fund is insufficient to make all of the payments pursuant to this section, the market administrator shall reduce uniformly such payment and shall complete such payment as soon as the necessary funds become available.

[59 FR 15327, Apr. 1, 1994]

§ 1135.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers and cooperative associations as follows:

(a) On or before the last day of the month, each handler shall pay to each producer from whom milk was received during the first 15 days of the month not less than the Class III price per hundredweight for the preceding month.
(b) On or before the 19th day after the end of each month, each handler shall pay to each producer from whom milk was received during the month, a sum computed as follows:
(1) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;
(2) Multiply the producer protein price for the month by the total pounds of protein in such milk;
(3) Multiply the weighted average differential price for the month multiplied by the hundredweight of such milk;
(4) Subtract payments made to the producer pursuant to paragraph (a) of this section;
(5) Subtract deductions for marketing services pursuant to §1135.86; and
Agricultural Marketing Service, USDA

§ 1135.74 Payments by a 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 §§1135.30(b) and 1135.31(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 plant:

(i) As Class I milk from pool plants, handlers pursuant to §1135.9(b) and (d), 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 estimated uniform 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

(6) Subtract proper deductions authorized in writing by such producer.

(c) On or before the second day prior to the dates specified in paragraphs (a) and (b) of this section, each handler shall pay a cooperative association for milk from producers who market their milk through the cooperative and who have authorized the cooperative to collect payments on their behalf an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section.

(d) In the event a handler has not received full payment from the market administrator pursuant to §1135.72 by the 19th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraphs (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) In making payments to individual producers as required by this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

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

(2) The total pounds of milk received from the producer and the pounds of butterfat and protein contained therein;

(3) The minimum rates at which payment is required pursuant to this section;

(4) The rates used in making payment, if such rates are other than the required applicable minimums;

(5) The amount (or rate per hundredweight) of each deduction claimed by the handler, including any deduction claimed under §1135.86, together with an explanation of each deduction; and

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

§ 1135.74  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 §1135.60 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, a handler described in §1135.(b) and (d), and an other order plant shall be allocated to 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 they were 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 §1135.60 shall be priced at the uniform price or estimated uniform price of the respective order regulating the handling of milk at the transferee-plant, with such uniform price or estimated 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 §1135.60 for such handler shall include, in lieu of the value of other source milk specified in §1135.60(j) less the value of such other source milk specified in §1135.71(b)(2), a value of milk determined pursuant to §1135.60 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 §1135.7(b), subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§1135.30(b) and 1135.31(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 §1135.60 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 §1135.50(f)(3), 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 §1135.50(f)(3), 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 §1135.43(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.

§1135.75 Adjustments of accounts.
Whenever audit by the market administrator of any handler’s reports, books, records, or accounts or other verification discloses errors resulting in money due the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§1135.76 Charges on overdue accounts.
Any unpaid obligation pursuant to §§1135.71, 1135.74, 1135.75, 1135.76, 1135.85, and 1135.86, shall be increased 1 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than 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.

§1135.85 Assessment for order administration.
As his pro rata share of the expenses of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:
§ 1135.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers (other than himself) pursuant to §1135.73, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 13th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions 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 16th day after the end of such 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 producer.

PART 1136 [RESERVED]

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec. 1137.1 General provisions.

DEFINITIONS

1137.2 Eastern Colorado marketing area.
1137.3 Route disposition.
1137.4-1137.6 [Reserved]
1137.7 Pool plant.
1137.8 Nonpool plant.
1137.9 Handler.
1137.10 Producer-handler.
1137.11 [Reserved]
1137.12 Producer.
1137.13 Producer milk.
1137.14 Other source milk.
1137.15 Fluid milk product.
1137.16 Fluid cream product.
1137.17 Filled milk.
1137.18 Cooperative association.
1137.19 [Reserved]
1137.20 Commercial food processing establishment.

HANDLER REPORTS

1137.30 Reports of receipts and utilization.
1137.31 Payroll reports.
1137.32 Other reports.

CLASSIFICATION OF MILK

1137.40 Classes of utilization.
1137.41 Shrinkage.
1137.42 Classification of transfers and diversions.
1137.43 General classification rules.
1137.44 Classification of producer milk.
1137.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1137.50 Class prices.
1137.51 Basic formula price.
1137.52 Plant location adjustments for handlers.
1137.53 Announcement of class prices.
1137.54 Equivalent price.

UNIFORM PRICE

1137.60 Handler's value of milk for computing uniform price.
1137.61 Computation of uniform price.
Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1137.61 Payments to the producer-settlement fund.
1137.62 Payments from the producer-settlement fund.
1137.63 Payments to producers and to cooperative associations.
1137.64 Butterfat differential.
1137.65 Plant location adjustments for producers and for nonpool milk.
1137.66 Payments by a handler operating a partially regulated distributing plant.
1137.67 Adjustment of accounts.
1137.68 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1137.81 Assessment for order administration.
1137.82 Deduction for marketing services.


SOURCE: 47 FR 42978, Sept. 30, 1982, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1137.1 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

§ 1137.2 Eastern Colorado marketing area.

Eastern Colorado marketing area hereinafter called the “marketing area” means all the territory within the perimeter boundaries of the counties listed below, including all territory (municipal, State, or Federal) installations, institutions and other establishments:

Colorado Counties

Kansas Counties
Cheyenne, Logan, Sherman, Wallace.

§ 1137.3 Route disposition.

Route disposition means any delivery to retail or wholesale outlets (including a delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk, other than a delivery to a pool plant or a nonpool plant: Provided, That packaged fluid milk products, except filled milk, that are transferred to a distributing plant from a plant with route disposition in the marketing area, and which are classified as Class I under §1137.40(a), shall be considered as a route disposition from the transferor plant, rather than from the transferee plant, for the single purpose of qualifying it as a pool distributing plant under §1137.7(a)(1).

§§ 1137.4-1137.6 [Reserved]

§ 1137.7 Pool plant.

Except as provided in paragraph (c) of this section, pool plant means:
(a) Any plant, hereinafter referred to as a “pool distributing plant”, in which during the month fluid milk products are processed or packaged and from which:
(1) An amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as route disposition, except filled milk. A unit consisting of two or more distributing plants operated by a handler shall be considered as one distributing plant for the purpose of meeting the requirements of this subparagraph if each plant separately meets the requirements of paragraph (a)(2) of this section and the handler notifies the market administrator in writing before the first day of the month that the plants should be considered as a unit. The unit shall continue from month to month thereafter without further notification. If, however, there is any change in the composition of the unit, the handler shall notify the market administrator in writing on or before the first day of the month such change is to be made; and


(2) Ten percent or more of such receipts, or 12,000 pounds per day, whichever is less, are disposed of as route disposition, except filled milk, in the marketing area.

(b) Any plant, hereinafter referred to as a “supply pool plant” from which during the month 50 percent of its dairy farm supply of Grade A milk is moved to distributing pool plant(s) as fluid milk products, except filled milk. Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant in each of the following months of March through August unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of March through August unless it fulfills the shipping requirements of this paragraph for such month.

(c) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, 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 unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant meeting the requirements of 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, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) Any distributing plant from which there is less than an average of 300 pounds of route disposition per day, except filled milk, in the marketing area during the month.

Effective Date Note: At 62 FR 35948, July 3, 1997, in §1137.7(b), the second sentence is amended by suspending the words “plant which has qualified as a” and “of March through August”, effective Sept. 1, 1997, through Feb. 28, 1999.

§ 1137.8 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 neither an other order plant nor a producer-handler plant, 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 which is neither an other order plant nor a producer-handler plant from which fluid milk products are moved during the month to a pool plant.

§ 1137.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of its member producers which it causes to be diverted for its account pursuant to §1137.12;

(c) A cooperative association with respect to the milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to
such cooperative association, if the cooperative association notifies the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it elects to be the handler for all such milk. Such milk shall be deemed to have been received by such cooperative association at the location of the pool plant to which delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in §1137.7(c).

§ 1137.10 Producer-handler.

(a) Producer-handler means any person who operates a dairy farm and a milk processing plant from which there is route disposition in the marketing area and who:

(1) Receives no fluid milk products during the month from dairy farmers;

(2) Receives no fluid milk products during the month from any other source except by transfer from a pool plant; and

(3) Receives no other source milk for reconstitution into fluid milk products.

(b) Such person must provide proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the volume of fluid milk products (excluding transfers from pool plants) and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of such person.

§ 1137.11 [Reserved]

§ 1137.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is received at a pool plant or diverted to a nonpool plant that is not a producer-handler plant within the limits set forth in paragraphs (a)(1) and (2) of this section:

(1) A cooperative association may divert for its account the milk of any member-producer from whom at least three deliveries of milk are received during the month at a distributing pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of its member producer milk received at distributing pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed such a request in writing with the market administrator on or before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer members of each cooperative according to a method approved by the market administrator.

(2) A handler in his capacity as the operator of a distributing pool plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section, from whom at least three deliveries of milk are received during the month at his distributing pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of the milk received at such distributing pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk.

(3) For the purposes of the requirements of §1137.7, milk diverted for the account of the operator of a distributing pool plant, except an operator which is also a cooperative association
§ 1137.13 Producer milk.

Producer milk means all skim milk and butterfat in milk produced by a producer.

(a) With respect to receipts at a pool plant for which the handler operating such plant is to be responsible pursuant to §1137.60:

(1) Received directly from such producer;

(2) Diverted from such pool plant to a nonpool plant for the account of the operator of the pool plant, subject to the limitations and conditions provided in §1137.12;

(b) With respect to the additional receipts of a cooperative association:

(1) For which the cooperative association is the handler pursuant to §1137.9(b), subject to the limitations and conditions provided in §1137.12; and

(2) For which the cooperative association is the handler pursuant to §1137.9(c).

§ 1137.14 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 §1137.40(b)(1) from any source other than producers, handlers described in §1137.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1137.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1137.40(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;

(d) Receipts of any milk product (other than a fluid milk product or a product specified in §1137.40(b)(1)) for which the handler fails to establish a disposition.

§ 1137.15 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
§ 1137.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for the 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 §1137.9(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 §1137.40(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 §1137.9 (b) and (c) shall report:
§ 1137.31

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and
(2) The utilization or disposition of all 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.

§ 1137.31 Payroll reports.

(a) On or before the 23rd day after the end of each month, each handler described in §1137.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:
(1) His name and address;
(2) The total pounds of milk received from such producer;
(3) The average butterfat content of such milk; and
(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.
(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1137.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1137.32 Other reports.

(a) On or before the seventh day after the end of each month, each handler described in §1137.9 (a) and (b) who diverted milk to nonpool plants shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:
(1) The name of the plant to which diverted;
(2) The name of the individual dairy farmers so diverted;
(3) The pounds of skim milk and butterfat from each dairy farmer contained in the milk so diverted; and
(4) The number of days milk of the dairy farmer was received at a pool plant of the diverting order.
(b) In addition to the reports required pursuant to §§1137.30 and 1137.31 and paragraph (a) of this section, 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

§ 1137.40 Classes of utilization.

Except as provided in §1137.42, all skim milk and butterfat required to be reported by a handler pursuant to §1137.30 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 non milk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;
(2) In packaged fluid milk products in inventory at the end of the month; and
(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;

(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;

(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 §1137.15 and the fluid cream product definition pursuant to §1137.16;

(7) In shrinkage assigned pursuant to §§1137.41(a) to the receipts specified in §1137.41(a)(2) and in shrinkage specified in §1137.41 (b) and (c).

[58 FR 27899, May 11, 1993]

§1137.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1137.30, the market administrator shall determine the following:

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

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph in amounts equal to 50 times the maximum amount that may be computed pursuant to 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;
§ 1137.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Except as provided in paragraph (e) of this section, skim milk or butterfat transferred 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 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 after the computations pursuant to §1137.44(a)(12) and the corresponding step of §1137.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to §1137.44(a)(7) or the corresponding step of §1137.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1137.44(a)(11) or (12) or the corresponding steps of §1137.44(b), the skim milk or butterfat so transferred 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.

(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 another 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 §1137.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred 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 his 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 or a producer-handler 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 §1137.30 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
§ 1137.43 General classification rules.

In determining the classification of producer milk pursuant to §1137.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1137.30 and shall compute separately for each pool plant,

(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;

(i) 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;

(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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then 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 priorities at the second plant that are set forth in this paragraph.

(e) Transfers by a cooperative association to pool plants. Skim milk and butterfat transferred in the form of bulk milk by a handler described in §1137.9(c) and from a pool plant operated by a cooperative association to another handler’s pool plant shall be classified pursuant to §1137.44 pro rata with producer milk received at the transferee-plant and the value thereof at the class prices shall be included in his value of milk pursuant to §1137.60.

and for each cooperative association with respect to milk for which it is the handler pursuant to §§1137.9 (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 §§1137.40, 1137.41, and 1137.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in §§1137.9 (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 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 §§1137.9 (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 uses under §§1137.44 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 §§1137.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §§1137.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.


§ 1137.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in §§1137.9(a) for each of his pool plants separately the classification of producer milk and milk subject to the provisions of §§1137.42(e) 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 §§1137.40(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 an other 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 §§1137.40(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 §§1137.40(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 §1137.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1137.40(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 §1137.40(b) 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;

(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; and

(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;

(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.

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

(a) Multiply by 1.25 the 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 subject to the provisions of §1137.42(e), 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 another 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 §1137.40(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, 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 for purposes of this subtraction at a pool plant operated by a cooperative association, skim milk in fluid milk products transferred to the pool plant of another handler shall be added to the remaining pounds of skim milk in each class pro rata to the market average utilization announced pursuant to §1137.45(a):

(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 subparagraph 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 paragraph (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 §1137.45(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). For purposes of such computation at a pool plant of a cooperative association, the pounds remaining shall include any remainder of the quantity added pursuant to paragraph (a)(11) of this section;

(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 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 §1137.42(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 subject to the provisions of §1137.42(e), 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 subject to the provisions of §1137.42(e) 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.

§ 1137.45 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 §1137.44(a)(12) and the corresponding step of §1137.44(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 §1137.43(d) and §1137.44 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 from 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 of the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

§ 1137.50 Class prices.

Subject to the provisions of §1137.52, the class prices per hundredweight for the month shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.73.

(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.

§ 1137.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1137.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk 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.
§ 1137.52

(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 produce 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 the 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.

§ 1137.52 Plant location adjustments for handlers.

(a) For milk received from producers and from handlers described in § 1137.9(c) at a pool plant, or diverted to a nonpool plant, located more than 50 miles by shortest highway distance as measured by the market administrator, from the plant to the nearest County Courthouse located in Denver, Colo.; Pueblo, Colo.; or Colorado Springs, Colo., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1137.50(a) shall be reduced by 10 cents if such plant is located more than 50 miles but not more than 75 miles from such courthouse, and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 75 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1137.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning.
with the plant at which the least location adjustment would apply.

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

§ 1137.60 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 §1137.9(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 subject to the provisions of §1137.42(e) that were classified in each class pursuant to §§1137.43(a) and 1137.44(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 §1137.44(a)(14) and the corresponding step of §1137.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1137.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) 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 for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1137.44(a)(9) and the corresponding step of §1137.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:
   (i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1137.44(a)(9) and the corresponding step of §1137.44(b) for the current month; or
   (ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to §1137.44(a)(12) and the corresponding step of §1137.44(b) for the preceding month;

(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 §1137.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1137.44(a)(7)(i) through (iv) and the corresponding step of §1137.44(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 §1137.44(a)(7)(v) and (vi) and the corresponding step of §1137.44(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
§ 1137.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to §1137.60 for all handlers who filed the reports prescribed by §1137.30 for the month and who made the payments pursuant to §§1137.71 and 1137.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to §1137.75;

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

(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 §1137.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the “uniform price” per hundredweight of producer milk of 3.5 percent butterfat content delivered to plants at which no location adjustment is applicable.

§ 1137.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

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

(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1137.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all payments made by handlers pursuant to §§1137.71, 1137.76, and 1137.77, subject to the provision of §1137.78 and out of which he shall make all payments pursuant to §§1137.72 and 1137.77. Provided, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1137.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to §1137.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to §1137.75, of such handler’s receipts of producer milk and milk subject to the provisions of §1137.42(e). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to §1137.73(c), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to §1137.60(f).

(b) 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 (b)(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.

§ 1137.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1137.71(a)(2) exceeds the amount computed pursuant to §1137.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1137.73 Payments to producers and to cooperative associations.

Except as provided in paragraphs (b) and (c) of this section, each handler except a cooperative association shall make payment as specified in paragraph (a) of this section to each producer from whom milk is received:

(a)(1) On or before the last day of each month, to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, a partial payment with respect to milk received during the first 15 days of the month at the Class III price for the preceding month.

(a)(2) On or before the 16th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to §1137.61, as adjusted by the butterfat differential specified in §1137.74 and location adjustments specified in §1137.75, plus or minus adjustments for errors made in previous payments to such producers and less:

(i) Payments made pursuant to paragraph (a)(1) of this section;

(ii) Deductions for marketing services pursuant to §1137.86; and

(iii) Proper deductions authorized in writing by such producer: Provided, That if by such date such handler has not received full payment for such delivery period pursuant to §1137.72 he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for
making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(b)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the second day prior to the date of payment to producers in lieu of payments pursuant to paragraph (a) of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(c) For milk received from a pool plant operated by a cooperative association or from a cooperative association that is a handler pursuant to §1137.9(c), each handler shall on or before the second day prior to the date payments are due individual producers pay such cooperative association for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) A final settlement equal to the value of such milk at the uniform price pursuant to §§1137.61, as adjusted pursuant to §§1137.74 and 1137.75, less payment made pursuant to paragraph (c)(1) of this section.

(d) In making the payments to producers pursuant to paragraphs (a)(2) and (b) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

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

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

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

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

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

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

§ 1137.74 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 price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the “base month” series, adjusted pursuant to §1137.51 (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 18979, Apr. 14, 1995]
§ 1137.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price to be paid for milk received at a pool plant from producers, in bulk from pool plants operated by cooperative associations, and from handlers described in § 1137.9(c) may be reduced by the amount of the location adjustment applicable at the location of the pool plant at which such milk was first physically received from producers, and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of such nonpool plant, each at the rates set forth in § 1137.52; and

(b) For the purposes of computations pursuant to §§ 1137.71 and 1173.72 the uniform price shall be adjusted at the rates set forth in § 1137.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1137.76 Payments by a 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 § 1137.30(b) and 1137.31(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 another order plant to the extent that the 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 uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform 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. 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 pricing a plurality of the milk used to produce the nonfluid milk ingredients. 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 §1137.60 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 by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of §1137.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§1137.30(b) and 1137.31(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 §1137.60 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 §1137.74, 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 §1137.74, 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 §1137.43(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.

§ 1137.77 Adjustment of accounts.
Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in moneys due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1137.78 Charges on overdue accounts.
Any unpaid obligation of a handler pursuant to §1137.71 or §1137.77 relative to payments to the producer settlement fund shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.
and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 16th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deduction was computed from each producer.

PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.

1138.1 General provisions.

DEFINITIONS

1138.2 New Mexico-West Texas marketing area.
1138.3 Route disposition.
1138.4 Plant.
1138.5 Distributing plant.
1138.6 Supply plant.
1138.7 Pool plant.
1138.8 Nonpool plant.
1138.9 Handler.
1138.10 Producer-handler.
1138.11 [Reserved]
1138.12 Producer.
1138.13 Producer milk.
1138.14 Other source milk.
1138.15 Fluid milk product.
1138.16 Fluid cream product.
1138.17 Filled milk.
1138.18 Cooperative association.
1138.19-1138.20 [Reserved]
1138.21 Commercial food processing establishment.

HANDLER REPORTS

1138.30 Reports of receipts and utilization.
1138.31 Payroll reports.

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

1138.32 Other reports.

CLASSIFICATION OF MILK

1138.40 Classes of utilization.
1138.41 Shrinkage.
1138.42 Classification of transfers and diversions.
1138.43 General classification rules.
1138.44 Classification of producer milk.
1138.45 Market administrator’s reports and announcements concerning classification.

CLASS PRICES

1138.50 Class prices.
1138.51 Basic formula price.
1138.52 [Reserved]
1138.53 Plant location adjustments for handlers.
1138.54 Announcement of class prices.
1138.55 Equivalent price.

UNIFORM PRICE

1138.60 Handler’s value of milk for computing uniform price.
1138.61 Computation of uniform price.
1138.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1138.70 Producer-settlement fund.
1138.71 Payments to the producer-settlement fund.
1138.72 Payments from the producer-settlement fund.
1138.73 Payments to producers and to cooperative associations.
1138.74 Butterfat differential.
1138.75 Plant location adjustments for producers and on nonpool milk.
1138.76 Payments by a handler operating a partially regulated distributing plant.
1138.77 Adjustment of accounts.
1138.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1138.85 Assessment for order administration.
1138.86 Deduction for marketing services.


SOURCE: 56 FR 52448, Oct. 21, 1991, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1138.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter are
Agricultural Marketing Service, USDA § 1138.7

hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1138.2 New Mexico-West Texas marketing area.

The New Mexico-West Texas marketing area, hereinafter called the marketing area, means all territory within the boundaries of the following counties, 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: Following counties—Bernalillo, Catron, Cibola, Colfax, Curry, De Baca, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union and Valencia, all in the State of New Mexico, and El Paso in Texas.

Zone 2: Following counties—Archuleta, La Plata and Montezuma in Colorado, and Chaves, Eddy, Lea and San Juan in New Mexico.


§ 1138.3 Route disposition.

Route disposition means any delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of any fluid milk product classified as Class I milk.

§ 1138.4 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 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.

§ 1138.5 Distributing plant.

Distributing plant means any plant:
(a) Approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption.
(b) In which fluid milk products are processed or packaged; and
(c) From which there is route disposition in the marketing area during the month.

§ 1138.6 Supply plant.

Supply plant means a plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption from which fluid milk products are transferred to a distributing plant(s) during the month.

§ 1138.7 Pool plant.

Pool plant means (a) A distributing plant: (1) From which during the month there is total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from the plant, and not less than 10 percent of such receipts are disposed of as fluid milk products on routes in the marketing area; or
(2) Located in the marketing area that qualifies pursuant to paragraph (a)(1) of this section so long as this order's Class I price applicable at such plant location is not less than an other order's Class I price applicable at the same location even though the plant may meet the pooling requirements of the other Federal order and have greater route disposition in the other marketing area than in the New Mexico-West Texas marketing area.
(b) A supply plant from which during the month not less than 50 percent of the total quantity of milk that is received from dairy farmers (including producer milk diverted from the plant pursuant to §1138.13, but excluding

821
milk diverted to such plant) and handlers described in §1138.9(c) is transferred to plants described in paragraph (a) of this section, subject to the following. A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through January shall continue to qualify in each of the following months of February through August.

(c) Any plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the cooperative association and 35 percent or more of the producer milk of members of the cooperative association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received during the month in the form of bulk fluid milk products at plants specified in paragraph (a) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(d) The shipping standards in paragraphs (b) and (c) of this section may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision, either at the Director’s initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a reduction in shipping standards pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to §1138.30.

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

(1) A producer-handler plant, a governmental agency plant, or an exempt plant.

(2) A distributing plant qualified pursuant to paragraph (a)(1) 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 unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing 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 this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made.
Agricultural Marketing Service, USDA

§ 1138.10

During the month to plants regulated under such other order than are made to plants regulated under this part; or

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

Effective Date Note: At 62 FR 50486, Sept. 26, 1997, in §1138.7, paragraph (a)(1), the words "including producer milk diverted from the plant," were suspended; and in paragraph (c), the words "35 percent or more of the producer" were suspended, effective Oct. 1, 1997, through Sept. 30, 1999.

§ 1138.8 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 distributing plant that does not qualify as a pool plant and is not an other order plant, a governmental agency plant, or a producer-handler plant.

(d) Unregulated supply plant means a nonpool plant, except an other order plant, a governmental agency plant, or a producer handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to §1138.7.

(e) Governmental agency plant means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from the pricing and pooling provisions of this order.

(f) Exempt plant means any plant that has monthly route disposition of 150,000 pounds or less that may be exempt from the pricing and pooling provisions of this order if the handler operating the plant files timely reports as specified by the market administrator and maintains adequate books and records that are made available to the market administrator which will enable determination of the exempt status of such plant.

§ 1138.9 Handler.

Handler means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to §1138.13 for the account of such cooperative association;

(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 who operates a partially regulated distributing plant;

(e) Any person who is a producer-handler or who operates a governmental agency or exempt plant; and

(f) Any person who operates an other order plant described in §1138.7(e) or an unregulated supply plant.

§ 1138.10 Producer-handler.

Producer-handler means any person:

(a) Who processes and packages milk from his or her own farm's production;

(b) Who has route disposition within the marketing area consisting of any portion of such milk;

(c) Who receives no fluid milk products from other dairy farmers or from any source other than a pool plant and whose receipts from pool plants are not in excess of 11,000 pounds per month;
(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 own farm production or pool plants; and

(e) Who furnishes to the Market Administrator for verification, subject to review by the Secretary, evidence that the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding receipts from pool plants) is the personal enterprise of and at the personal risk of such person and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of the same person.

§ 1138.11 [Reserved]

§ 1138.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk approved for fluid consumption by a duly constituted regulatory agency and whose milk is:

(1) Received at a pool plant or by a handler described in §1138.9(c); or

(2) Diverted pursuant to §1138.13 by a handler for such handler's account.

(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 §1138.8(e) and a handler that operates an exempt plant pursuant to §1138.8(f);

(3) Any person with respect to milk production 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 §1138.44(a)(8)(iii) and the corresponding step of §1138.44(b); or

(4) Any person with respect to milk production 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.

§ 1138.13 Producer milk.

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

(a) Received by the operator of a pool plant directly from such producer. Any milk 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, shall be regarded 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 §1138.9(c), is the handler for such milk.

(b) Received by a handler described in §1138.9(c).

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant, without limit in any month. Such milk shall be priced at the location of the plant to which diverted.

(d) Diverted by the operator of a pool plant or by a cooperative association from a pool plant to a nonpool plant (other than a producer-handler plant), subject to the following conditions:

(1) In each of the months of September through January, milk of a producer shall not be eligible for diversion from a pool plant under this section unless at least one day's production from such producer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a cooperative association in any month shall not exceed the total quantity of producer milk that the cooperative association caused to be delivered to and was physically received at pool plants during the month;

(3) The operator of a pool plant other than a cooperative association may divert any milk that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted in any month shall not exceed the total quantity of milk that
was physically received at pool plant(s) as producer milk for which the plant operator is the handler;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to so designate, milk diverted on the last day of the month, then the second-to-last-day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limits are accounted for;

(5) The quantity of milk diverted from a pool plant that would cause the pool plant to become a nonpool plant shall not be producer milk. Diversions in excess of the prescribed limit shall be prorated among the diverting handlers;

(6) If a dairy farmer loses producer status under this order (except as a result of temporary loss of approval from a duly constituted regulatory agency for the production of milk for fluid consumption), such dairy farmer's milk shall not be eligible for diversion until it has been physically received as producer milk at a pool plant; and

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

EFFECTIVE DATE NOTE: At 62 FR 50486, Sept. 26, 1997, in §1138.13, paragraphs (d) (1), (2), and (5) were suspended, effective Oct. 1, 1997, through Sept. 30, 1999.

§ 1138.14 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 §1138.40(b)(1) from any source other than producers, handlers described in §1138.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in §1138.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1138.40(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 §1138.40(b)(1) for which the handler fails to establish a disposition.

§ 1138.15 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.

§ 1138.16 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.

§ 1138.17 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).

§ 1138.18 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; (b) To have full authority in the sale of milk of its members; and (c) To be engaged in making collective sales or marketing or milk products for its members.

§§ 1138.19-1138.20 [Reserved]

§ 1138.21 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 §§1138.13, 1138.41 and 1138.53.

[58 FR 27902, May 11, 1993]

§ 1138.30 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 such handler's 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 §1138.9(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 §1138.40(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 §1138.9(b) and (c) shall report:

1. The quantities of all skim milk and butterfat contained in receipts of milk from producers; and
2. The utilization or disposition of all such receipts.

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

§ 1138.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in §1138.9(a), (b) and (c) who pays producers pursuant to §1138.73 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;
§ 1138.32 Other reports.

(a) On or before the 21st day of each month, each handler described in §1138.9(a) who is required pursuant to §1138.71(c) to make payments to the market administrator for milk received from producers and cooperative associations 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;
2. The total pounds of milk received from each producer;
3. The average butterfat content of such milk;
4. The amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk;
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 7th day after the end of each month, each handler described in §1138.9(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, its average butterfat content and the total pounds of milk diverted to each plant that is not a pool plant;
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 and butterfat received from a handler described in §1138.9(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 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 and to the market administrator 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 §1138.30 and §1138.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(e) Each handler other than a cooperative association who causes milk to be diverted shall, prior to such diversion, report to the market administrator his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.
§ 1138.40  Classes of utilization.

Except as provided in § 1138.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1138.30 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 §1138.15 and the fluid cream product definition pursuant to §1138.16; and

(7) In shrinkage assigned pursuant to §1138.41(a) to the receipts specified in §1138.41(a)(2) and in shrinkage specified in §1138.41 (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.

§ 1138.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1138.30, the market administrator shall determine the following:

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

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

(2) In other source milk not specified in paragraph (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 §1138.9(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 subparagraph 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 subparagraph 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;

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in shrinkage of
§ 1138.42 Classification of transfers and diversions.

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

1. The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to §1138.44(a)(12) and the corresponding step of §1138.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

2. If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to §1138.44(a)(7) or the corresponding step of §1138.44(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 §1138.44(a) (11) or (12) or the corresponding step of §1138.44(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 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 class 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

§ 1138.42 Classification of transfers and diversions.
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 §1138.40.

(c) Transfers to producer-handlers and transfers and diversions to exempt plants and 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 an exempt plant or and 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 receipt 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, an exempt 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 paragraph (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 §1138.30 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
§ 1138.43 General classification rules.

In determining the classification of producer milk pursuant to §1138.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1138.30 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 §1138.9 (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 §§1138.40, 1138.41 and 1138.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in §1138.9 (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 §1138.9 (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 §1138.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1138.44 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

§ 1138.43

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, then to Class II utilization, and then to Class III utilization at such nonpool plant;

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

(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 priorities at the second plant that are set forth in this subparagraph.

(e) Transfers by a handler described in §1138.9(c) to pool plants. Skim milk and butterfat transferred in the form of bulk milk by a handler described in §1138.9(c) to another handler's pool plant shall be classified pursuant to §1138.44 pro rata with producer milk received at the transferee-handler's plant and the value thereof at the class prices shall be included in the pool plant handler's value of milk pursuant to §1138.60.

§ 1138.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in §1138.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in §1138.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:
   (1) Subtract from the total pounds of skim milk in Class III the pounds of
       skim milk in shrinkage specified in §1138.41(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 classi-
           fied and priced as Class I milk and is not used as an offset for any other pay-
           ment 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 in Class II the pounds of
       skim milk in:
       (i) Bulk concentrated fluid milk products and 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 §1138.40(b) (excluding the quantity of such skim milk that was classified
           as Class III milk pursuant to §1138.40(c)(6)), but not in excess of the pounds of
           skim milk remaining in Class II.
       (4) Subtract from the remaining pounds of skim milk in Class II the pounds of
           skim milk in products specified in §1138.40(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 §1138.40(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 para-
       graph or comparable provisions of another Federal milk order in the imme-
       diately 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 §1138.40(b) (excluding the quantity of such skim milk that was classified
       as Class III milk pursuant to §1138.40(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 re-
           maining 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 prod-
               uct) and, if paragraph (a)(5) of this section applies, packaged inventory at the
               beginning of the month of products specified in §1138.40(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;
§ 1138.44

(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 and an exempt 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 §1138.12(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) and (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class 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 §1138.9(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 sequence beginning with Class III, the pounds of skim milk in fluid milk products and products specified in §1138.40(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 pro-rated 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 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;

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph 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 §1138.45(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 in Class II and Class III combined shall be increased
§ 1138.45 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 §1138.44(a)(12) and the corresponding step of §1138.44(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 §1138.43(d) and §1138.44 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 shipments were allocated by the market administrator of the other order on the basis of such report (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in such allocation arising from the verification of such report.

(d) On or before the 12th 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 whose milk is being
Agricultural Marketing Service, USDA

§ 1138.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to §1138.74 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 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 date 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.

§ 1138.52

(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 18979, Apr. 14, 1995]

§ 1138.53 [Reserved]

§ 1138.54 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 price for the preceding month.

[60 FR 6613, Feb. 2, 1995]

§ 1138.55 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.

Uniform Price

§ 1138.60 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 §1138.9(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 §1138.9(c) that were classified in each class pursuant to §§1138.43(a) and 1138.44(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 §1138.44(a)(14) and the corresponding step of §1138.44(b) by the respective class prices, as adjusted by the butterfat differential specified in §1138.74, 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 the rates set forth in paragraph (a) of this section.

[60 FR 18979, Apr. 14, 1995]
§ 1138.61 Computation of uniform price.

The market administrator shall compute for each month the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to §1138.60 for all handlers who filed the reports prescribed in §1138.30 for the month and who made the payments pursuant to §1138.71 for the preceding month;

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

(c) Add the aggregate of all plus location adjustments and subtract the aggregate of all plus location adjustments computed pursuant to §1138.75;
§ 1138.62

(d) Divide the resulting amount by the sum of the following for all handlers included in the computations;
   (1) The total hundredweight of producer milk; and
   (2) The total hundredweight for which a value is computed pursuant to §1138.60(f); and
   (e) Subtract not more than 5 cents. The result shall be the “uniform price” for milk received from producers.

§ 1138.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:
   (a) The fifth day after the end of each month the butterfat differential for such month; and
   (b) The 12th day after the end of each month the applicable uniform price pursuant to §1138.61 for such month.

§ 1138.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund” into which he shall deposit all payments made by handlers pursuant to §§1138.71, 1138.76 and 1138.77 and from which he shall make all payments pursuant to §§1138.72 and 1138.77, except that payments to a cooperative association pursuant to §1138.72 shall be offset by any payments due from such cooperative association pursuant to §1138.71 that have not been received by the market administrator.

§ 1138.71 Payments to the producer-settlement fund.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of the month the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:
   (1) The total value of milk of the handler for such month as determined pursuant to §1138.61.
   (2) The sum of:
      (i) The value at the uniform price, as adjusted pursuant to §1138.75, of such handler’s receipts of producer milk and milk received from handlers pursuant to §1138.9(c). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to §1138.73(d), exclusive of differential butterfat values; and
      (ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to §1138.60(f).
(b) Subject to paragraph (d) of this section, each person who operated a plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator on or before the 25th day after the end of each month 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 (b)(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.
(c) Any handler who the market administrator determines was more than 3 days late in making any payment obligation under part 1138 shall pay to the market administrator the amount the handler would have otherwise been required to pay to producers and cooperative associations pursuant to §1138.73. Payment shall be made to the market administrator on or before the day prior to the dates specified in §1138.73 and such payments shall continue until the handler has met all payment obligations for 3 consecutive months.
(d) The following conditions shall apply with respect to payments prescribed in paragraphs (a), (b) and (c) of this section:
Agricultural Marketing Service, USDA § 1138.73

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator. (2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payment shall not be due until the next day on which the market administrator’s office is open for public business.

(3) 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 § 1138.73 (b) and (d).

§ 1138.72 Payments from the producer-settlement fund.

(a) On or before the 15th day after the end of each month the market administrator shall pay to each handler except one making payment pursuant to § 1138.71(c) the amount, if any, by which the amount computed pursuant to § 1138.71(a)(2) exceeds the amount computed pursuant to § 1138.71(a)(1).

(b) If the market administrator received payment from a handler(s) pursuant to § 1138.71(c), he shall distribute such amount plus any amount due such handler(s) pursuant to paragraph (a) of this section to producers and to cooperative associations in the same manner as provided in § 1138.73. In the event the handler fails to transmit the total amount due, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

(c) If at any time the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section, the market administrator shall reduce uniformly such payments as soon as the appropriate funds are available.

§ 1138.73 Payments to producers and to cooperative associations.

(a) Except as provided in § 1138.71(c) and paragraphs (b), (d) and (f) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month each producer who did not discontinue shipping milk to such handler before the 23rd day of the month, an amount equal to not less than the previous month’s uniform price (adjusted for location of such plant) multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer, provided that the deductions do not exceed the value of the milk received during the partial payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(2) On or before the 17th day of the following month, an amount equal to not less than the appropriate uniform price adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1138.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer, provided that the deductions do not exceed the value of the milk received during the final payment period and the handler has paid such deductions to assignees by the date payment is otherwise due to the producer: Provided, That if by such date such handler had not received full payment from the market administrator pursuant to § 1138.72(a) for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producer shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Except as provided in paragraph (f) of this section, in the case of a cooperative association which the market
§ 1138.73

administrator determines is authorized by those producers for whom it markets milk to collect payment for their milk and which has so requested any handler in writing, such handler other than one specified in §1138.71(c) shall on or before the 2nd day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from those producers for whom it markets milk as determined by the market administrator an amount equal to not less than the amount due such producers as determined pursuant to paragraph (a) of this section;

(c) In making payments to producers pursuant to paragraph (a) of this section, or to a cooperative association pursuant to paragraph (b) of this section, each handler shall furnish such producer or cooperative association with respect to each of the producers for whom it markets milk and from whom the handler received milk during the month, a written statement showing:

(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 new amount of payment to the producer.

(d) Except as provided in §1138.71(c) and paragraph (f) of this section, each handler pursuant to §1138.9(a) who receives milk from a cooperative association as a handler pursuant to §1138.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the 2nd day prior to the last day of the month for milk received during the first 15 days of the month, not less than the applicable partial payment rate specified for such month in paragraph (a)(1) of this section; and

(2) On or before the 15th day of the following month for milk received during the month, not less than the uniform price as adjusted pursuant to §1138.74 and §1138.75, less any payments made pursuant to paragraph (a)(1) of this section.

(e) Except as provided in §1138.71(c), each handler who received bulk fluid milk or bulk fluid cream products from a pool plant operated by a cooperative association shall pay the following amounts for such products to the cooperative association:

(1) On or before the 2nd day prior to the last day of each month, not less than the applicable partial payment rate specified for such month in paragraph (a)(1) of this section. If the handler so elects, such price may be adjusted by the butterfat differential specified in §1138.74 for the preceding month.

(2) On or before the 15th day after the end of each month, an amount determined by multiplying such receipts during the month that was classified in each class pursuant to §1138.42(a) by the applicable class price, as adjusted by the butterfat differential specified in §1138.74, less any payments made by the handler pursuant to paragraph (e)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant including the applicable administrative assessment rate.

(f) If the application of §1138.71(d)(2) results in a delay in payment by the market administrator to handlers, the payments prescribed in paragraphs (a), (b) and (d) of this section may be delayed by the same number of days.

(g) If the market administrator does not receive the full payment required of a handler pursuant to §1138.71(c), he shall reduce uniformly per hundredweight the payments due producers and cooperative associations 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.

§ 1138.74 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 §1138.51 (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 18980, Apr. 14, 1995]

§ 1138.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments required pursuant to §1138.73, the uniform price computed pursuant to §1138.61 shall be adjusted by the amounts set forth in §1138.53 according to the location of the plant where the milk being priced was received.

(b) For the purpose of computations pursuant to §§1138.71 and 1138.72, the uniform price shall be adjusted by the amount set forth in §1138.53 that is applicable at the location of the non-pool plant from which the milk was received.

§ 1138.76 Payments by a 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 §1138.30(b) and §1138.31(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 nonfluid 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 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 uniform price, both prices to be applicable at the location of the partially regulated distributing plant; 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
§ 1138.76

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 §1138.60 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)(3)(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 §1138.60 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 §1138.60 for such handler shall include, in lieu of the value of other source milk specified in §1138.60(f) less the value of such other source milk specified in §1138.71(a)(2)(ii), a value of milk determined pursuant to §1138.60 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 §1138.7(b) subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§1138.30(b) and 1138.31(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 §1138.60 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 §1138.74, 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 §1138.74, 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 §1138.43(d). Payments may be made to the producer-settlement fund of theorder 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.

§1138.77 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 results 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 date for making payment set forth in the provision under which the 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. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required pursuant to §1138.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§1138.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§1138.71, 1138.73, 1138.76, 1138.77, 1138.85, or 1138.86 shall be increased 1 percent beginning on the first day after the due date, and on the same day of each subsequent month until such obligation is paid, 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 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 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.

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

§1138.85 Assessment for order administration.

As each handler's pro rata share of the expense of administration of the order, each handler shall pay to the
market administrator on or before the 15th day after the end of the month 5 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 §1138.9(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 §1138.9(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 §1138.43(d) and other source milk allocated to Class I pursuant to §1138.44 (a)(7) and (a)(11) and the corresponding steps of §1138.44(b), except such other source milk that is excluded from the computations pursuant to §1138.60(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 §1138.76(a)(2).


§ 1138.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to §1138.73, shall deduct 6 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. Each handler making such deductions shall pay the deductions to the market administrator on or before the 15th day after the end of the month. The monies shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide producers with market information. The services shall be performed by the market administrator or an agent engaged by and responsible to the market administrator.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producer as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each month, pay such deduction to the cooperative association rendering such services accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.
Agricultural Marketing Service, USDA § 1139.6

§ 1139.6 Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1139.1 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

§ 1139.2 Great Basin marketing area.

Great Basin marketing area (hereinafter called the “marketing area”) means all the territory, including all municipalities and government reservations and installations within, or partially within, the counties listed below:

Utah Counties: All
Nevada Counties: Clark, Elko, Lincoln and White Pine
Wyoming Counties: Lincoln and Uinta
Idaho Counties: Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Jefferson, Madison, Oneida and Power

§ 1139.3 Route disposition.

Route disposition means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery to a distribution point by a vendor, from a plant store, or through a vending machine). The term “route disposition” does not include a delivery to a plant defined in §1139.7 (a) or (b).

§ 1139.4 [Reserved]

§ 1139.5 Distributing plant.

Distributing plant means a plant in which approved fluid milk products or filled milk are processed or packaged, and from which fluid milk products are disposed of on routes in the marketing area during the month.

§ 1139.6 Supply plant.

Supply plant means a plant from which approved fluid milk products or
§ 1139.7 Pool plant.

Pool plant means any plant, except a plant defined in § 1139.8, which meets the standards of one or more of the following paragraphs:

(a) A distributing plant from which not less than:
   (1) 50 percent in any month of September through February, 45 percent of any month of March and April, and 40 percent in any month of May through August of the approved fluid milk products, except filled milk, received at such plant (excluding milk received at such plant from other order plants or dairy farms which is classified in Class II or Class III under this order and which is subject to the pricing and pooling provisions of any other order issued pursuant to the Act), are disposed of as route disposition; and
   (2) 15 percent of such receipts are disposed of as route disposition in the marketing area during the month.

(b) If a handler operates more than one distributing plant, the combined receipts and fluid milk product dispositions of such plants may be used as the basis for qualifying all of the plants pursuant to paragraph (a)(1) of this section, provided the handler so notifies the market administrator in writing before the last day of the month for which such consolidation is desired.

(c) A supply plant from which during the month not less than 50 percent of its approved milk receipts from dairy farms is transferred to a pool distributing plant pursuant to paragraphs (a) or (b) of this section as fluid milk products. Any supply plant that has qualified as a pool plant in each of the immediately preceding months of August through February shall be a pool plant in each of the following months of March through July unless written request for nonpool status for any of such months is filed by the plant operator with the market administrator prior to the first day of the month the request is to be effective. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it fulfills the transferring requirement of this paragraph for such month.

(d) Any manufacturing plant, or other plant not defined in paragraphs (a), (b) or (c) of this section, located within the marketing area at which milk is received from producers and which is owned and operated by a cooperative association or federation which delivers at least 35 percent of its producer milk (including that in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the amount in producer milk actually received at such plant) to pool distributing plants during the current month or the 12-month period ending with the current month, if the cooperative association or federation requests pool plant status for such plant in writing before the first day of any month for which such status is to be effective.

(e) The pool plant performance standards in paragraphs (a)(1), (b), (c) or (d) of this section may be reduced or increased by 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

§ 1139.8 Nonpool plant.

Nonpool plant means any plant defined in this section, and any other milk receiving, manufacturing, or
processing plant, other than a pool plant:

(a) Producer-handler plant means a plant operated by a producer-handler as defined in this, or any other order issued pursuant to the Act.

(b) Other order plant means a plant as specified under paragraph (b)(1), (2) or (3) of this section that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act:

(1) A distributing plant qualified pursuant to §1139.7(a) that also meets the pool plant requirements of another Federal order, and from which the Secretary determines a greater quantity of Class I milk was disposed of as route disposition during the month in such other Federal order marketing area than was disposed of as route disposition in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area;

(2) A supply plant qualified pursuant to §1139.7(c) that also meets the pool plant requirements of another Federal order and from which a larger quantity of fluid milk products is transferred during the month to plants regulated under such other order than is transferred to distributing plants under this order, except that transfers to other order plants for Class III dispositions during the months of March through July shall be disregarded for purposes of this computation if the operator of the supply plant elects to retain pool status under this order; or

(3) A plant qualified pursuant to §1139.7(a), (b), or (c) which the Secretary determines, despite the provisions of this order, to be fully regulated under another Federal order.

(c) Exempt plant means a distributing plant:

(1) Having less than an average of one thousand pounds per day of route dispositions in the marketing area during the month;

(2) Operated by a governmental agency, or a duly accredited college or university, disposing of fluid milk products only through the operation of its own food service, and having no route dispositions in commercial channels; or

(3) From which the total route disposition is to individuals or institutions for charitable purposes without remuneration from such individuals or institutions.

(d) Partially regulated distributing plant means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) Unregulated supply plant means a supply plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

§ 1139.9 Handler.

Handler means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to producer milk diverted for the account of such association pursuant to §1139.13;

(c) Any cooperative association or federation with respect to milk that is received at the farm 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 or federation;

(d) Any person who operates a plant defined in §1139.8 (a) through (e).

§ 1139.10 Producer-handler.

Producer-handler means any person who meets all of the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by such person in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is such person’s sole risk, and under such person’s complete and exclusive management and control;

(2) Each such farm is owned or operated by and at the sole risk of such person, and under such person’s complete
§ 1139.11 Approved milk.

Approved milk means any milk or fluid milk product that is approved for fluid consumption by a duly constituted regulatory authority.

§ 1139.12 Producer.

(a) Except as provided in paragraph (b) hereof, producer means any person:
   (1) Who produces approved milk; and
   (2) Whose milk is received at a pool plant or diverted to a nonpool plant within the limits set forth in §1139.13.

(b) “Producer” shall not include:
   (1) A producer-handler as defined under any order (including this order) issued pursuant to the Act;
   (2) Any person with respect to milk 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 §1139.44(a)(8)(iii) and the corresponding step of §1139.44(b);
   (3) Any person with respect to milk diverted to another order plant if any part of such milk was allocated to Class I, or the other order defines such person as a producer; or
   (4) Any person whose milk is received at a nonpool plant (except an other order plant) other than as a diversion from a pool plant after the first delivery of milk from such dairy farmer in any month was received as approved milk at a pool plant, or was otherwise qualified as producer milk.

§ 1139.13 Producer milk.

Producer milk means the skim milk and butterfat in milk of a producer that is:
   (a) Received or diverted by a handler defined in §1139.9(a) under one of the following conditions:
   (1) Received at such handler’s pool plant directly from the farm of such producer;
(2) Received at such handler’s pool plant from a handler defined in §1139.9(c); or
(3) Diverted to a nonpool plant subject to the conditions set forth in paragraph (d) of this section;
(b) Diverted by a handler defined in §1139.9(b) to a nonpool plant subject to the conditions set forth in paragraph (d) of this section;
(c) Received by a handler defined in §1139.9(c) from the producer’s farm in excess of the producer’s milk that is received at pool plants pursuant to paragraph (a)(2) of this section. Such producer milk shall be deemed to have been received by the handler at the location of the pool plant to which the milk was delivered;
(d) The following conditions shall apply to producer milk diverted to a nonpool plant:
(1) The weighted average differential applicable to such milk shall be adjusted based on the location of the plant to which delivered, but it shall not be adjusted to a lower figure than is applicable at the location determined pursuant to §1139.52 (a) or (b) based on the location of the county seat or the county courthouse of the county in which such producer’s farm is located.
(2) A cooperative association or federation may divert for its account the milk of any of its producers from whom at least one day’s milk production is received during the month at a pool plant. The total quantity of milk diverted by a cooperative association during any month may not exceed 75 percent of the producer milk that the cooperative association causes to be delivered to pool plants or diverted pursuant to this section if each association has located
(3) The operator of a pool plant (other than a cooperative association or federation) may divert for its account the milk of any producer (other than milk diverted pursuant to paragraph (d)(2) of this section) from whom at least one day’s milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 70 percent in the months of April through August, and 60 percent in other months of the producer milk received at or diverted from such pool plant for which the operator of such plant is the handler during the month. The milk for which the operator of such plant is the handler for the month may not duplicate milk diverted pursuant to paragraph (d)(2) of this section;
(4) The diversion limits of this paragraph may be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the needs for revision either at the Director’s own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments;
(5) Diversions in excess of the percentages in paragraphs (d)(2) and (d)(3) of this section shall not be producer milk, and the diverting handler shall designate the milk which is not producer milk. If the handler fails to make such designation, no milk diverted by the handler shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by the producer during the month as producer milk will not be subject to §1139.12(b)(4); and
(6) Milk of a dairy farmer who was not a producer in the preceding month shall not be eligible for diversion until after one day’s milk production from
§ 1139.14 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 §1139.40(b)(1) from any source other than producers, handlers defined in §1139.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in §1139.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1139.40(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 §1139.40(b)(1)) for which the handler fails to establish a disposition.

§ 1139.15 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, 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.

§ 1139.16 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.

§ 1139.17 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 milk fat, 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).

§ 1139.18 Cooperative association.

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

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the “Capper-Volstead Act”, and any amendments thereto;

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

(c) To have its entire activities under the control of its members.
§ 1139.19 [Reserved]

§ 1139.20 Federation.

Federation means a business organization which is incorporated under state law that is owned and operated by two or more cooperative associations as defined in §1139.18.

§ 1139.21 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 §§1139.12, 1139.13, 1139.41 and 1139.52.

[58 FR 27905, May 11, 1993]

§ 1139.30 Reports of receipts and utilization.

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler who operates one or more pool plants shall report for each such plant the quantities of, and the pounds of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler, and the pounds of milk protein contained in such receipts;

(2) Receipts of milk from handlers defined in §1139.9(c) and the pounds of milk protein contained in such receipts;

(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 §1139.40(b)(1); and

(6) The utilization, disposition or month-end inventories 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 under 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.

(c) Each handler as defined in §1139.9(b) and (c) shall report:

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

(2) The utilization or disposition of all skim milk, butterfat and milk protein in such receipts.

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

§ 1139.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler who pays producers pursuant to §1139.74 shall submit a producer payroll to the market administrator which shall include the following information for each producer from whom milk was received during such month:

(1) The name and address of the producer;

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content of the milk, and the number of days on which milk was received from each producer;

(3) The minimum payment required by the order, and the amount paid if more than the minimum required;

(4) The amount and nature of any deductions from such payment;

(5) The net amount of payment to the producer; and
§ 1139.32 Other reports.

In addition to the reports required pursuant to §§1139.30 and 1139.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under this order.

CLASSIFICATION OF MILK

§ 1139.40 Classes of utilization.

Except as provided in §1139.42, all skim milk and butterfat required to be reported by a handler pursuant to §1139.30 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;

(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 §1139.15 and the fluid cream product definition pursuant to §1139.16; and

(7) In shrinkage assigned pursuant to §1139.41(a) to the receipts specified in §1139.41(a)(2) and in shrinkage specified in §1139.41 (b) and (c).

[58 FR 27905, May 11, 1993]

§1139.41 Shrinkage.
For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1139.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim and butterfat, respectively, at each pool plant to the respective qualities 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, or received from handlers defined in §1139.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from handlers defined in §1139.9(c), except 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 protein and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted 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 protein and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

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

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool 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
§ 1139.42 Classification of transfers and diversions.

1. Transfers to pool plants. Skim milk or butterfat transferred 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 shall be subject to the following conditions:

(a) 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 after the computation pursuant to §1139.44(a)(12) and the corresponding step of §1139.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(b) If the transferor-handler received during the month other source milk to be allocated pursuant to §1139.44(a)(11) or (12) or the corresponding steps of §1139.44(b), the skim milk or butterfat so transferred, 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.

(c) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of 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 or diverted 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 the market administrator, 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 adjustments 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 §1139.40.

(c) Transfers and diversions to producer-handlers and to exempt plants. Skim milk or butterfat in the following forms that is transferred or diverted to a producer-handler under this or any other Federal order or to an exempt distributing 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 an exempt distributing 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 transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(a) If the transferor-handler or diversor-handler so requests and the conditions described in paragraphs (d)(2)(i) and (b) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignments of the nonpool plant’s utilization to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section;

(b) The transferor-handler or diversor-handler claims such classification in his report of receipts and utilization filed pursuant to §1139.30 for the month within which such transaction occurred; and

(c) 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:

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

(2) 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:
§ 1139.43  General accounting and classification rules.

(a) Each month the market administrator shall:

(1) Correct for mathematical and other obvious errors all reports filed pursuant to §1139.30; and

(2) Compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to §1139.9 (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 §§1139.40, 1139.41, and 1139.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in §1139.9 (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.

(c) The classification of producer milk for which a cooperative association is the handler pursuant to §1139.9 (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 §1139.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1139.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1139.44  Classification of producer milk.

For each month the market administrator shall determine for each handler defined in §1139.9 (a) for each pool plant...
of the handler separately the classification of producer milk and milk received from a handler described in §1139.4(c) by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in §1139.41(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 other plants, but not in excess of the pounds remaining in Class II:

   (i) Bulk concentrated fluid milk products and 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 §1139.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1139.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II.

(4) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in §1139.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds 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 §1139.40(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 §1139.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §1139.40(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 §1139.40(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 approved milk status 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, or from an exempt distributing 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 milk from a dairy farmer pursuant to §1139.12(b)(4);

(b) 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 (a)(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), (a)(7)(v), and (a)(8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii)(a) through (c) 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 §1139.9(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 §1139.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(i), (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 paragraph (a)(11)(i) 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), (a)(7)(v), and (a)(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 any class pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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 (a)(8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii) and (iii) 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 §1139.45(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; and

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to either paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(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 §1139.42(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 described in §1139.9(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
§ 1139.45

(c) The quantity of producer milk and milk received from a handler described in §1139.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to (a)(14) of this section and the corresponding step of paragraph (b) of this section.


§ 1139.45 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 §1139.44(a)(12) and the corresponding step of §1139.44(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 §1139.43(d) and §1139.44 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) Report to each cooperative association that so requests, on or before the 12th day after the end of each month, the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.


CLASS AND COMPONENT PRICES

§ 1139.50 Class prices and component prices.

Subject to the provisions of §1139.51 and §1139.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $1.90.

(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) The skim milk price per hundredweight shall be the basic formula price for the month less an amount computed by multiplying the butterfat differential computed pursuant to paragraph (e)(1) of this section by 35.

(e) Butterfat price. The butterfat price per pound shall be the total of paragraphs (e)(2) and (e)(3) of this section computed as follows:

(1) Compute a butterfat differential rounded to the nearest one-tenth cent, by multiplying the current month’s butter price by 0.138, and subtract from the result an amount determined by multiplying 0.0028 by the preceding month’s average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the “base month” series, adjusted pursuant to §1139.51 (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.
§ 1139.51 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 butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1139.50(e)(1) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

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

1. The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:
   
   i. Multiply the Grade AA butter price by 4.27;
   
   ii. Multiply the 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. 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.

4. 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
§ 1139.52 Plant location adjustments for handlers.

(a) The Class I price shall be adjusted for plants located in the zones set forth below as follows:

(1) Zone 1 $0 adjustments.

Utah Counties
Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Juab, Millard, Morgan, Rich, Salt Lake, Sanpete, Sevier, Summit, Tooele, Uinta, Utah, Wasatch and Weber

Nevada Counties
Elko and White Pine

(2) Zone 2 $0.25 adjustment.

Idaho Counties
Bannock, Bear Lake, Caribou, Franklin, Oneida and Power

(3) Zone 3 $0.30 adjustment.

Idaho Counties
Bingham, Bonneville, Jefferson and Madison

Wyoming Counties
Lincoln and Uinta

Nevada Counties
Clark and Lincoln

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price and the Class II price for the following month.

(b) The 5th day after the end of each month, the Class III price, and the prices for skim milk and butterfat computed pursuant to §1139.50 (d) and (e) respectively, and the handler protein price computed pursuant to §1139.50(f) for such month.
§ 1139.54 Equivalent price.

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

§ 1139.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in §1139.9(a) with respect to each of such handler’s pool plants, and for each handler defined in §1139.9(b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to §1139.44 multiplied by the difference between the Class I price (adjusted pursuant to §1139.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to §1139.44 multiplied by the difference between the Class II price and Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to §1139.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to §1139.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler’s receipts of producer skim milk during the month, as follows:

(1) The value of the product pounds, skim milk, and butterfat subtracted from Class I pursuant to §1139.44(a)(14) and the corresponding step of §1139.44(b) applicable at the location of the pool plant at the current month’s Class I-Class III price difference and the current month’s skim milk and butterfat prices, less the Class III value of the milk at the previous month’s protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1139.44(a)(14) and the corresponding step of §1139.44(b) at the current month’s Class II-Class III price difference and the current month’s protein and butterfat prices, less the Class III value of the milk at the previous month’s protein and butterfat prices;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to §1139.44(a)(9) and the corresponding step of §1139.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to §1139.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler’s receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk, and butterfat subtracted from Class I pursuant to §1139.44(a)(9) and the corresponding step of §1139.44(b) applicable at the location of the pool plant at the current month’s Class I-Class III price difference and the current month’s skim milk and butterfat prices, less the Class III value of the milk at the previous month’s protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to §1139.44(a)(9) and the corresponding step of §1139.44(b) at the current month’s Class II-Class III price difference and the current month’s protein and butterfat prices, less the Class III value of the milk at the previous month’s protein and butterfat prices;

(e) The value of the product pounds, skim milk, and butterfat assigned to Class I pursuant to §1139.44(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant
§ 1139.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to §1139.60, paragraphs (a) through (g) and (j) and (k), for all handlers who made reports pursuant to §1139.30 and who made payments pursuant to §1139.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to §1136.75;

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

(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;
(2) The total hundredweight for which a value is computed pursuant to § 1139.60(g).

(e) Subtract not more than 5 cents per hundredweight. The result is the “Weighted Average Differential Price”.

§ 1139.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1139.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1139.30 and who made payments pursuant to § 1139.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the “Producer protein price.”

§ 1139.63 Uniform price and handlers’ obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1139.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1139.73 and 1139.74.

§ 1139.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to § 1139.61, the producer protein price computed pursuant to § 1139.62, and the uniform price computed pursuant to § 1139.63(a).
the marketing area which was allocated to Class I at such plant; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(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 f.o.b. the other order plant and the Class III price.

(c) The following conditions shall apply with respect to the payment prescribed in paragraph (a) of this section:

(1) Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market administrator’s office, or deposited into the market administrator’s bank account; and

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

§ 1139.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1139.71(a)(2) exceeds the amount computed pursuant to §1139.71(a)(1). If the date by which such payments are to be made falls on a Saturday or Sunday or 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. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available.

§ 1139.73 Value of producer milk.

(a) The partial payment for milk received from each producer during the first 15 days of the month shall be determined by a rate computed by multiplying the Class III price for the preceding month by 1.2, but not to exceed the current month’s Class I price.

(b) The total value of milk received from producers during any month shall be computed as follows:

(1) The weighted average differential price computed pursuant to §1139.61 subject to the appropriate plant location adjustment times the total hundredweight of milk received from the producer; plus

(2) The total milk protein contained in the producer milk received from the producer multiplied by the producer protein price computed pursuant to §1139.62; plus

(3) The total butterfat contained in the producer milk received from the producer times the butterfat price computed pursuant to §1139.50(d).

§ 1139.74 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (c), (d) or (e) of this section, each handler shall, on or before the last day of each month, make a partial payment to each producer from whom milk was received during the first 15 days of the month, and who had shipped milk to such handler through the 17th day of the month, at the rate set forth in §1139.73(a), less proper deductions authorized in writing by such producer;

(b) Except as provided in paragraph (c), (d) or (e) of this section, each handler shall, on or before the 17th day of the following month, make a final payment to each producer for milk received from such producer during the month at no less than the total amount computed in accordance with the provisions set forth in §1139.73(b) with respect to such milk:

(1) Less any deductions for marketing services pursuant to §1139.86;

(2) Less payment made pursuant to paragraph (a) of this section for such month;

(3) Less proper deductions authorized in writing by such producer;

(4) Plus or minus adjustments for errors made in previous payments to such producer and proper deductions authorized in writing by such producer; and
(5) If by the date specified such handler has not received full payment from the market administrator pursuant to §1139.72 for such month, the handler may reduce his payments to producers pro rata by not more than the amount of such underpayment. Payments to producers shall be completed thereafter no later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(c) Payment shall be made in the manner set forth in subparagraphs (1) and (2) of this section to a cooperative association for milk received from such association pursuant to §1139.13(a)(2) or from its member producers pursuant to §1139.13(a)(1) if the cooperative association is authorized by its members to collect payment for their milk and the cooperative association notifies the handler and the market administrator in writing of its desire to make such collection:

(1) On or before the 3rd day prior the last day of the month for milk received from the members of such cooperative association at the rates set forth in §1139.73(a); and

(2) On or before the 16th day of the following month such handler shall pay to such cooperative association the sum of the payments computed in accordance with the procedures set forth in §1139.73(b) with respect to deliveries by producer-members of such cooperative association to handler(s) from whom payment has been requested, less the amounts of payments made to such cooperative association pursuant to paragraph (c)(1) of this section, and less the amount retained by handlers as authorized deductions.

(d) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (c) of this section shall report to such cooperative association and to the market administrator on or before the 7th day of the following month as follows:

(1) The total pounds of milk received during the month and, if requested, the pounds received from each member-producer;

(2) The amount of payment made pursuant to paragraph (c)(1) of this section and the quantity of milk to which such payment applied; and

(3) The amount or rate and nature of any proper deductions authorized to be made from such payments.

(e) Each handler shall pay a cooperative association for milk received from a pool plant operated by such association on the basis of the classification thereof assigned by the market administrator as follows:

(1) On or before the 3rd day prior to the last day of the month for milk received during the first 15 days of the month at the Class III price (or basic formula price) for the previous month; and

(2) On or before the 16th day after the end of the month for milk received during the month at the following rates:

(i) The butterfat price per pound for the butterfat contained in such milk; plus

(ii) The milk protein price per pound for the pounds of protein contained in Class II and Class III use and the skim milk price per hundredweight for Class I use of such milk; plus

(iii) The difference between the Class I price adjusted pursuant to §1139.52 and the Class III price multiplied by the hundredweight of such milk classified as Class I; plus

(iv) The difference between the Class II and Class III prices multiplied by the hundredweight of such milk classified as Class II; plus

(v) The amount assessed by the market administrator with respect to such milk pursuant to §1139.85; less

(vi) Payments made pursuant to paragraph (e)(1) of this section.

§ 1139.75 Location and zone differentials for producer and nonpool milk.

(a) In making payments computed pursuant to §1139.72 and in crediting handlers for payment due pursuant to §1139.71(a)(2)(i) the market administrator shall adjust the weighted average differential price by an amount equal to the plant location adjustment specified in §1139.52 applicable at the plant where the milk was first received from producers, except that the
§ 1139.76 Payments by a handler operating a partially regulated distributing plant.

(a) Each handler who operates a partially regulated distributing plant that is not subject to a milk classification and pricing program that provides for marketwide pooling of producer returns and is enforced under the authority of a state government 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)(1) of this section, or, if the handler submits pursuant to §§1139.30(b) and 1139.31(b) the information necessary for making the appropriate computations, and so elects, the amount computed pursuant to paragraph (a)(2) of this section:

(1) An amount computed as follows:
   (i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;
   (ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;
      (a) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and
      (b) 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;
   (iii) 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;
   (iv) Multiply the remaining pounds by the amount the Class I-Class III price difference exceeds the weighted average differential computed pursuant to §1139.61 as adjusted by the appropriate location or zone differential (but in no case less than 0);
   (v) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(1)(iii) 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.
   (2) An amount computed as follows:
      (i) Determine the value that would have been computed pursuant to §1139.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:
         (a) 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 products were classified at the fully regulated plant.

(b) 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 (a)(2)(i)(a) 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 §1139.60(e) 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 (or weighted average 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.

(c) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to §1139.60 for such handler shall include in lieu of the value of other source milk specified in §1139.60(g) less the value of such other source milk specified in §1139.71(a)(2)(i)(a) a value of milk determined pursuant to §1139.60 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 §1139.7(c) subject to the following conditions:

(1) The operator of the partially regulated distributing plant submits with reports filed for the month pursuant to §§1139.30(b) and 1139.31(b) similar reports for each nonpool supply plant;

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

(3) The value of milk determined pursuant to §1139.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(ii) From the partially regulated distributing plant’s value of milk computed pursuant to paragraph (a)(2)(i) of this section, subtract:

(a) The gross payment made by the operator of such partially regulated distributing plant, less the value of the butterfat at the butterfat price specified in §1139.50(d), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(b) If paragraph (a)(2)(i)(c) of this section applies, the gross payments by the operator of such nonpool supply plant, less the value of the butterfat at the butterfat price specified in §1139.50(d), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(c) 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 (a)(2)(i)(c) of this section applies.

(b) Each handler who operates a partially regulated distributing plant which is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of the state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund an amount computed as follows:

(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 under another Federal milk order;
   (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 plants 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) Determine the value of the remaining pounds according to the difference between the appropriate Class prices applicable at the location of the partially regulated distributing plant (but not to be less than zero) as announced by the State order and as determined pursuant to §1139.50.

(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 §1139.43(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.

§1139.77 Adjustment of accounts.
Whenever audit by the market administrator of any handler’s reports, books, records, or accounts or other verification discloses errors resulting in money due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§1139.78 Charges on overdue accounts.
(a) Any unpaid balance due from a handler pursuant to §§1139.71, 1139.76, 1139.77, 1139.85 and 1139.86, or under this section shall be increased 1% per month on the next day following the due date of such unpaid obligation and any balance remaining unpaid shall likewise be increased on the first day of each month thereafter until paid.
(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.

§1139.85 Assessment for order administration.
A pro rata share of the expense of administration of the order shall be paid to the market administrator by each handler on or before the 14th day after the end of the month at the rate of 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:
(a) Producer milk (including milk received from a handler defined in §1139.9(c), but excluding in the case of a cooperative association which is a handler pursuant to §1139.9(c), milk which was received at the pool plant of another handler) and such handler’s own production;
(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1139.43(d) and other source milk allocated to Class I pursuant to §1139.44(a)(7) and (a)(11) and the corresponding steps of §1139.44(b), except such other source milk that is excluded from the computations pursuant to §1139.60 (e) and (g); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the quantity subtracted pursuant to §1139.76(a)(1)(ii).

§ 1139.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk pursuant to §1139.74 (other than milk of the handler’s own production) shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 14th day after the end of the month.

(b) The monies acquired by the market administrator pursuant to paragraph (a) of this section shall be expended by the market administrator to provide market information, and to verify or establish the weights, samples and tests of milk of any producer for whom a cooperative association is not performing the same services on a comparable basis as determined by the Secretary.

PART 1150—DAIRY PROMOTION PROGRAM

Subpart—Dairy Promotion and Research Order

DEFINITIONS

Sec. 1150.101 Act.
1150.102 Department.
1150.103 Secretary.
1150.104 Board.
1150.105 Person.
1150.106 United States.
1150.107 Fiscal period.
1150.108 Eligible organization.
1150.109 Qualified State or regional program.
1150.110 Producer.
1150.111 Milk.
1150.112 Dairy products.
1150.113 Fluid milk products.
1150.114 Promotion.
1150.115 Research.
1150.116 Nutrition education.
1150.117 Plans and projects.
1150.118 Marketing.
1150.119 Cooperative association.

NATIONAL DAIRY PROMOTION AND RESEARCH BOARD

1150.131 Establishment and membership.
1150.132 Term of office.
1150.133 Nominations.
1150.134 Nominee’s agreement to serve.
1150.135 Appointment.
1150.136 Vacancies.
1150.137 Procedure.
1150.138 Compensation and reimbursement.
1150.139 Powers of the Board.
1150.140 Duties of the Board.

EXPENSES AND ASSESSMENTS

1150.151 Expenses.
1150.152 Assessments.
1150.153 Qualified State or regional dairy product promotion, research or nutrition education programs.
1150.154 Influencing governmental action.
1150.155 Adjustment of accounts.
1150.156 Charges and penalties.

PROMOTION, RESEARCH AND NUTRITION EDUCATION

1150.161 Promotion, research and nutrition education.

REPORTS, BOOKS AND RECORDS

1150.171 Reports.
1150.172 Books and records.
1150.173 Confidential treatment.

MISCELLANEOUS

1150.181 Proceedings after termination.
1150.182 Effect of termination or amendment.
1150.183 Personal liability.
1150.184 Patents, copyrights, inventions and publications.
1150.185 Amendments.
1150.186 Separability.
1150.187 Paperwork Reduction Act assigned number.

Subpart—Procedure for Certification of Milk Producer Organizations

1150.270 General.
1150.271 Definitions.
1150.272 Responsibility for administration of regulations.
1150.273 Application for certification.
§ 1150.101 Act.

§ 1150.102 Department.
Department means the United States Department of Agriculture.

§ 1150.103 Secretary.
Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has herebefore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary’s stead.

§ 1150.104 Board.
Board means the National Dairy Promotion and Research Board established pursuant to §1150.131.

§ 1150.105 Person.
Person means any individual, group of individuals, partnership, corporation, association, cooperative or other entity.

§ 1150.106 United States.
United States means the 48 contiguous States in the continental United States.

§ 1150.107 Fiscal period.
Fiscal period means the calendar year or such other annual period as the Board may determine.

§ 1150.108 Eligible organization.
Eligible organization means any organization which has been certified by the Secretary pursuant to §§1150.270 through 1150.278 of this part.

§ 1150.109 Qualified State or regional program.
Qualified State or regional program means any State or regional dairy product promotion, research or nutrition education program which is certified as a qualified program pursuant to §1150.153.

§ 1150.110 Producer.
Producer means any person engaged in the production of milk for commercial use.

§ 1150.111 Milk.
Milk means any class of cow’s milk produced in the United States.

§ 1150.112 Dairy products.
Dairy products means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products.

§ 1150.113 Fluid milk products.
Fluid milk products means those milk products normally consumed in liquid form as a beverage.

§ 1150.114 Promotion.
Promotion means actions such as paid advertising, sales promotion, and publicity to advance the image and sales of, and demand for, dairy products generally.

§ 1150.115 Research.
Research means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for dairy products.

§ 1150.116 Nutrition education.
Nutrition education means those activities intended to broaden the understanding of sound nutritional principles, including the role of milk and dairy products in a balanced diet.

§ 1150.117 Plans and projects.
Plans and projects means promotion, research and nutrition education plans,
§ 1150.118 Marketing.

Marketing means the sale or other disposition in commerce of dairy products.

§ 1150.119 Cooperative association.

Cooperative association means any cooperative marketing association of producers which is organized under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

National Dairy Promotion and Research Board

§ 1150.131 Establishment and membership.

(a) There is hereby established a National Dairy Promotion and Research Board of thirty-six members. For purposes of nominating producers to the Board, the United States shall be divided into thirteen geographic regions and the number of Board members from each region shall be as follows:

(1) One member from region number one comprised of the following States: Washington and Oregon.

(2) Six members from region number two comprised of the following State: California.

(3) Three members from region number three comprised of the following States: Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming.

(4) Three members from region number four comprised of the following States: Arkansas, Kansas, New Mexico, Oklahoma and Texas.

(5) Three members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

(6) Five members from region number six comprised of the following State: Wisconsin.

(7) Two members from region number seven comprised of the following States: Illinois, Iowa, Missouri, and Nebraska.

(8) One member from region number eight comprised of the following States: Alabama, Kentucky, Louisiana, Mississippi and Tennessee.

(9) Three members from region number nine comprised of the following States: Indiana, Michigan, Ohio and West Virginia.

(10) Two members from region number ten comprised of the following States: Florida, Georgia, North Carolina, South Carolina and Virginia.

(11) Three members from region number eleven comprised of the following States: Delaware, Maryland, New Jersey and Pennsylvania.

(12) Three members from region number twelve comprised of the following State: New York.

(13) One member from region number thirteen comprised of the following States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

(b) The Board shall be composed of milk producers appointed by the Secretary either from nominations submitted pursuant to §1150.133 or in accordance with §1150.136. A milk producer may be nominated only to represent the region in which such producer's milk is produced.

(c) At least every five years, and not more than every three years, the Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of regions and/or a modification of the number of members from regions in order to best reflect the geographic distribution of milk production volume in the United States.

(d) The number of members for each region which shall serve on the Board shall be determined by dividing the total pounds of milk produced in the United States for the calendar year previous to the date of review by 36 which provides a factor of pounds of milk per member, and then dividing the total pounds of milk for each region by such factor.

(e) In determining the volume of milk produced in the United States, the Board and the Secretary shall utilize the information received by the Board pursuant to §1150.171 and data published by the Department.

§ 1150.132 Term of office.
(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall serve proportionately, for terms of one, two and three years.
(b) Each member of the Board shall serve until October 31 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed.
(c) No member shall serve more than two consecutive terms.

§ 1150.133 Nominations.
Nominations for members of the Board shall be made in the following manner:
(a) Upon effectuation of this provision, the Secretary shall solicit nominations for the initial Board from all eligible organizations. If the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, such eligible organizations, the Secretary shall also solicit nominations from such producers through general farmer organizations or by other means.
(b) After the appointment of the initial Board, the Secretary shall announce at least 120 days in advance when a Board member’s term is expiring and shall solicit nominations for that position in the manner described in paragraph (a) of this section. Nominations for such position should be submitted to the Secretary not less than 60 days prior to the expiration of such term.
(c) An eligible organization may submit nominations only for positions on the Board that represent regions in which such eligible organization can establish that it represents a substantial number of producers. If there is more than one Board position for any such region, the organization may submit nominations for each position.
(d) Where there is more than one eligible organization representing producers in a specific region, they may caucus and jointly nominate producers for each position representing that region on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary nominations for each appointment to be made to represent that region.

§ 1150.134 Nominee’s agreement to serve.
Any producer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:
(a) Serve on the Board if appointed;
(b) Disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board; and
(c) Withdraw from participation in deliberations, decision-making, or voting on matters where paragraph (b) applies.

§ 1150.135 Appointment.
From the nominations made pursuant to § 1150.133, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1150.131(a).

§ 1150.136 Vacancies.
To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations made by the Board.

§ 1150.137 Procedure.
(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall establish rules concerning timely notice of meetings.
(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph when in the opinion of the chairman of the Board such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members
Agricultural Marketing Service, USDA

§ 1150.140 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairman and such other officers as may be necessary;

(b) To appoint from its members an executive committee whose membership shall equally reflect each of the different regions in the United States in which milk is produced, and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(c) To appoint or employ such persons as it may deem necessary and define the duties and determine the compensation of each;

(d) To review all programs that promote milk and dairy products on a brand or trade name basis that have requested certification pursuant to §1150.153, and to recommend to the Secretary whether such request should be granted;

(e) To develop and submit to the Secretary for approval, promotion, research, and nutrition education plans or projects resulting from research or studies conducted either by the Board or others;

(f) To solicit, among other proposals, research proposals that would increase the use of fluid milk and dairy products by the military and by persons in developing nations, and that would demonstrate the feasibility of converting surplus nonfat dry milk to casein for domestic and export use;

(g) To prepare and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses pursuant to a plan or project, funds collected through assessments authorized under §1150.152 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1150.139 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of fluid milk and dairy products as well as projects for research and nutrition education and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To make rules and regulations to effectuate the terms and provisions of this subpart;

(d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(e) To disseminate information to producers or eligible organizations through programs or by direct contact utilizing the public postage system or other systems;

(f) To select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable;

(g) To establish advisory committees of persons other than Board members and pay the necessary and reasonable expenses and fees of the members of such committees;

(h) To recommend to the Secretary amendments to this subpart; and

(i) With the approval of the Secretary, to invest, pending disbursement

§ 1150.138 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a per diem allowance as recommended by the Board and approved by the Secretary, incurred by them in the performance of their duties under this subpart.

§ 1150.137 Notice of meeting of the Board.

Any member or group of members of the Board shall have the right to be notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

[49 FR 11816, Mar. 28, 1984, as amended at 50 FR 9984, Mar. 13, 1985]
and disbursements in the administration of this subpart, including probable costs of promotion, research and nutrition education plans or projects, and also including a general description of the proposed promotion, research and nutrition education programs contemplated therein;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports from time to time to the Secretary as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i) With the approval of the Secretary, to enter into contracts or agreements with national, regional or State dairy promotion and research organizations or other organizations or entities for the development and conduct of activities authorized under §§1150.139 and 1150.161, and for the payment of the cost thereof with funds collected through assessments pursuant to §1150.152. Any such contract or agreement shall provide that:

1. The contractors shall develop and submit to the Board a plan or project together with a budget or budget which shall show the estimated cost to be incurred for such plan or project;

2. Any such plan or project shall become effective upon approval of the Secretary; and

3. The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(j) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(k) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards, at least once each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(l) To give the Secretary the same notice of meetings of the Board, committees of the Board and advisory committees as is given to such Board or committee members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(m) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(n) To encourage the coordination of programs of promotion, research and nutrition education designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the United States.

§ 1150.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. However, after the first full year of operation of the order, administrative expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal year. Such expenses shall be paid from assessments collected pursuant to §1150.152.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to §1150.152, for administrative costs incurred by the Department after May 1, 1984.

§ 1150.152 Assessments.

(a) Each person making payment to a producer for milk produced in the United States and marketed for commercial use shall collect an assessment on all such milk handled for the account of the producer at the rate of 15 cents per hundredweight of milk for commercial use or the equivalent thereof and shall remit the assessment to the Board.

(b) Any producer marketing milk of that producer's own production in the
form of milk or dairy products to consumers, either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such milk at the rate of 15 cents per hundredweight of milk for commercial use or the equivalent thereof.

(c) In determining the assessment due from each producer pursuant to §1150.152(a) and (b), a producer who is participating in a qualified State or regional program(s) shall receive a credit for contributions to such program(s), but not to exceed the following amounts:

1. In the case of contributions for milk marketed on or before May 31, 1984, up to the actual rate of contribution that was in effect under such program(s) on November 29, 1983, not to exceed 15 cents per hundredweight of milk marketed.

2. In all other cases, the credit shall not exceed 10 cents per hundredweight of milk marketed.

(d) In order for a producer described in §1150.152(a) to receive the credit authorized in §1150.152(c), either the producer or a cooperative association on behalf of the producer must establish to the person responsible for remitting the assessment to the Board that the producer is contributing to a qualified State or regional program. Producers who contribute to a qualified program directly (other than through a payroll deduction) must establish with the person responsible for remitting the assessment to the Board, with validation by the qualified program, that they are making such contributions.

(e) In order for a producer described in §1150.152(b) to receive the credit authorized in §1150.152(c), the producer and the applicable qualified State or regional program must establish to the Board that the producer is contributing to a qualified State or regional program.

(f) The collection of assessments pursuant to §1150.152(a) and (b) shall begin with respect to milk marketed on and after the effective date of this section and shall continue until terminated by the Secretary. If the Board is not constituted by the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board. The Secretary shall remit such assessments to the Board when it is constituted.

(g) Each person responsible for the remittance of the assessment pursuant to §1150.152(a) and (b) shall remit the assessment to the Board not later than the last day of the month following the month in which the milk was marketed.

(h) Money remitted to the Board shall be in the form of a negotiable instrument made payable to “National Dairy Promotion and Research Board.” Remittances and reports specified in §1150.171 shall be mailed to the location designated by the Secretary or the Board.

§ 1150.153 Qualified State or regional dairy product promotion, research or nutrition education programs.

(a) Any organization which conducts a State or regional dairy product promotion, research or nutrition education program may apply to the Secretary for certification of qualification so that producers may receive credit pursuant to §1150.152(c) for contributions to such program.

(b) In order to be certified by the Secretary as a qualified program, the program must:

1. Conduct activities as defined in §§1150.114, 1150.115, and 1150.116 that are intended to increase consumption of milk and dairy products generally;

2. Except for programs operated under the laws of the United States or any State, have been active and ongoing before enactment of the Act;

3. Be financed primarily by producers, either individually or through cooperative associations;

4. Not use a private brand or trade name in its advertising and promotion of dairy products unless the Board recommends and the Secretary concurs that such preclusion should not apply;

5. Certify to the Secretary that any requests from producers for refunds under the program will be honored by forwarding to either the Board or a qualified State or regional program designated by the producer that portion of such refunds equal to the amount of credit that otherwise would be applicable to that program pursuant to §1150.152(c); and
§ 1150.154 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

§ 1150.155 Adjustment of accounts.

Whenever the Board or the Department determines through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board upon which evidence is desired or upon which argument may be presented. The hearing place shall be as convenient to the State or regional program as can reasonably be arranged.

The hearing shall be conducted in such manner as will be most conducive to the proper disposition of the matter. Written statements or briefs may be filed by the petitioner or the State or regional program, or other participating parties, within the time specified by the presiding officer.

The presiding officer shall prepare preliminary findings setting forth a recommendation as to what action should be taken and the basis for such action. A copy of such findings shall be served upon the petitioner or the State or regional program by mail or in person. Written exceptions to the findings may be filed within 10 days after service thereof.

After due consideration of all the facts and the exceptions, if any, the Director of the Dairy Division shall issue a final decision setting forth the action to be taken and the basis for such action.

§ 1150.154 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

§ 1150.155 Adjustment of accounts.

Whenever the Board or the Department determines through an audit of a person’s reports, records, books or accounts or through some other means that additional money is due the Board
or that money is due such person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in §1150.152. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

§ 1150.156 Charges and penalties.

(a) Late-payment charge. Any unpaid assessments to the Board pursuant to §1150.152 shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board 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. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(b) Penalties. Any person who willfully violates any provision of this subpart shall be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by this subpart, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States. The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available by law or in equity.

§ 1150.171 Reports.

Each producer marketing milk of that producer's own production directly to consumers and each person
making payment to producers and responsible for the collection of the assessment under §1150.152 shall be required to report at the time for remitting assessments to the Board such information as may be required by the Board or by the Secretary. Such information may include but not be limited to the following:

(a) The quantity of milk purchased, initially transferred or which, in any other manner, are subject to the collection of the assessment;

(b) The amount of assessment remitted;

(c) The basis, if necessary, to show why the remittance is less than the number of hundredweights of milk multiplied by 15 cents; and

(d) The date any assessment was paid.

§ 1150.172 Books and records.

Each person who is subject to this subpart, and other persons subject to §1150.171, shall maintain and make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1150.173 Confidential treatment.

All information obtained from such books, records or reports under the Act and this subpart shall be kept confidential by all persons, including employees and former officers and employees of the Board, and by all officers and all employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

Miscellaneous

§ 1150.181 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to §1150.140(i);

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred
§ 1150.271 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1150.183 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee, except for acts of dishonesty or willful misconduct.

§ 1150.184 Patents, copyrights, inventions and publications.

Any patents, copyrights, trademarks, inventions or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1150.181 shall apply to determine disposition of all such property.

§ 1150.185 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose such amendments to the Secretary.

§ 1150.186 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1150.187 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in §§ 1150.133, 1150.152, 1150.153, 1150.171, 1150.172, 1150.202, 1150.204, 1150.205, 1150.211 and 1150.273 of these regulations (7 CFR Part 1150) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0147.

[50 FR 9984, Mar. 13, 1985]

Subpart—Procedure for Certification of Milk Producer Organizations

§ 1150.270 General.

Organizations must be certified by the Secretary that they are eligible to represent milk producers and to participate in the making of nominations of milk producers to serve as members of the National Dairy Promotion and Research Board as provided in the Dairy and Tobacco Adjustment Act of 1983. Certifications of eligibility required of the Secretary shall be conducted in accordance with this subpart.

§ 1150.271 Definitions.

As used in this subpart:

(a) Act means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act
§ 1150.272 Responsibility for administration of regulations.

The Dairy Division shall have the responsibility for administering the provisions of this subpart.

§ 1150.273 Application for certification.

Any organization whose membership consists primarily of milk producers may apply for certification. Applicant organizations should supply information for certification using as a guide “Application for Certification of Organizations,” Form DA–26. Form DA–26 may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250.

§ 1150.274 Certification standards.

(a) Certification of eligible organizations shall be based, in addition to other available information, on a factual report submitted by the organization, which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

1. Geographic territory covered by the organization’s active membership;
2. Nature and size of the organization’s active membership including the total number of active milk producers represented by the organization;
3. Evidence of stability and permanency of the organization;
4. Sources from which the organization’s operating funds are derived;
5. Functions of the organization; and
6. The organization’s ability and willingness to further the aims and objectives of the Act.

(b) The primary considerations in determining the eligibility of an organization shall be whether its membership consists primarily of milk producers who produce a substantial volume of milk, and whether the primary or overriding interest of the organization is in the production or processing of fluid milk and dairy products and promotion of the nutritional attributes of fluid milk and dairy products.

(c) The Secretary shall certify any organization which he finds meets the criteria under this section and his determination as to eligibility shall be final.

§ 1150.275 Inspection and investigation.

The Secretary shall have the right, at any time after an application is received from an organization, to examine such books, documents, papers, records, files, and facilities of an organization as he deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the organization is eligible for certification.

§ 1150.276 Review of certification.

Certifications issued pursuant to this subpart are subject to termination or suspension if the organization does not currently meet the certification standards. A certified organization may be requested at any time to supply the Dairy Division with such information as may be required to show that the organization continues to be eligible for certification. Any information submitted to satisfy a request pursuant to this section shall be subject to inspection and investigation as provided in §1150.275.
§ 1150.277 Listing of certified organizations.

A copy of each certification shall be furnished by the Dairy Division to the respective organization. Copies also shall be filed in the Dairy Division where they will be available for public inspection.

§ 1150.278 Confidential treatment.

All documents and other information submitted by applicant organizations and otherwise obtained by the Department by investigation or examination of books, documents, papers, records, files, or facilities shall be kept confidential by all employees of the Department. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in the issuance of general statements based upon the applications of a number of persons, which do not identify the information furnished by any one person.
§ 1160.102 Department.

Department means the United States Department of Agriculture.

§ 1160.103 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary’s stead.

§ 1160.104 United States.

United States means the 48 contiguous states in the continental United States and the District of Columbia, except that United States means the 50 states of the United States of America and the District of Columbia under the following provisions: the petition and review under section 1999K of the Act, enforcement under section 1999L of the Act, and investigations and power to subpoena under section 1999M of the Act.

§ 1160.105 Board.

Board means the National Processor Advertising and Promotion Board established pursuant to 7 U.S.C. 6407(b)(1) and this subpart (hereinafter known as the National Fluid Milk Processor Promotion Board or Board).

§ 1160.106 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative or other entity.

§ 1160.107 Fluid milk product.

(a) Fluid milk product means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) Fluid milk product does not include evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas specifically prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent milk solids, and whey.

§ 1160.108 Fluid milk processor.

(a) Fluid milk processor means any person who processes and markets commercially fluid milk products in consumer-type packages in the United States, except that the term fluid milk processor shall not include in each of the respective fiscal periods those persons who process and market not more than 500,000 pounds of such fluid milk products during the representative month, which shall be the first month of the fiscal period; Provided, however, that for the fiscal period following the initial fiscal period, the representative month shall be September 1995.

(b) Any person who did not qualify as a fluid milk processor for a fiscal period because of the 500,000-pound limitation shall not later qualify as a fluid milk processor during that fiscal period even though the monthly volume limitation is later exceeded during that period.

(c) Any person who qualified as a fluid milk processor for a fiscal period and whose monthly marketings of fluid milk products later become 500,000 pounds or less shall no longer qualify as a fluid milk processor during that fiscal period beginning with the month in which the marketings first dropped below the volume limitation.

(d) For the purpose of determining qualification as a fluid milk processor, each processor of fluid milk products shall report for the representative month of each fiscal period the hundredweight of fluid milk products processed and marketed by the processor.

§ 1160.109 Milk.

Milk means any class of cow’s milk produced in the United States.
§ 1160.110 Class I price.

Class I price is the price that is established for Class I milk in each marketing area under milk marketing orders authorized by the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601-674.

§ 1160.111 Promotion.

Promotion means the following activities:

(a) Consumer Education, which means any program utilizing public relations, advertising or other means devoted to educating consumers about the desirable characteristics of fluid milk products and directed toward increasing the general demand for fluid milk products.

(b) Advertising, which means any advertising or promotion program involving only fluid milk products and directed toward educating consumers about the positive attributes of fluid milk and increasing the general demand for fluid milk products.

§ 1160.112 Research.

Research means market research to support advertising and promotion efforts, including educational activities, research directed to product characteristics, and product development, including new products or improved technology in production, manufacturing or processing of milk and the products of milk.


§ 1160.113 Fiscal period.

Fiscal period means the initial period of up to 30 months that this subpart is effective. Thereafter, the fiscal period shall be such annual period as the Board may determine, except that the Board may provide for a lesser or greater period as it may find appropriate for the period immediately after the initial fiscal period to assure continuity of fiscal periods until the beginning of the first annual fiscal period.


§ 1160.114 Eligible organization.

Eligible organization means an organization eligible to nominate members of the Board and which meets the following criteria:

(a) Is a nonprofit organization pursuant to section 501(c) (3), (5), or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5), or (6));

(b) Is governed by a board comprised of a majority of fluid milk processors; and

(c) Represents fluid milk processors on a national basis whose members process more than 50 percent of the fluid milk products processed and marketed within the United States.

§ 1160.115 Milk marketing area.

Milk marketing area means each area within which milk being marketed is subject to a milk marketing order issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601-674, or applicable state laws.

§ 1160.116 [Reserved]

§ 1160.117 Continuation referendum.

Continuation referendum means that referendum among fluid milk processors that the Secretary shall conduct as provided in §1160.501.

NATIONAL FLUID MILK PROCESSOR PROMOTION BOARD

§ 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Promotion Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than two members. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for a fluid milk processor or its successor fluid milk processor shall
disqualify that member for membership on the Board except that such member shall continue to serve on the Board for a period of up to 60 days following the disqualification or until the appointment of a successor Board member to such position, whichever is sooner, provided that such person continues to meet the criteria for serving on the Board as a processor representative.

(b) In selecting the 15 Board members who represent geographic regions, one member shall be selected from each of the following regions:

Region 2. New York and New Jersey.
Region 4. Georgia, North Carolina and South Carolina.
Region 5. Florida.
Region 6. Ohio and West Virginia.
Region 7. Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.
Region 8. Illinois and Indiana.
Region 10. Texas.
Region 11. Arkansas, Iowa, Kansas, Missouri, Nebraska and Oklahoma.
Region 12. Arizona, Colorado, New Mexico, Nevada, and Utah.
Region 14. Northern California which shall be composed of the Northern California Marketing Area and the South Valley Marketing Area as defined by the Stabilization and Marketing Plan, as amended, issued by the California Department of Food and Agriculture pursuant to the provisions of Chapter 2, Part 3, Division 2L of the California Food and Agriculture Code, effective February 3, 1992.
Region 15. Southern California which shall be composed of the Southern California Marketing Area as defined by the Stabilization and Marketing Plan, as amended, issued by the California Department of Food and Agriculture pursuant to the provisions of Chapter 2, Part 3, Division 2L of the California Food and Agriculture Code, effective February 3, 1992.


§ 1160.202 Nominations.

Nominations for members of the Board shall be made in the following manner:

(a) The Secretary shall solicit nominations for the initial Board from individual fluid milk processors and other interested parties, including eligible organizations. Fluid milk processors and other interested parties may submit nominations for positions on the Board for regions in which they are located or market fluid milk, and for at-large members. Eligible organizations may submit a slate of nominees for seats in all regions and for at-large members.

(b) After the appointment of the initial Board, the Secretary shall announce at least 180 days in advance of the expiration of members’ terms that such terms are expiring, and shall solicit nominations for such positions in the manner described in paragraph (a) of this section. Nominations for such positions should be submitted to the Secretary not less than 120 days prior to the expiration of members’ terms.

§ 1160.203 Nominee’s agreement to serve.
Each nominee for Board membership must file with the Secretary at the time of nomination a written agreement to serve on the Board if appointed.

§ 1160.204 Appointment.
From the nominations made pursuant to § 1160.202, the Secretary shall appoint the members of the Board on the basis of representation provided for in §§ 1160.200 and 1160.201.

§ 1160.205 Vacancies.
To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations made by individual fluid milk processors and other interested parties, including eligible organizations, for the Board, or from nominations made by the Board.

§ 1160.206 Procedure.
(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall establish rules concerning timely notice of meetings.
(b) The Board may take action upon the concurring votes of a majority of members by mail, telephone, telegraph, or other means of electronic communication when, in the opinion of the chairperson of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1160.207 Compensation and reimbursement.
The members of the Board and trustees, if any, named under § 1160.502, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1160.208 Powers of the Board.
The Board shall have the following powers:
(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to educate consumers and promote the use of fluid milk products and to make recommendations to the Secretary regarding such proposals;
(b) To administer the provisions of this subpart in accordance with its terms and provisions;
(c) To make rules and regulations to effectuate the terms and provisions of this subpart;
(d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;
(e) To employ such persons as the Board deems necessary and determine the duties and compensation of such persons;
(f) To contract with eligible organizations or other persons to conduct activities authorized pursuant to this subpart;
(g) To select committees and subcommittees, to adopt bylaws, and to adopt such rules for the conduct of its business as it may deem advisable; the Board may establish working committees of persons other than Board members;
(h) To recommend to the Secretary amendments to this subpart; and
(i) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1160.211 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1160.209 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, who may serve for a term of a fiscal period pursuant to §1160.113, and not more than two consecutive terms, and to select such other officers as may be necessary;

(b) To prepare and submit to the Secretary for approval a budget for each fiscal period of the anticipated expenses and disbursements in the administration of this subpart, including a description of and the probable costs of consumer education, promotion and research projects;

(c) To develop and submit to the Secretary for approval promotion and consumer education, and research plans or projects;

(d) To the extent practicable, carry out consumer education and promotion programs under §1160.301 in such a manner as to ensure that advertising coverage in each of the regions defined in §1160.200 is proportionate to funds collected from each such region;

(e) To disseminate information to fluid milk processors or eligible organizations;

(f) To maintain minutes, books and records that accurately reflect all of the acts and transactions of the Board, which shall be available to the Secretary for inspection and audit, and prepare and promptly report minutes of each Board meeting to the Secretary and submit such reports from time to time to the Secretary as the Secretary may prescribe, and to account with respect to the receipt and disbursement of all funds entrusted to it;

(g) To enter into contracts or agreements, with the approval of the Secretary, with such persons and organizations as the Board may approve for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to §1160.211 and income from such assessments. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budget(s) showing the estimated cost of such plan or project;

(2) Any such plan or project shall be adopted upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of all activities conducted pursuant to the contract or agreement, and provide accounts of all funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board periodically may audit the records of the contracting parties;

(h) For the initial fiscal period, the Board shall contract, to the extent practicable and subject to the approval of the Secretary, with an eligible organization to carry out the provisions of this subpart;

(i) To prepare and make public, at least annually, a report of its activities and an accounting for funds received and expended;

(j) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards, at the end of the first 15 months of the initial fiscal period, at the end of the initial fiscal period, and at least once each fiscal period thereafter as well as at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board and committees of the Board, including actions conducted under §1160.206(b), as is given to such Board or committee members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(l) To submit to the Secretary such information pursuant to this subpart as may be requested;

(m) The Board shall take reasonable steps to coordinate the collection of assessments, and promotion, education, and research activities of the Board, with the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)); and
(n) The Board shall conduct advertising using third parties only through contracts which shall prohibit the third party from selling, offering for sale, or otherwise making available advertising time or space to private industry members conducting brand-name advertising which immediately precedes, follows, appears in juxtaposition, or appears in the midst of Board-sponsored advertising.

§ 1160.210 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart; except that, after the Board's first year, it shall not spend on its administration more than 5 percent of the assessments collected during any fiscal period subsequent to the initial fiscal period. Such administrative expenses shall be paid from assessments collected pursuant to §1160.211.

(b) The Board shall reimburse the Secretary for administrative costs incurred by the Department from assessments collected pursuant to §1160.211.

(c) Within 30 days after funds are remitted from Regions 14 and 15, the Board shall provide a grant of 80% of such funds to the entity authorized by the laws of the State of California to conduct an advertising program for fluid milk products in that State for the purpose of implementing a coordinated advertising program in the markets within those regions. Such grant shall be provided with the approval of the Secretary on the following conditions:

1. The granted funds shall be utilized to implement a fluid milk promotion campaign within the markets within those regions. Verification of the implementation of this program shall be provided to the Board.

2. The Board shall ensure that the recipients of these funds implement a research and evaluation program to determine the effect of such program on consumption of fluid milk within the region.

3. The recipient of these funds must provide to the Board data from the research and evaluation programs so that the Board can determine the effect of the program on consumption of fluid milk.

§ 1160.211 Assessments.

(a) (1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of $.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processor. Producer-handlers required to pay assessments under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under §1160.108, shall also pay the assessment under this subpart. No assessments are required on fluid milk products exported from the United States. The Secretary shall have the authority to receive assessments on behalf of the Board.

(2) The Secretary shall announce the establishment of the assessment each month in the Class I price announcement in each milk marketing area by adding it to the Class I price for the following month. In the event the assessment is suspended for a given month, the Secretary shall inform all fluid milk processors of the suspension in the Class I price announcement for that month. The Secretary shall also inform fluid milk processors marketing fluid milk in areas not subject to milk marketing orders administered by the Secretary of the establishment or suspension of the assessment.

(b) The Secretary shall announce the establishment of the assessment each month in the Class I price announcement in each milk marketing area by adding it to the Class I price for the following month. In the event the assessment is suspended for a given month, the Secretary shall inform all fluid milk processors of the suspension in the Class I price announcement for that month. The Secretary shall also inform fluid milk processors marketing fluid milk in areas not subject to milk marketing orders administered by the Secretary of the establishment or suspension of the assessment.

(b) Such assessments shall not:

1. Reduce the prices paid under the Federal milk marketing orders issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937;

2. Otherwise be deducted from the amounts that handlers must pay to
§ 1160.212 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

§ 1160.213 Adjustment of accounts.

Whenever the Board or the Secretary determines through an audit of a processor's reports, records, books or accounts or through some other means that additional money is due the Board or to such processor from the Board, the Board shall notify that person of the amount due or overpaid. If the processor owes money to the Board, it shall remit that amount by the next date for remitting assessments provided in § 1160.211. If the processor has overpaid, that amount shall be credited to its account and applied against amounts due in succeeding months.

§ 1160.214 Charges and penalties.

(a) Late-payment charge. Any unpaid assessments shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment determined at a date later than prescribed by this subpart because of the failure of a processor to submit a report to the Board 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. The receipt of a payment by the Board will be based on the earlier of the postmark date or the actual date of receipt.

(b) Penalties. The Secretary may assess any person who violates any provision of this subpart a civil penalty of not less than $500 nor more than $5,000 for each such violation. In the case of a willful failure to pay an assessment as required by this subpart, in addition to the amount due, the Secretary may assess an additional penalty of not less than $10,000 nor more than $100,000 for each such violation. The amount of any such penalty shall accrue to the United States, which may recover such amount in a civil suit. The remedies provided in this section are in addition to, and not exclusive of, other remedies that may be available by law or in equity.

Promotion, Consumer Education and Research

§ 1160.301 Promotion, consumer education and research.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any plans or projects authorized in §§ 1160.206 and 1160.209. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of consumer education, promotion and research activities with respect to fluid milk products; and

(2) The evaluation of consumer education, promotion and research activities implemented under the direction of the Board, and the communication of such evaluation to fluid milk processors and the public.

(b) The Board shall periodically review or evaluate each plan or project authorized under § 1160.301(a) to ensure that it contributes to an effective program of promotion, consumer education and research. If the Board finds that any such plan or project does not further the purposes of the Act, the Board shall terminate that plan or project.
(c) No plan or project authorized under §1160.301(a) may employ unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

(d) No plan or project authorized under §1160.301(a) may make use of a brand or trade name of a fluid milk product, except that this paragraph does not preclude the Board from offering program material to commercial parties to use under such terms and conditions as the Board may prescribe, subject to approval by the Secretary.

REPORTS, BOOKS AND RECORDS

§ 1160.401 Reports.

Each fluid milk processor marketing milk and paying an assessment under §1160.211 shall be required to report upon the remittance of such assessments such information as the Board or the Secretary may require. Such information shall include but not be limited to the following:

(a) The quantity of fluid milk products marketed that is subject to the collection of the assessment;

(b) The amount of assessment remitted;

(c) The reason, if necessary, why the remittance is less than the number of hundredweights of milk multiplied by 20 cents; and

(d) The date any assessment was paid.

§ 1160.402 Books and records.

Each person subject to this subpart shall maintain and make available for inspection by agents of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1160.403 Confidential treatment.

(a) All persons, including agents and former agents of the Board, all officers and employees and all former officers and employees of the Department, and all officers and all employees and all former officers and employees of contracting agencies having access to commercial or financial information obtained from such books, records or reports under the Act and this subpart shall keep such information confidential, and not make it available to Board members. Only those persons, as determined by the Secretary, who have a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, they shall disclose only that information the Secretary deems relevant, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section, however, shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of processors, individuals, groups of individuals, partnerships, corporations, associations, cooperatives, or other entities subject to this subpart or statistical data collected from such sources, which statements do not identify the information furnished by any such parties, and

(2) The publication, at the direction of the Secretary, of the name of any processor, individuals, group of individuals, partnership, corporation, association, cooperative, or other entity that has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart so violated.

(b) Except as otherwise provided in this subpart, information obtained under this subpart may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(c) Any person violating this section, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and if such person is an agent of the Board or an officer or employee of the
§ 1160.501 Department shall be removed from office.

(d) Nothing in this subsection authorizes the Secretary to withhold information from a duly authorized committee or subcommittee of Congress.

MISCELLANEOUS

§ 1160.501 Continuation referenda.

(a) The Secretary at any time may conduct a referendum among those persons who the Secretary determines were fluid milk processors during a representative period, as determined by the Secretary, on whether to suspend or terminate the order. The Secretary shall hold such a referendum at the request of the Board or of any group of such processors that marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed in the United States by fluid milk processors voting in the preceding referendum.

(b) Any suspension or termination of the order on the basis of a referendum conducted pursuant to this section must be favored:

(1) By at least 50 percent of the fluid milk processors voting in the referendum; and

(2) By fluid milk processors voting in the referendum that marketed during a representative period, as determined by the Secretary, 40 percent or more of the volume of fluid milk products marketed in the United States by fluid milk processors voting in the referendum.

(c) If the Secretary determines that the suspension or termination of the order is favored in the manner set forth in §1160.501(b), the Secretary shall take such action within 6 months of such determination.

§ 1160.502 Proceedings after suspension or termination.

(a) Upon the suspension or termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Once the Secretary has designated such members as trustees, they shall become trustees of all the funds and property that the Board owns, possesses, or controls, including unpaid and undelivered property or any other unpaid claim existing at the time of such termination. The actions of such trustees shall be subject to approval by the Secretary.

(b) The said trustees shall:

(1) Serve as trustees until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements that it entered pursuant to §§1160.208 and 1160.209;

(3) Account for all receipts and disbursements and deliver to any person designated by the Secretary all property on hand, together with all books and records of the Board and the trustees; and

(4) At the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in the Secretary's designee full title and right to all of the funds, property, and claims of the Board or the trustees.

(c) The Secretary's designee shall be subject to the same obligations with respect to funds, property or claims transferred or delivered pursuant to this subpart as the Board and the trustees.

(d) The Board, the trustees or the Secretary's designee shall deliver to the Secretary any residual funds not required to pay liquidation expenses, which funds may be used, to the extent practicable, to continue one or more of the promotion, research or nutrition education plans or projects authorized pursuant to this subpart.

§ 1160.503 Effect of suspension, termination or amendment.

Unless otherwise expressly provided by the Secretary, the suspension or termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability of the Board or its trustees which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

§ 1160.601
(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or
(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person, with respect to any such violation.

§ 1160.504 Personal liability.
No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission by such member or employee, except for acts of dishonesty or willful misconduct.

§ 1160.505 Patents, copyrights, inventions and publications.
(a) Any patents, copyrights, trademarks, inventions or publications developed through the use of funds collected under the provisions of this subpart are the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Section 1160.502 governs the disposition of all such property upon suspension or termination of this subpart.
(b) Should patents, copyrights, inventions, and publications be developed through the use of funds collected by the Board under this subpart, and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, and publications shall be determined by the agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention, and publication in a manner consistent with paragraph (a) of this section.

§ 1160.507 Report.
The Secretary shall provide annually for an independent evaluation of the effectiveness of the fluid milk promotion program carried out under this subpart during the previous fiscal year, in conjunction with the evaluation of the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)).

§ 1160.508 Separability.
If any provision of this subpart is declared invalid or the applicability thereof to any person or any circumstances is held invalid, such declaration or holding shall not offset the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances.

Subpart—Procedure for Conduct of Referenda in Connection with a Fluid Milk Promotion Order

§ 1160.600 General.
Referenda to determine whether eligible fluid milk processors favor the issuance, continuance, termination or suspension of a Fluid Milk Promotion Order authorized by the Fluid Milk Promotion Act of 1990 shall be conducted in accordance with this subpart.

§ 1160.601 Definitions.
As used in this subpart:
(b) Department means the United States Department of Agriculture.
(c) Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.
(d) Administrator means the Administrator of the Agricultural Marketing Service, USDA.

§ 1160.602 The Secretary may from time to time amend provisions of this subpart. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.
§ 1160.602 Conduct of referendum.

(a) The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator. There shall be no voting except within the time specified by the referendum agent.

(b) The referendum agent shall mail to each fluid milk processor that has properly registered to participate in the referendum:

1. A ballot containing a description of the question(s) upon which the referendum is being held;
2. Instructions for completing the ballot; and
3. A statement as to the time within which the ballot must be mailed to the referendum agent.

§ 1160.603 Who may vote.

(a) Each person who was a fluid milk processor during the representative period, as determined by the Secretary, and who at the time of voter registration and when voting is processing and marketing commercially fluid milk products in consumer-type packages in the United States shall be entitled to vote in a referendum, and no such person shall be refused a ballot. Any person casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such person in such referendum. Each person voting shall have registered with the referendum agent prior to the voting period. Each ballot cast shall contain a certification by the person casting the ballot that such person is qualified to vote. All information required on the ballot pertinent to the identification of the person voting must be supplied and certified to as being correct in order for the ballot to be valid.

(b) Voting by proxy or agent will not be permitted. However, the ballot of a fluid milk processor who is other than an individual may be cast by a person who is duly authorized to do so, and such ballot shall contain a certification by such person that the entity on whose behalf the ballot is cast was a fluid milk processor during the representative period. All information required on the ballot pertinent to the identification of the fluid milk processor on whose behalf the ballot is cast must be supplied and certified to as being correct in order for the ballot to be valid.

§ 1160.604 Duties of the referendum agent.

The referendum agent, in addition to any other duties imposed by this subpart, shall:

(a) For the purpose of adjusting the rate of assessment, determine and publicly announce prior to the voting period the total volume of fluid milk products marketed by all processors of fluid milk in the United States during the representative period and the portion of such volume that must be represented by those fluid milk processors voting in favor of the question included on the ballot if the referendum question is to pass.

(b)(1) Within 12 days after the deadline for registering to vote in the referendum, the referendum agent shall make available upon request a list of...
§ 1160.606 Notice of referendum.

The referendum agent shall provide at least 30 days' notice of any referendum authorized by the Act by:

(a) Mailing to each known person processing fluid milk products a notice of referendum, which shall include:

(1) An advance registration form to be filed with the referendum agent prior to the voting period by any person choosing to vote in the referendum, with a statement as to the time within which the registration form must be mailed to the referendum agent;
§ 1160.607 Tabulation of ballots.

(a) The referendum agent shall verify the validity of all ballots cast in accordance with the instructions and requirements specified in §§1160.602 through 1160.606. Ballots that are not valid shall be marked “disqualified” with a notation on the ballot as to the reason for the disqualification.

(b) The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of ballots cast approving, the number of ballots cast disapproving, and the pounds of fluid milk products distributed during the representative period by the processors represented in each grouping of ballots, shall also be ascertained. The ballots marked “disqualified” shall not be considered as approving or disapproving, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(c) The referendum agent shall notify the Administrator of the number of ballots cast, the count of the votes, the number of disqualified ballots, and the volume of fluid milk products associated with the ballots cast as prescribed in §1160.607(b). The referendum agent shall seal the ballots and transmit to the Administrator a complete detailed report of all actions taken in connection with the referendum and all other information furnished to or compiled by the referendum agent.

(d) Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent or others who assist in the referendum shall not disclose the results of the referendum or the total number of ballots and votes cast.

§ 1160.608 Confidential information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, except the list of eligible voters, shall be regarded as confidential.

§ 1160.609 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of referenda by referendum agents.
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected
# Table of CFR Titles and Chapters
(Revised as of January 1, 1999)

## Title 1—General Provisions
I  Administrative Committee of the Federal Register (Parts 1—49)
II  Office of the Federal Register (Parts 50—299)
IV  Miscellaneous Agencies (Parts 400—500)

## Title 2—[Reserved]

## Title 3—The President
I  Executive Office of the President (Parts 100—199)

## Title 4—Accounts
I  General Accounting Office (Parts 1—99)
II  Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100—299)

## Title 5—Administrative Personnel
I  Office of Personnel Management (Parts 1—1199)
II  Merit Systems Protection Board (Parts 1200—1299)
III  Office of Management and Budget (Parts 1300—1399)
IV  Advisory Committee on Federal Pay (Parts 1400—1499)
V  The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI  Federal Retirement Thrift Investment Board (Parts 1600—1699)
VII  Advisory Commission on Intergovernmental Relations (Parts 1700—1799)
VIII  Office of Special Counsel (Parts 1800—1899)
IX  Appalachian Regional Commission (Parts 1900—1999)
XI  Armed Forces Retirement Home (Part 2100)
XIV  Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV  Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI  Office of Government Ethics (Parts 2600—2699)
XXI  Department of the Treasury (Parts 3100—3199)
Title 5—Administrative Personnel—Continued

XXII Federal Deposit Insurance Corporation (Part 3201)
XXIII Department of Energy (Part 3301)
XXIV Federal Energy Regulatory Commission (Part 3401)
XXV Department of the Interior (Part 3501)
XXVI Department of Defense (Part 3601)
XXVIII Department of Justice (Part 3801)
XXIX Federal Communications Commission (Parts 3900—3999)
XXX Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI Farm Credit Administration (Parts 4100—4199)
XXXIII Overseas Private Investment Corporation (Part 4301)
XXXV Office of Personnel Management (Part 4501)
XL Interstate Commerce Commission (Part 5001)
XLI Commodity Futures Trading Commission (Part 5101)
XLII Department of Labor (Part 5201)
XLIII National Science Foundation (Part 5301)
XLVII Federal Trade Commission (Part 5701)
L Inter-American Foundation (Part 7301)
LII Export-Import Bank of the United States (Part 6201)
LII Department of Education (Parts 6300—6399)
LVII General Services Administration (Part 7601)
L Department of Transportation (Part 6001)
LIIII Consumer Product Safety Commission (Part 8101)
LIIII Board of Governors of the Federal Reserve System (Part 6801)
LII National Aeronautics and Space Administration (Part 6901)
LXI United States Postal Service (Part 7001)
LXI National Labor Relations Board (Part 7101)
LXII Equal Employment Opportunity Commission (Part 7201)
LXIII Inter-American Foundation (Part 7301)
LXV Department of Housing and Urban Development (Part 7501)
LXVI National Archives and Records Administration (Part 7601)
LXIX Tennessee Valley Authority (Part 7901)
LXI Consumer Product Safety Commission (Part 8101)
LXXIV Federal Mine Safety and Health Review Commission (Part 8401)
LXXVI Federal Retirement Thrift Investment Board (Part 8601)
LXXVII Office of Management and Budget (Part 8701)

Title 7—Agriculture

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)
Subtitle B—Regulations of the Department of Agriculture
I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

902
Title 7—Agriculture—Continued

II Food and Nutrition Service, Department of Agriculture (Parts 210—299)

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

V Agricultural Research Service, Department of Agriculture (Parts 500—599)

VI Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

VII Farm Service Agency, Department of Agriculture (Parts 700—799)

VIII Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

XII Northeast Dairy Compact Commission (Parts 1300—1399)

XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

XVII Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

XVIII Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

XXVI Office of Inspector General, Department of Agriculture (Parts 2600—2699)

XXVII Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)

XXVIII Office of Operations, Department of Agriculture (Parts 2800—2899)

XXIX Office of Energy, Department of Agriculture (Parts 2900—2999)

XXX Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)

XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)

XXXII Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)

XXXIII Office of Transportation, Department of Agriculture (Parts 3300—3399)
Title 7—Agriculture—Continued

XXXIV Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)

XXXV Rural Housing Service, Department of Agriculture (Parts 3500—3599)

XXXVI National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)

XXXVII Economic Research Service, Department of Agriculture (Parts 3700—3799)

XXXVIII World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)

XLII Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)

Title 8—Aliens and Nationality

I Immigration and Naturalization Service, Department of Justice (Parts 1—499)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

II Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)

III Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)

II Department of Energy (Parts 200—699)

III Department of Energy (Parts 700—999)

X Department of Energy (General Provisions) (Parts 1000—1099)

XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)

Title 11—Federal Elections

I Federal Election Commission (Parts 1—9099)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)

II Federal Reserve System (Parts 200—299)

III Federal Deposit Insurance Corporation (Parts 300—399)

IV Export-Import Bank of the United States (Parts 400—499)
Title 12—Banks and Banking—Continued

V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI Farm Credit Administration (Parts 600—699)
VII National Credit Union Administration (Parts 700—799)
VIII Federal Financing Bank (Parts 800—899)
IX Federal Housing Finance Board (Parts 900—999)
XI Federal Financial Institutions Examination Council (Parts 1100—1199)
XIV Farm Credit System Insurance Corporation (Parts 1400—1499)
XV Department of the Treasury (Parts 1500—1599)
XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)
XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)
III Economic Development Administration, Department of Commerce (Parts 300—399)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)
II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)
III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)
V National Aeronautics and Space Administration (Parts 1200—1299)

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE (PARTS 0—29)
SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE
I Bureau of the Census, Department of Commerce (Parts 30—199)
II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
IV Foreign Trade Zones Board, Department of Commerce (Parts 400—499)
VII Bureau of Export Administration, Department of Commerce (Parts 700—799)
VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
Title 15—Commerce and Foreign Trade—Continued

Chap. IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

XI Technology Administration, Department of Commerce (Parts 1100—1199)

XIII East-West Foreign Trade Board (Parts 1300—1399)

XIV Minority Business Development Agency (Parts 1400—1499)

SUBTITLE C—REGULATIONS RELATING TO FOREIGN TRADE AGREEMENTS

XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—REGULATIONS RELATING TO TELECOMMUNICATIONS AND INFORMATION

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)

II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)

II Securities and Exchange Commission (Parts 200—399)

IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

III Delaware River Basin Commission (Parts 400—499)

VI Water Resources Council (Parts 700—799)

VIII Susquehanna River Basin Commission (Parts 800—899)

XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 1—199)

II United States International Trade Commission (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

II Railroad Retirement Board (Parts 200—399)
Title 20—Employees' Benefits—Continued

III Social Security Administration (Parts 400—499)
IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)
V Employment and Training Administration, Department of Labor (Parts 600—699)
VI Employment Standards Administration, Department of Labor (Parts 700—799)
VII Benefits Review Board, Department of Labor (Parts 800—899)
VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)
III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)
II Agency for International Development, International Development Cooperation Agency (Parts 200—299)
III Peace Corps (Parts 300—399)
IV International Joint Commission, United States and Canada (Parts 400—499)
V United States Information Agency (Parts 500—599)
VI United States Arms Control and Disarmament Agency (Parts 600—699)
VII Overseas Private Investment Corporation, International Development Cooperation Agency (Parts 700—799)
IX Foreign Service Grievance Board Regulations (Parts 900—999)
X Inter-American Foundation (Parts 1000—1099)
XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII United States International Development Cooperation Agency (Parts 1200—1299)
XIII Board for International Broadcasting (Parts 1300—1399)
XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV African Development Foundation (Parts 1500—1599)
XVI Japan-United States Friendship Commission (Parts 1600—1699)
XVII United States Institute of Peace (Parts 1700—1799)
Title 23—Highways

Chap.

I Federal Highway Administration, Department of Transportation (Parts 1—999)
II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)
III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)
II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)
III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)
IV Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)
V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)
VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]
VII Office of the Secretary, Department of Housing and Urban Development (Parts 700—799)
VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)
IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)
X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)
XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)
XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)
XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)
Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)
II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)
III National Indian Gaming Commission, Department of the Interior (Parts 500—599)
IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)
V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)
VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Part 1001)
VII Office of the Special Trustee for American Indians, Department of the Interior (Part 1200)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—799)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I Department of Justice (Parts 0—199)
III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)
V Bureau of Prisons, Department of Justice (Parts 500—599)
VI Offices of Independent Counsel, Department of Justice (Parts 600—699)
VII Office of Independent Counsel (Parts 700—799)

Title 29—Labor

Subtitle A—Office of the Secretary of Labor (Parts 0—99)
Subtitle B—Regulations Relating to Labor
I National Labor Relations Board (Parts 100—199)
II Office of Labor-Management Standards, Department of Labor (Parts 200—299)
III National Railroad Adjustment Board (Parts 300—399)
IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V Wage and Hour Division, Department of Labor (Parts 500—899)
IX Construction Industry Collective Bargaining Commission (Parts 900—999)
X National Mediation Board (Parts 1200—1299)
Title 29—Labor—Continued

XII Federal Mediation and Conciliation Service (Parts 1400—1499)
XIV Equal Employment Opportunity Commission (Parts 1600—1699)
XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)
XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)
XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II Minerals Management Service, Department of the Interior (Parts 200—299)
III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)
IV Geological Survey, Department of the Interior (Parts 400—499)
VI Bureau of Mines, Department of the Interior (Parts 600—699)
VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—799)

Title 31—Money and Finance: Treasury

SUBTITLE A—Office of the Secretary of the Treasury (Parts 0—50)
SUBTITLE B—Regulations Relating to Money and Finance
I Monetary Offices, Department of the Treasury (Parts 51—199)
II Fiscal Service, Department of the Treasury (Parts 200—399)
IV Secret Service, Department of the Treasury (Parts 400—499)
V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)
VIII Office of International Investment, Department of the Treasury (Parts 800—899)

Title 32—National Defense

SUBTITLE A—Department of Defense
I Office of the Secretary of Defense (Parts 1—399)
V Department of the Army (Parts 400—699)
VI Department of the Navy (Parts 700—799)
Title 32—National Defense—Continued

VII Department of the Air Force (Parts 800—1099)
  Subtitle B—Other Regulations Relating to National Defense

XII Defense Logistics Agency (Parts 1200—1299)

XVI Selective Service System (Parts 1600—1699)

XIX Central Intelligence Agency (Parts 1900—1999)

XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

XXI National Security Council (Parts 2100—2199)

XXIV Office of Science and Technology Policy (Parts 2400—2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)

XXVIII Office of the Vice President of the United States (Parts 2800—2899)

XXIX Presidential Commission on the Assignment of Women in the Armed Forces (Part 2900)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1—199)

II Corps of Engineers, Department of the Army (Parts 200—399)

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

Subtitle B—Regulations of the Offices of the Department of Education

I Office for Civil Rights, Department of Education (Parts 100—199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)

V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

VI Office of Postsecondary Education, Department of Education (Parts 600—699)

VII Office of Educational Research and Improvement, Department of Education (Parts 700—799)

XI National Institute for Literacy (Parts 1100–1199)

Subtitle C—Regulations Relating to Education

XII National Council on Disability (Parts 1200—1299)
Title 35—Panama Canal

I Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1–199)
II Forest Service, Department of Agriculture (Parts 200–299)
III Corps of Engineers, Department of the Army (Parts 300–399)
IV American Battle Monuments Commission (Parts 400–499)
V Smithsonian Institution (Parts 500–599)
VII Library of Congress (Parts 700–799)
VIII Advisory Council on Historic Preservation (Parts 800–899)
IX Pennsylvania Avenue Development Corporation (Parts 900–999)
X Presidio Trust (Parts 1000–1099)
XI Architectural and Transportation Barriers Compliance Board (Parts 1100–1199)
XII National Archives and Records Administration (Parts 1200–1299)
XIV Assassination Records Review Board (Parts 1400–1499)

Title 37—Patents, Trademarks, and Copyrights

I Patent and Trademark Office, Department of Commerce (Parts 1–199)
II Copyright Office, Library of Congress (Parts 200–299)
IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400–499)
V Under Secretary for Technology, Department of Commerce (Parts 500–599)

Title 38—Pensions, Bonuses, and Veterans’ Relief

I Department of Veterans Affairs (Parts 0–99)

Title 39—Postal Service

I United States Postal Service (Parts 1–999)
III Postal Rate Commission (Parts 3000–3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1–799)
V Council on Environmental Quality (Parts 1500–1599)

Title 41—Public Contracts and Property Management

Subtitle B—Other Provisions Relating to Public Contracts
50 Public Contracts, Department of Labor (Parts 50–1–50–999)
Title 41—Public Contracts and Property Management—Continued

51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51-1—51-99)
60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)
61 Office of the Assistant Secretary for Veterans Employment and Training, Department of Labor (Parts 61-1—61-999)

Subtitle C—Federal Property Management Regulations System

101 Federal Property Management Regulations (Parts 101-1—101-99)
105 General Services Administration (Parts 105-1—105-999)
109 Department of Energy Property Management Regulations (Parts 109-1—109-99)
114 Department of the Interior (Parts 114-1—114-99)
115 Environmental Protection Agency (Parts 115-1—115-99)
128 Department of Justice (Parts 128-1—128-99)

Subtitle D—Other Provisions Relating to Property Management [Reserved]

Subtitle E—Federal Information Resources Management Regulations System

201 Federal Information Resources Management Regulation (Parts 201-1—201-99) [Reserved]

Subtitle F—Federal Travel Regulation System

300 General (Parts 300-1—300.99)
301 Temporary Duty (TDY) Travel Allowances (Parts 301-1—301-99)
302 Relocation Allowances (Parts 302-1—302-99)
303 Payment of Expenses Connected with the Death of Certain Employees (Parts 303-1—303-2)
304 Payment from a Non-Federal Source for Travel Expenses (Parts 304-1—304-99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)
IV Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)
V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)
Subtitle B—Regulations Relating to Public Lands
I Bureau of Reclamation, Department of the Interior (Parts 200—499)
II Bureau of Land Management, Department of the Interior (Parts 1000—9999)
Chap.  Title 43—Public Lands: Interior—Continued

III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10005)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0—399)
IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

Subtitle A—Department of Health and Human Services (Parts 1—199)
Subtitle B—Regulations Relating to Public Welfare

II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)
III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)
IV Office of Refugee Resettlement, Administration for Children and Families Department of Health and Human Services (Parts 400—499)
V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)
VI National Science Foundation (Parts 600—699)
VII Commission on Civil Rights (Parts 700—799)
VIII Office of Personnel Management (Parts 800—899)
X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)
XI National Foundation on the Arts and the Humanities (Parts 1100—1199)
XII Corporation for National and Community Service (Parts 1200—1299)
XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)
XVI Legal Services Corporation (Parts 1600—1699)
XVII National Commission on Libraries and Information Science (Parts 1700—1799)
XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)
XXI Commission on Fine Arts (Parts 2100—2199)
XXII Christopher Columbus Quincentenary Jubilee Commission (Parts 2200—2299)
XXIII Arctic Research Commission (Part 2301)
XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)
XXV Corporation for National and Community Service (Parts 2500—2599)

914
Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 1—199)
II Maritime Administration, Department of Transportation (Parts 200—399)
III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400—499)
IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)
II Office of Science and Technology Policy and National Security Council (Parts 200—299)
III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)
2 Department of Defense (Parts 200—299)
3 Department of Health and Human Services (Parts 300—399)
4 Department of Agriculture (Parts 400—499)
5 General Services Administration (Parts 500—599)
6 Department of State (Parts 600—699)
7 United States Agency for International Development (Parts 700—799)
8 Department of Veterans Affairs (Parts 800—899)
9 Department of Energy (Parts 900—999)
10 Department of the Treasury (Parts 1000—1099)
11 Department of Transportation (Parts 1200—1299)
12 Department of Commerce (Parts 1300—1399)
13 Department of the Interior (Parts 1400—1499)
14 Environmental Protection Agency (Parts 1500—1599)
15 Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
16 Office of Personnel Management (Parts 1700—1799)
17 National Aeronautics and Space Administration (Parts 1800—1899)
18 Nuclear Regulatory Commission (Parts 2000—2099)
19 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)
20 Social Security Administration (Parts 2300—2399)
21 Department of Housing and Urban Development (Parts 2400—2499)
22 National Science Foundation (Parts 2500—2599)
23 Department of Justice (Parts 2800—2899)
24 Department of Labor (Parts 2900—2999)
Title 48—Federal Acquisition Regulations System—Continued

34 Department of Education Acquisition Regulation (Parts 3400—3499)
35 Panama Canal Commission (Parts 3500—3599)
44 Federal Emergency Management Agency (Parts 4400—4499)
51 Department of the Army Acquisition Regulations (Parts 5100—5199)
52 Department of the Navy Acquisition Regulations (Parts 5200—5299)
53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)
54 Defense Logistics Agency, Department of Defense (Part 5452)
57 African Development Agency (Parts 5700—5799)
61 General Services Administration Board of Contract Appeals (Parts 6100—6199)
63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)
99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)
Subtitle B—Other Regulations Relating to Transportation
I Research and Special Programs Administration, Department of Transportation (Parts 100—199)
II Federal Railroad Administration, Department of Transportation (Parts 200—299)
III Federal Highway Administration, Department of Transportation (Parts 300—399)
IV Coast Guard, Department of Transportation (Parts 400—499)
V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)
VI Federal Transit Administration, Department of Transportation (Parts 600—699)
VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)
VIII National Transportation Safety Board (Parts 800—999)
X Surface Transportation Board, Department of Transportation (Parts 1000—1399)
XI Bureau of Transportation Statistics, Department of Transportation (Parts 1400—1499)

Title 50—Wildlife and Fisheries
I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)
Title 50—Wildlife and Fisheries—Continued

Chap. Title 50—Wildlife and Fisheries—Continued

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index
List of Agency Prepared Indexes
Parallel Tables of Statutory Authorities and Rules
List of CFR Titles, Chapters, Subchapters, and Parts
Alphabetical List of Agencies Appearing in the CFR
### Alphabetical List of Agencies Appearing in the CFR
*(Revised as of January 1, 1999)*

<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Committee of the Federal Register</td>
<td>1, I</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Advisory Commission on Intergovernmental Relations</td>
<td>5, VII</td>
</tr>
<tr>
<td>Advisory Committee on Federal Pay</td>
<td>5, IV</td>
</tr>
<tr>
<td>Advisory Council on Historic Preservation</td>
<td>36, VIII</td>
</tr>
<tr>
<td>African Development Foundation</td>
<td>22, XV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 57</td>
</tr>
<tr>
<td>Agency for International Development, United States</td>
<td>48, 7</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III; 9, I</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension Service</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 4</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII; 9, II</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Operations, Office of</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLI</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XLI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Secretary of Agriculture, Office of</td>
<td>7, Subtitle A</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation Supplement</td>
<td>48, 53</td>
</tr>
<tr>
<td>Alcohol, Tobacco and Firearms, Bureau of</td>
<td>27, I</td>
</tr>
<tr>
<td>AMTRAK</td>
<td>49, VII</td>
</tr>
<tr>
<td>American Battle Monuments Commission</td>
<td>36, IV</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III; 9, I</td>
</tr>
<tr>
<td>Appalachian Regional Commission</td>
<td>5, IX</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Architectural and Transportation Barriers Compliance Board</td>
<td>36, XI</td>
</tr>
<tr>
<td>Arctic Research Commission</td>
<td>45, XXIII</td>
</tr>
<tr>
<td>Armed Forces Retirement Home</td>
<td>5, XI</td>
</tr>
<tr>
<td>Arms Control and Disarmament Agency, United States</td>
<td>22, VI</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, SI</td>
</tr>
<tr>
<td>Assassination Records Review Board</td>
<td>36, XIIV</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>20, VII</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of</td>
<td>34, V</td>
</tr>
<tr>
<td>Blind or Severely Disabled, Committee for Purchase From People Who Are</td>
<td>41, SI</td>
</tr>
<tr>
<td>Board for International Broadcasting</td>
<td>22, XI</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Central Intelligence Agency</td>
<td>32, XIX</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Christopher Columbus Quincentenary Jubilee Commission</td>
<td>45, XXII</td>
</tr>
<tr>
<td>Civil Rights, Commission on</td>
<td>45, VII</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Commerce Department</td>
<td>44, IV</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Export Administration, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, I</td>
</tr>
<tr>
<td>Fishery Conservation and Management</td>
<td>50, VI</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, I; 19, III</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV, VI</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Telecommunications and Information</td>
<td>15, XXIII; 47, III</td>
</tr>
<tr>
<td>Administration</td>
<td></td>
</tr>
<tr>
<td>National Weather Service</td>
<td>15, I</td>
</tr>
<tr>
<td>Patent and Trademark Office</td>
<td>37, I</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary for Secretary of Commerce, Office of</td>
<td>15, Subtitle A</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Commodity Futures Trading Commission</td>
<td>5, XLI; 17, I</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Construction Industry Collective Bargaining Commission</td>
<td>29, IX</td>
</tr>
<tr>
<td>Consumer Product Safety Commission</td>
<td>5, LXI; 16, II</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension Service</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Corporation for National and Community Service</td>
<td>37, II</td>
</tr>
<tr>
<td>Cost Accounting Standards Board</td>
<td>48, 99</td>
</tr>
<tr>
<td>Council on Environmental Quality</td>
<td>40, V</td>
</tr>
<tr>
<td>Customs Service, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Department</td>
<td>5, XXVI; 32, Subtitle A</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
</tbody>
</table>

920
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Army Department</td>
<td>32, V; 33, II; 36, III, 48,</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, I, XII; 48, 54</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 2</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI; 48, 52</td>
</tr>
<tr>
<td>Secretary of Defense, Office of Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, XII; 48, 54</td>
</tr>
<tr>
<td>Defense Nuclear Facilities Safety Board</td>
<td>10, XVIII</td>
</tr>
<tr>
<td>Delaware River Basin Commission</td>
<td>18, III</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>East-West Foreign Trade Board</td>
<td>15, XIII</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>27, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Education, Department of Civil Rights, Office for</td>
<td>34, V</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 34</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>Secretary of Education, Office of Subtitle A</td>
<td>34, Subtitle A</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Employees' Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Energy, Department of</td>
<td>5, XXIII; 10, II, III, X</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 9</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXIV; 18, I</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 109</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXXIX</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Environmental Protection Agency</td>
<td>5, LIV; 40, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 15</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 115</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Equal Employment Opportunity Commission</td>
<td>5, LXII; 29, XIV</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for President</td>
<td>24, I</td>
</tr>
<tr>
<td>Executive Office of the President</td>
<td>3, I</td>
</tr>
<tr>
<td>Administration, Office of</td>
<td>5, XV</td>
</tr>
<tr>
<td>Environmental Quality, Council on</td>
<td>40, V</td>
</tr>
<tr>
<td>Management and Budget, Office of National Drug Control Policy, Office of</td>
<td>25, III, LXXVII; 48, 99</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI; 47, 2</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV; 47, II</td>
</tr>
<tr>
<td>Trade Representative, Office of the United States</td>
<td>15, XX</td>
</tr>
<tr>
<td>Export Administration, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>Export-Import Bank of the United States</td>
<td>5, LII; 12, IV</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Farm Credit Administration</td>
<td>5, XXXI; 12, VI</td>
</tr>
<tr>
<td>Farm Credit System Insurance Corporation</td>
<td>5, XXX; 12, XIV</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 1</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>--------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>4, II</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>5, XXIX; 47, I</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Federal Deposit Insurance Corporation</td>
<td>5, XXII; 12, III</td>
</tr>
<tr>
<td>Federal Election Commission</td>
<td>11, I</td>
</tr>
<tr>
<td>Federal Emergency Management Agency</td>
<td>44, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 44</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance Federal Acquisition Regulation</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXIV; 18, I</td>
</tr>
<tr>
<td>Federal Financial Institutions Examination Council</td>
<td>12, XI</td>
</tr>
<tr>
<td>Federal Financing Bank</td>
<td>12, VIII</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corporation</td>
<td>23, I, II; 49, III</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight Office</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Federal Housing Finance Board</td>
<td>12, IX</td>
</tr>
<tr>
<td>Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority</td>
<td>5, XIV; 22, XIV</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Federal Maritime Commission</td>
<td>46, IV</td>
</tr>
<tr>
<td>Federal Mediation and Conciliation Service</td>
<td>29, XII</td>
</tr>
<tr>
<td>Federal Mine Safety and Health Review Commission</td>
<td>5, LXXIV; 29, XXVII</td>
</tr>
<tr>
<td>Federal Pay, Advisory Committee on</td>
<td>5, IV</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>29, LIII</td>
</tr>
<tr>
<td>Federal Procurement Policy Office</td>
<td>48, 99</td>
</tr>
<tr>
<td>Federal Property Management Regulations</td>
<td>41, 101</td>
</tr>
<tr>
<td>Federal Property Management Regulations System</td>
<td>41, Subtitle C</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Register, Administrative Committee of</td>
<td>1, I</td>
</tr>
<tr>
<td>Federal Register, Office of</td>
<td>1, II</td>
</tr>
<tr>
<td>Federal Reserve System</td>
<td>12, XI</td>
</tr>
<tr>
<td>Board of Governors</td>
<td>5, LVII</td>
</tr>
<tr>
<td>Federal Retirement Thrift Investment Board</td>
<td>5, VI, LXXVI</td>
</tr>
<tr>
<td>Federal Service Impasses Panel</td>
<td>5, XIV</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
<td>5, XLVII; 16, I</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>Fine Arts, Commission on</td>
<td>45, XXI</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Fishery Conservation and Management</td>
<td>50, VI</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, I</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>30, I</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Foreign Service Grievance Board</td>
<td>22, IX</td>
</tr>
<tr>
<td>Foreign Service Impasses Disputes Panel</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign Service Labor Relations Board</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>General Accounting Office</td>
<td>4, I, II</td>
</tr>
<tr>
<td>General Services Administration</td>
<td>5, LVII</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 61</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 5</td>
</tr>
<tr>
<td>Federal Property Management Regulations System</td>
<td>41, 101, 105</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>General Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td>41, 302</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Temporary Duty (TDY) Travel Allowances</td>
<td>41, 301</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Government Ethics, Office of</td>
<td>5, XVI</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII; 9, II</td>
</tr>
<tr>
<td>Harry S. Truman Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>Health and Human Services, Department of</td>
<td>5, XLV; 45, Subtitle A</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 3</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Health Care Financing Administration</td>
<td>42, IV</td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Inspector General (Health Care), Office of</td>
<td>42, V</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, I</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Health Care Financing Administration</td>
<td>42, IV</td>
</tr>
<tr>
<td>Housing and Urban Development, Department of</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 24</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight, Office of</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant Secretary for</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>24, XII</td>
</tr>
<tr>
<td>Multifamily Housing Assistance Restructuring, Office of</td>
<td>24, IV</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Secretary, Office of</td>
<td>24, Subtitle A, VII</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant Secretary for</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Secretary for</td>
<td></td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Immigration and Naturalization Service</td>
<td>8, I</td>
</tr>
<tr>
<td>Independent Counsel, Office of</td>
<td>28, VII</td>
</tr>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, II</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Information Agency, United States</td>
<td>22, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 19</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Information Security Oversight Office, National Archives and Records Administration</td>
<td>32, XX</td>
</tr>
<tr>
<td>Inspector General</td>
<td></td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>Health and Human Services Department</td>
<td>42, V</td>
</tr>
<tr>
<td>Housing and Urban Development Department</td>
<td>24, XII</td>
</tr>
<tr>
<td>Institute of Peace, United States</td>
<td>22, XVII</td>
</tr>
<tr>
<td>Inter-American Foundation</td>
<td>5, L XIX; 22, X</td>
</tr>
<tr>
<td>Intergovernmental Relations, Advisory Commission on</td>
<td>5, VII</td>
</tr>
<tr>
<td>Interior Department</td>
<td></td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 14</td>
</tr>
<tr>
<td>Federal Property Management Regulations System</td>
<td>41, XIV</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, II</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, II</td>
</tr>
<tr>
<td>Mines, Bureau of</td>
<td>30, VI</td>
</tr>
</tbody>
</table>

923
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Secretary of the Interior, Office of</td>
<td>43, Subtitle A</td>
</tr>
<tr>
<td>Surface Mining and Reclamation Appeals, Board of</td>
<td>30, III</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Boundary and Water Commission, United States and Mexico, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>International Development, United States Agency for</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>International Development Cooperation Agency, United States States</td>
<td>22, XII</td>
</tr>
<tr>
<td>Overseas Private Investment Corporation</td>
<td>5, XXXIII; 22, VII</td>
</tr>
<tr>
<td>International Fishing and Related Activities</td>
<td>30, III</td>
</tr>
<tr>
<td>International Investment, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>International Joint Commission, United States and Canada</td>
<td>22, IV</td>
</tr>
<tr>
<td>International Organizations Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>International Trade Commission, United States</td>
<td>19, II</td>
</tr>
<tr>
<td>Interstate Commerce Commission</td>
<td>22, XI</td>
</tr>
<tr>
<td>James Madison Memorial Fellowship Foundation</td>
<td>45, XXIV</td>
</tr>
<tr>
<td>Japan–United States Friendship Commission</td>
<td>22, XVI</td>
</tr>
<tr>
<td>Joint Board for the Enrollment of Actuaries</td>
<td>20, VIII</td>
</tr>
<tr>
<td>Justice Department</td>
<td>5, XXVIII; 28, I</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 28</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>4, II</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Immigration and Naturalization Service</td>
<td>8, I</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>28, VI</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 128</td>
</tr>
<tr>
<td>Labor Department</td>
<td>5, XLII</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>22, II</td>
</tr>
<tr>
<td>Employees’ Compensation Appeals Board</td>
<td>20, VII</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, I</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 29</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Procurement Regulations System</td>
<td>41, 50</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, III; 29, IV</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Pension and Welfare Benefits Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Public Contracts</td>
<td>41, 50</td>
</tr>
<tr>
<td>Secretary of Labor, Office of</td>
<td>29, Subtitle A</td>
</tr>
<tr>
<td>Veterans’ Employment and Training, Office of the Assistant Secretary for</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Workers’ Compensation Programs, Office of</td>
<td>29, II; 29, IV</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II; 29, IV</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Legal Services Corporation</td>
<td>45, XVI</td>
</tr>
<tr>
<td>Library of Congress</td>
<td>36, VII</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>5, III; LXXVII; 48, 99</td>
</tr>
<tr>
<td>Marine Mammal Commission</td>
<td>50, V</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>Merit Systems Protection Board</td>
<td>5, II</td>
</tr>
<tr>
<td>Micronesian Status Negotiations, Office for</td>
<td>32, XXVII</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, II</td>
</tr>
<tr>
<td>Mines, Bureau of</td>
<td>30, VI</td>
</tr>
</tbody>
</table>
Agency | CFR Title, Subtitle or Chapter
--- | ---
Minority Business Development Agency | 15, XIV
Miscellaneous Agencies | 1, IV
Monetary Offices | 31, I
Multifamily Housing Assistance Restructuring, Office of | 24, IV
National Aeronautics and Space Administration | 5, LIX; 14, V
Federal Acquisition Regulation | 48, 18
National Agricultural Library | 7, XLI
National Agricultural Statistics Service | 7, XXXVI
National Archives and Records Administration | 5, LXVI; 36, XII
Information Security Oversight Office | 32, XX
National Bureau of Standards | 15, II
National Capital Planning Commission | 1, IV
National Commission for Employment Policy | 1, IV
National Commission on Libraries and Information Science | 45, XVII
National and Community Service, Corporation for | 45, XII, XXV
National Council on Disability | 34, XII
National Credit Union Administration | 12, VII
National Drug Control Policy, Office of | 21, III
National Endowment for the Arts | 45, XI
National Endowment for the Humanities | 45, II, III; 49, V
National Imagery and Mapping Agency | 32, I
National Indian Gaming Commission | 25, III
National Institute for Literacy | 34, XI
National Institute of Standards and Technology | 15, II
National Labor Relations Board | 5, LXXI; 29, I
National Marine Fisheries Service | 50, II, IV, VI
National Mediation Board | 29, X
National Oceanic and Atmospheric Administration | 15, IX; 50, II, III, IV, VI
National Park Service | 36, I
National Railroad Adjustment Board | 29, III
National Railroad Passenger Corporation (AMTRAK) | 49, VII
National Science Foundation | 5, XLI; 45, VI
Federal Acquisition Regulation | 48, 25
National Security Council | 32, XXI
National Security Council and Office of Science and Technology Policy | 47, II
National Telecommunications and Information Administration | 15, XXIII; 47, III
National Transportation Safety Board | 49, VIII
National Weather Service | 15, I
Natural Resources Conservation Service | 7, VI
Navajo and Hopi Indian Relocation, Office of | 25, IV
Navy Department | 32, VI
Federal Acquisition Regulation | 48, 52
Neighborhood Reinvestment Corporation | 24, XXV
Northeast Dairy Compact Commission | 7, XIX
Nuclear Regulatory Commission | 5, LXVIII; 10, I
Federal Acquisition Regulation | 48, 20
Occupational Safety and Health Administration | 29, XVII
Occupational Safety and Health Review Commission | 29, X
Offices of Independent Counsel | 29, VI
Operations Office | 7, XXVIII
Overseas Private Investment Corporation | 5, XXXIII; 22, VII
Panama Canal Commission | 48, 25
Panama Canal Regulations | 35, V
Patent and Trademark Office | 37, I
Payment From a Non-Federal Source for Travel Expenses | 41, 304
Payment of Expenses Connected With the Death of Certain Employees | 41, 303
Peace Corps | 22, III
Pennsylvania Avenue Development Corporation | 36, I
Pension and Welfare Benefits Administration | 29, XXV
Pension Benefit Guaranty Corporation | 29, XL
Personnel Management, Office of | 5, I, XXXV; 45, VIII
Federal Acquisition Regulation | 48, 17
Federal Employees Group Life Insurance Federal Acquisition Regulation | 48, 21
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Postal Rate Commission</td>
<td>5, XLVI; 39, III</td>
</tr>
<tr>
<td>Postal Service, United States</td>
<td>5, LX; 39, I</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>President’s Commission on White House Fellowships</td>
<td>1, IV</td>
</tr>
<tr>
<td>Presidential Commission on the Assignment of Women in the Armed Forces</td>
<td>32, XXIX</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Presidio Trust</td>
<td>36, X</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary</td>
<td></td>
</tr>
<tr>
<td>Public Contracts, Department of Labor</td>
<td>41, 50</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, I</td>
</tr>
<tr>
<td>Railroad Retirement Board</td>
<td>20, II</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Regional Action Planning Commissions</td>
<td>13, V</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td>41, 302</td>
</tr>
<tr>
<td>Research and Special Programs Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVII, XVIII, XLII</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of, and National Security Council</td>
<td></td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>17, II</td>
</tr>
<tr>
<td>Selective Service System</td>
<td>32, XVI</td>
</tr>
<tr>
<td>Small Business Administration</td>
<td>13, I</td>
</tr>
<tr>
<td>Smithsonian Institution</td>
<td>36, V</td>
</tr>
<tr>
<td>Social Security Administration</td>
<td>20, III; 48, 23</td>
</tr>
<tr>
<td>Soldiers’ and Airmen’s Home, United States</td>
<td>5, XI</td>
</tr>
<tr>
<td>Special Counsel, Office of</td>
<td>5, VIII</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>State Department</td>
<td>22, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 6</td>
</tr>
<tr>
<td>Surface Mining and Reclamation Appeals, Board of</td>
<td>30, III</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Susquehanna River Basin Commission</td>
<td>18, VIII</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Tennessee Valley Authority</td>
<td>5, L, XIX; 18, XIII</td>
</tr>
<tr>
<td>Thrift Supervision Office, Department of the Treasury</td>
<td>12, V</td>
</tr>
<tr>
<td>Trade Representative, United States, Office of</td>
<td>15, XX</td>
</tr>
<tr>
<td>Transportation, Department of</td>
<td>5, L</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>33, 1; 46, I; 49, 1V</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>46, III</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 63</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 12</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, 1, II; 49, III</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II, III; 49, V</td>
</tr>
<tr>
<td>Research and Special Programs Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, 1V</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Secretary of Transportation, Office of</td>
<td>14, II; 49, Subtitle A</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Travel Allowances, Temporary Duty (TDY)</td>
<td>41, 301</td>
</tr>
<tr>
<td>Treasury Department</td>
<td>5, XXI; 12, XV; 17, IV</td>
</tr>
<tr>
<td>Alcohol, Tobacco and Firearms, Bureau of</td>
<td>27, I</td>
</tr>
<tr>
<td>Community Development Financial Institutions Fund</td>
<td>12, XVIII</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Customs Service, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 10</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, I</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Investment, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Secretary of the Treasury, Office of</td>
<td>31, Subtitle A</td>
</tr>
<tr>
<td>Thrift Supervision, Office of</td>
<td>12, V</td>
</tr>
<tr>
<td>Truman, Harry S. Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>United States and Canada, International Joint Commission</td>
<td>22, IV</td>
</tr>
<tr>
<td>United States and Mexico, International Boundary and Water Commission, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>Utah Reclamation Mitigation and Conservation Commission</td>
<td>43, III</td>
</tr>
<tr>
<td>Veterans Affairs Department</td>
<td>38, I</td>
</tr>
<tr>
<td>Veterans' Employment and Training, Office of the Assistant</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Secretary for</td>
<td></td>
</tr>
<tr>
<td>Vice President of the United States, Office of</td>
<td>32, XXVIII</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Water Resources Council</td>
<td>18, VI</td>
</tr>
<tr>
<td>Workers' Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
</tbody>
</table>
List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.


<table>
<thead>
<tr>
<th>7 CFR</th>
<th>1986 Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter X</td>
<td>SLFR Page</td>
</tr>
<tr>
<td>1001.50 (a) revised</td>
<td>12831</td>
</tr>
<tr>
<td>1002.50 (a) revised</td>
<td>12831</td>
</tr>
<tr>
<td>1006.15 Amended</td>
<td>11551</td>
</tr>
<tr>
<td>1006.50 (a) revised</td>
<td>12831</td>
</tr>
<tr>
<td>1006.52 (a) table revised; interim</td>
<td>20462, 26226</td>
</tr>
<tr>
<td>1007.15 (b)(1) amended</td>
<td>1246</td>
</tr>
<tr>
<td>1007.50 (a) revised</td>
<td>12831</td>
</tr>
<tr>
<td>1007.52 (a) and (b) revised; interim</td>
<td>20462, 26225</td>
</tr>
<tr>
<td>1007.61 (a)(3) revised; interim</td>
<td>20462</td>
</tr>
<tr>
<td>1007.75 (a) revised; interim</td>
<td>20462, 26225</td>
</tr>
<tr>
<td>1011 Technical correction</td>
<td>15876</td>
</tr>
<tr>
<td>1011.7 (a)(2) suspended in part</td>
<td>44265</td>
</tr>
<tr>
<td>1011.50 (a) revised</td>
<td>12831</td>
</tr>
<tr>
<td>1012.50 (a) revised; interim</td>
<td>20462, 26226</td>
</tr>
<tr>
<td>1012.50 (a) table revised; interim</td>
<td>20463, 26226</td>
</tr>
<tr>
<td>1013.50 (a) revised</td>
<td>12832</td>
</tr>
<tr>
<td>1013.52 (a) table revised; interim</td>
<td>20463, 26226</td>
</tr>
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<td>1032.52 (a)(1), (2)(i) and (ii), (3), and (4) and (b) revised; (a)(2)(iii) added; interim</td>
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<td>1036.13 (e) and (f) introductory text, (1)(ii), and (2)(ii) revised</td>
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<td>12832</td>
</tr>
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<td>12832</td>
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</tr>
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</tr>
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<td>1056.7 (c) temporarily suspended in part</td>
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</tr>
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<td>Action</td>
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<td>Amended; interim</td>
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<td>(a) revised</td>
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<td>(a) revised; interim</td>
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<td>(a) revised</td>
</tr>
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<td>1106.52</td>
<td>(a) revised; interim</td>
</tr>
<tr>
<td>1106.52</td>
<td>(a) revised; final</td>
</tr>
<tr>
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<td>(a) revised</td>
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<td>(a) revised</td>
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<td>1124.9</td>
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<td>1124.11</td>
<td>(a) and (b) revised</td>
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<td>Added</td>
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<tr>
<td>1124.46</td>
<td>(a)(4) and (5)(i) revised</td>
</tr>
<tr>
<td>1124.51</td>
<td>(a) revised</td>
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</table>

**1987**

Chapter X

1002.3 Revision at 50 FR 45596 removed | 48795 |
1002.51 (c) revision at 50 FR 45596 removed | 48795 |
1004.2 (d)(2)(i) and (e) revisions at 50 FR 45596 removed | 48795 |
1004.12 (d) temporarily suspended in part | 34764 |
1004.52 (a) revision at 50 FR 45596 removed | 48795 |
1004.75 Revision at 50 FR 45596 removed | 48795 |
1006.52 (a) table revised | 5071 |
1007.52 (a) and (b) revised | 5071 |
1007.61 (a)(3) revised | 5071 |
1007.73 (a)(2) introductory text revised | 5071 |
1007.75 (a) revised | 5071 |
List of CFR Sections Affected

7 CFR—Continued

Chapter X—Continued
1002.90 Amended ........................ 48516
Corrected.......................... 49966
1004.61 (b) (3) and (7) amended; eff. 2–1–89................. 50916
1004.105 Removed; eff. 3–31–89 .... 50916
1004.106 Removed; eff. 3–31–89 .... 50916
1004.110—1004.122 Removed; eff. 3–31–89................. 50916
1007.7 (e)(3) revised; (e)(4) added........... 48518
1030.4 Revised........................ 26679
1030.6 Revised........................ 26679
1030.7 Revised........................ 26679
1030.8 (b) introductory text and (4)(i)(B) corrected........ 27798

7 CFR—Continued

Chapter X—Continued
1079.7 (b) temporarily amended........... 33916
1079.13 (d) (2) and (3) temporarily suspended in part ...... 31752
1079.52 (b)(3) amended ................... 3217
1093.52 (a)(1) table revised; (a)(2), (3), (4) and (6) amended .... 5072
1094.2 Amended........................ 5072
1094.52 (a)(1) table revised; (a)(2)(i), (ii), (iii) (3) and (5) amended ............. 5073
1096.52 (a) revised ........................ 5073
1097.7 (b) temporarily suspended .......... 10730
1098.52 (a) revised......................... 5073
1099.52 (a) revised ......................... 5073
1102 Removed........................... 6318
1106.2 Amended........................ 6318
1106.7 (c) introductory text revised; (c) temporary amendments of 51 FR 6731 and 7247 terminated ...... 6318
1106.12 (b) (5) temporarily suspended ............. 20384
1106.13 (d)(1) suspended ................. 19637
1106.52 (a)(1) table amended; (a)(3)(i) and (4) revised .... 6318
1124.9 (b) temporarily suspended in part .......... 43316
1137.7 (b) temporarily suspended in part .......... 35996
1137.12 (a)(1) temporarily suspended in part .......... 10732, 42271

1988

7 CFR

Chapter X
1002.90 Amended ........................ 48516
Corrected.......................... 49966
1004.61 (b) (3) and (7) amended; eff. 2–1–89................. 50916
1004.105 Removed; eff. 3–31–89 .... 50916
1004.106 Removed; eff. 3–31–89 .... 50916
1004.110—1004.122 Removed; eff. 3–31–89................. 50916
1007.7 (e)(3) revised; (e)(4) added........... 48518
1030.4 Revised........................ 26679
1030.6 Revised........................ 26679
1030.7 Revised........................ 26679
(b) introductory text and (4)(i)(B) corrected........ 27798
# List of CFR Sections Affected

## 7 CFR—Continued 1989

<table>
<thead>
<tr>
<th>Section</th>
<th>Date</th>
<th>Action</th>
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<tr>
<td>1006.52</td>
<td>(c) added</td>
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<tr>
<td>1006.53</td>
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<td>49956</td>
</tr>
<tr>
<td>1012.51</td>
<td>Amended</td>
<td>6386</td>
</tr>
<tr>
<td>1012.41</td>
<td>Revised</td>
<td>6385</td>
</tr>
<tr>
<td>1012.40 (b)(6)</td>
<td>revised; (b)(7) removed</td>
<td>6385</td>
</tr>
<tr>
<td>1012.13 (b)</td>
<td>revised</td>
<td>6385</td>
</tr>
<tr>
<td>1006.78</td>
<td>Revised</td>
<td>6386</td>
</tr>
<tr>
<td>1006.75 (b)</td>
<td>revised</td>
<td>6386</td>
</tr>
<tr>
<td>1006.78</td>
<td>Revised</td>
<td>6384</td>
</tr>
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<td>1006.50 (b)</td>
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<td>removed</td>
<td>6384</td>
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<td>49957</td>
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<td>6386</td>
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<td>6387</td>
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<td>1013.53</td>
<td>Revised; interim</td>
<td>49957</td>
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## 7 CFR—Continued 1989

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<th>Date</th>
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<td>6387</td>
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<td>1013.78 Revised</td>
<td>6388</td>
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<td>Revised; interim</td>
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<td>introductory text amended</td>
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<td>49959</td>
</tr>
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<td>Revised; interim</td>
<td>49959</td>
</tr>
</tbody>
</table>

933
List of CFR Sections Affected

1990

7 CFR

Chapter X
1001. 51 Revised .................................. 53278
1001. 76 (b) revised ................................ 53278
1002. 22 (m)(2) amended ......................... 3199
1002. 30 Introductory text revised .......... 3199
1002. 50 Revised .................................. 53278
1002. 50a Introductory text revised ............... 3199
Corrected ............................................ 5716
1002. 80 (a) through (f) redesignated as (b) through (g); new (a) added; new (b) introductory text and new (c) revised .......... 3200
1002. 61 Revised .................................. 53278
1002. 65 Amended .................................. 3200
1002. 66 (a) and (b) amended ..................... 3200
1002. 69 (f)(1) amended ....................... 3200
1004. 51 Revised .................................. 53278
1004. 74 Revised .................................. 53278
1005 Added ........................................ 31352
1005. 7 (a)(2) amended (temporary) .......... 43084
1005. 51 Revised .................................. 53279
1005. 74 Revised .................................. 53279
1006. 50 (b) introductory text revised ........... 25963
1006. 51 Revised .................................. 53279
1006. 52 (a) amended ............................ 17589
1006. 53 Revised .................................. 25963
1006. 74 Revised .................................. 53279
1007. 32 (a) temporarily suspended .......... 34218
1007. 50 (b) introductory text revised ........... 25963
1007. 51 Revised .................................. 53279
1007. 53 Revised .................................. 25963
1007. 61 (a) in part and (b) temporarily suspended .......... 34218
1007. 74 Revised .................................. 53279
1011. 50 (b) introductory text revised .......... 25963
1011. 51 Revised .................................. 53279
1011. 53 Revised .................................. 25963
1011. 74 Revised .................................. 53279
1012. 15 Amended ................................ 18099
1012. 50 (b) introductory text revised .......... 25963
1012. 51 Revised .................................. 53280
1012. 52 (a) amended ............................ 17589
1012. 53 Revised .................................. 25963
1012. 74 Revised .................................. 53280
1013. 50 (b) introductory text revised .......... 25963
1013. 51 Revised .................................. 53280
1013. 52 (a) amended ............................ 17589
1013. 53 Revised .................................. 25964
1013. 74 Revised .................................. 53280
1013. 7 (b) introductory text amended .......... 41334
(b) introductory text amended
1030. 74 Revised .................................. 53280
1030. 7 (b) temporarily suspended in part .......... 2227
1032. 13 (d)(2) temporarily suspended in part .......... 12810
1030. 51 Revised .................................. 53280
1030. 53 Revised .................................. 25964
1030. 74 Revised .................................. 53280
1030. 7 (b) temporarily suspended .......... 34218
1032. 27 (k)(1) and (3) revised .......... 25964
1033. 50 Revised .................................. 53280
1033. 51 (b) introductory text revised .......... 25964
1033. 73 Revised .................................. 53281
1036. 7 (b) and (d) amended (temporary) eff. 9-90 through 2-91 .......... 35139
1036. 50 (b) introductory text revised .......... 25964
1036. 51 Revised .................................. 53281
1036. 53 Revised .................................. 25964
1036. 74 Revised .................................. 53281
1040. 50 (b) introductory text revised .......... 25964
1040. 51 Revised .................................. 53281
1040. 53 Revised .................................. 25965
1040. 74 Revised .................................. 53281
1044. 18 Removed .................................. 53281
1044. 22 (i)(1)(i), (ii), (iii) and (2) revised .......... 53281
1044. 46 (c) revised ................................ 53481
1044. 50 Revised .................................. 53281
1044. 52 Removed .................................. 53281
1044. 61 (a) revised ................................ 53281
1044. 62 Revised .................................. 53281
1046. 50 (b) introductory text revised .......... 25965
1046. 51 Revised .................................. 53282
1046. 53 Revised .................................. 25965
1046. 74 Revised .................................. 53282
1049. 50 (b) introductory text revised .......... 25965
1049. 51 Revised .................................. 53282
1049. 53 Revised .................................. 25965

7 CFR—Continued

Chapter X—Continued
1013. 52 (a) amended ......................... 17589
1013. 53 Revised .................................. 25964
1013. 74 Revised .................................. 53280
1030. 7 (b) introductory text amended .......... 41334
(b) introductory text amended
1030. 50 (b) introductory text revised .......... 25964
1030. 51 Revised .................................. 53280
1030. 53 Revised .................................. 25964
1030. 74 Revised .................................. 53280
1032. 27 (k)(1) and (3) revised .......... 25964
1033. 50 Revised .................................. 53280
1033. 51 (b) introductory text revised .......... 25964
1033. 73 Revised .................................. 53281
1036. 7 (b) and (d) amended (temporary) eff. 9-90 through 2-91 .......... 35139
1036. 50 (b) introductory text revised .......... 25964
1036. 51 Revised .................................. 53281
1036. 53 Revised .................................. 25964
1036. 74 Revised .................................. 53281
1040. 50 (b) introductory text revised .......... 25964
1040. 51 Revised .................................. 53281
1040. 53 Revised .................................. 25965
1040. 74 Revised .................................. 53281
1044. 18 Removed .................................. 53281
1044. 22 (i)(1)(i), (ii), (iii) and (2) revised .......... 53281
1044. 46 (c) revised ................................ 53481
1044. 50 Revised .................................. 53281
1044. 52 Removed .................................. 53281
1044. 61 (a) revised ................................ 53281
1044. 62 Revised .................................. 53281
1046. 50 (b) introductory text revised .......... 25965
1046. 51 Revised .................................. 53282
1046. 53 Revised .................................. 25965
1046. 74 Revised .................................. 53282
1049. 50 (b) introductory text revised .......... 25965
1049. 51 Revised .................................. 53282
1049. 53 Revised .................................. 25965

935
### 7 CFR—Continued

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1049.74 Revised</td>
<td>53282</td>
</tr>
<tr>
<td>1050.50 (b) introductory text revised</td>
<td>25965</td>
</tr>
<tr>
<td>1050.51 Revised</td>
<td>53282</td>
</tr>
<tr>
<td>1050.53 Revised</td>
<td>25965</td>
</tr>
<tr>
<td>1050.74 Revised</td>
<td>53282</td>
</tr>
<tr>
<td>1064.50 (b) introductory text revised</td>
<td>25965</td>
</tr>
<tr>
<td>1064.51 Revised</td>
<td>53282</td>
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<td>1064.53 Revised</td>
<td>25965</td>
</tr>
<tr>
<td>1064.54 Revised</td>
<td>53282</td>
</tr>
<tr>
<td>1065.50 (b) introductory text revised</td>
<td>25965</td>
</tr>
<tr>
<td>1065.51 Revised</td>
<td>53283</td>
</tr>
<tr>
<td>1065.53 Revised</td>
<td>25966</td>
</tr>
<tr>
<td>1065.74 Revised</td>
<td>53283</td>
</tr>
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<td>1068.7 (a)(1) and (b) revised; (d)(1) and (2) removed; (d)(4) introductory text, (i), (iv), and (5)(ii)(B) revised; (d)(7) redesignated as (8); new (d)(7) added</td>
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<td>25966</td>
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<tr>
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<td>53283</td>
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<td>1068.53 Revised</td>
<td>25966</td>
</tr>
<tr>
<td>1068.74 Revised</td>
<td>53283</td>
</tr>
<tr>
<td>1068.85 Introductory text amended</td>
<td>26636</td>
</tr>
<tr>
<td>1075.22 Removed</td>
<td>53283</td>
</tr>
<tr>
<td>1075.27 (j)(1)(i), (ii), (iii) and (2) revised</td>
<td>53283</td>
</tr>
<tr>
<td>1075.46 (c) revised</td>
<td>53283</td>
</tr>
<tr>
<td>1075.50 Revised</td>
<td>53283</td>
</tr>
<tr>
<td>1075.52 Removed</td>
<td>53283</td>
</tr>
<tr>
<td>1075.70 (a) revised</td>
<td>53282</td>
</tr>
<tr>
<td>1075.71 (b) removed; (c) and (d) redesignated as (b) and (c)</td>
<td>53283</td>
</tr>
<tr>
<td>1075.81 Revised</td>
<td>53283</td>
</tr>
<tr>
<td>1076.13 (c)(2), (3), and (4) removed</td>
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</tr>
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<td>25966</td>
</tr>
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<td>53284</td>
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<td>25966</td>
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<td>1076.74 Revised</td>
<td>53284</td>
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<td>1079.7 (b) introductory text amended</td>
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<td>25966</td>
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<td>53284</td>
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<td>53288</td>
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<td>Section</td>
<td>Action</td>
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<td>1001.73</td>
<td>(a) and (b) amended</td>
</tr>
<tr>
<td>1001.74</td>
<td>(d)(1) through (3) amended</td>
</tr>
<tr>
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<td>1001.85</td>
<td>(c) revised</td>
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<td>1002.6</td>
<td>Revised</td>
</tr>
<tr>
<td>1002.14</td>
<td>(a) revised; (b) added</td>
</tr>
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<td>1002.15</td>
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<td>Added</td>
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<td>Revised</td>
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<td>Introductory text, (a)(2), (3), (c)(5), (k)(1), and (l) amended; (c) introductory text, (1), and (h) revised</td>
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<td>Nomenclature change; (c) through (j) redesignated as (d) through (k); (b) introductory text, new (d), (h) introductory text, (2), (3), and (i) revised; new (c) and (l) added</td>
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<td>Revised</td>
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<td>1002.42</td>
<td>Revised</td>
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<td>1002.45</td>
<td>Revised</td>
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<tr>
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<td>Redesignated from 1002.70; nomenclature change; (a) amended; (d) revised</td>
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<td>Redesignated from 1002.71; (b-1) through (g) redesignated as (c) through (h); introductory text, (a), (b), (e) and new (h) amended</td>
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<td>Added</td>
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<td>1002.70—1002.77</td>
<td>Undesignated center heading transferred from 1002.83—1002.89</td>
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<td>Section</td>
<td>Revised</td>
</tr>
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<tr>
<td>1002.141</td>
<td>(a), (b), (e) and (f) revised</td>
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<tr>
<td>1002.142</td>
<td>(e) and (f) revised</td>
</tr>
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<td>(a) revised</td>
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<td>Revised</td>
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<td>Revised</td>
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<td>Revised</td>
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<td>(b) revised; (c) amended</td>
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<td>Revised</td>
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<td>Revised</td>
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<td>1002.260</td>
<td>Revised</td>
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<td>(d) revised</td>
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<td>1004.12</td>
<td>(a), (e), and (f)(5) revised</td>
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<td>(a) revised</td>
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1006.43 (a) revised; (c) and (d) added............................... 27788
1006.44 Revised ........................................ 27788
1006.45 (a) amended; (b) revised.... 27790
1006.50 (c) added........................................ 27790
1006.60 Revised ........................................ 27790
1006.76 (b)(3) and (5) revised; (c) added........................... 27791
1006.85 (b)(4) and (5) suspended in part.......................... 27791
1006.90 (d), (f) and (g) revised; (h) and (i) added............. 27791
1006.44 Revised ........................................ 27788
1007.13 (b)(4) and (5) suspended in part.......................... 27791
1007.14 Revised ........................................ 27791
1007.15 Revised ........................................ 27791
1007.16 Revised ........................................ 27791
1007.21 Added .......................................... 27791
1007.32 (a) suspended; eff. 8-1-93
through 8-31-93........................................... 43068
1007.40 Revised ........................................ 27792
1007.41 (i) revised; (d) added..........63286
1007.42 (a)(1) amended; (d)(2)(vi)
and (vii) revised........................................... 27792
1007.43 (d) added........................................ 27792
1007.44 (a)(2), (6), (7)(i) and (9) revised;
(a)(5), (7)(v), (8)(i), (ii) introductory text and (11)
introductory text amended............................... 27793
1007.45 (b) revised....................................... 27793
1007.50 (d) added........................................ 63286
1007.53 Revised ........................................ 63286
1007.60 (d), (f) and (g) revised; (h)
and (i) added.............................................. 27793
1007.61 (a) introductory text in
part and (b) suspended; eff. 8-1-93
through 8-31-93........................................... 43068
1007.76 (a)(3) and (5) revised; (c) added........................... 27791
1007.85 (b) revised....................................... 27794
1011.13 (e)(3) amended; eff. through 7-31-93........................... 17948
1011.15 Revised ........................................ 27794
1011.16 Revised ........................................ 27794
1011.19 Added .......................................... 27794
1011.40 Revised ........................................ 27794
1011.42 (a)(1) amended; (d)(2)(vi)
and (vii) revised........................................... 27795
1011.43 (d) added........................................ 27795
1011.44 (a)(2), (6), (7)(i) and (9) revised;
(a)(5), (7)(v), (8)(i), (ii) introductory text and (11)
introductory text amended............................... 27795
1011.45 (b) revised....................................... 27796
1011.50 (d) added........................................ 63286
1011.52 (b)(1) introductory text revised............................... 27796
1011.53 Revised ........................................ 63286
1011.60 (d), (f) and (g) revised; (h)
and (i) added.............................................. 27796
1011.76 (a)(3) and (5) revised; (c) added........................... 27796
1011.85 (c) revised....................................... 27797
1012.15 Revised ........................................ 27797
1012.16 Revised ........................................ 27797
1012.20 Added .......................................... 27797
1012.40 Revised ........................................ 27797
1012.42 Revised ........................................ 27798
1012.43 (a) revised; (c) and (d)
added.............................................. 27799
1012.44 Revised ........................................ 27799
1012.45 (a) amended; (b) revised.... 27801
1012.50 (c) added........................................ 27801
1012.60 Revised ........................................ 27801
1012.76 (b)(3) and (5) revised; (c) added........................... 27802
1012.85 (b) revised....................................... 27802
1013.15 Revised ........................................ 27802
1013.16 Revised ........................................ 27803
1013.20 Added .......................................... 27803
1013.30 Revised ........................................ 27803
1013.40 Revised ........................................ 27803
1013.42 Revised ........................................ 27803
1013.43 (c) and (d) added ......... 27805
1013.44 Revised ........................................ 27805
1013.45 (a) amended; (b) revised.... 27807
1013.50 (c) revised....................................... 27807
1013.60 Revised ........................................ 27807
1013.76 (b)(3) and (5) revised; (c) added........................... 27808
1013.85 (a)(2) revised.................................... 27809
1013.90 (b)(6)(v) temporarily suspended through 7-31-93.................. 40038
1013.91 (b) introductory text amended; eff. in part to 9-30-93........................... 48954
1013.92 Revised ........................................ 27808
1013.93 Revised ........................................ 27808
1013.94 Revised ........................................ 27808
1013.95 (a) amended; (d)(2)(vi) and (vii) revised ..... 27809
1013.96 (d) added........................................ 27809
1013.97 (e) added........................................ 63286
1014.40 (a)(2)(ii) added; (a)(5)
amended; (a)(8)(i) (a) and (b) redesignated as (a)(8)(i)(A) and (B); (a)(6), (7)(i), new (8)(i)(B)
and (9) revised ........................................... 27809
1011.45 (b) revised....................................... 27810
1013.50 (d) added........................................ 63286
1013.52 (c)(1) and (5) revised................. 27810
1013.53 Revised ........................................ 63286
### List of CFR Sections Affected

**7 CFR—Continued**

<table>
<thead>
<tr>
<th>Section Number</th>
<th>Revised/Affected Details</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1030.60</td>
<td>(d) and (f) revised; (g) and (h) amended; (i), (j) and (k) added</td>
<td>27810</td>
</tr>
<tr>
<td>1030.76</td>
<td>(a)(3) and (5) revised; (c) added</td>
<td>27810</td>
</tr>
<tr>
<td>1030.95</td>
<td>(b) revised</td>
<td>27811</td>
</tr>
<tr>
<td>1032.15</td>
<td>Revised</td>
<td>27811</td>
</tr>
<tr>
<td>1032.16</td>
<td>Revised</td>
<td>27811</td>
</tr>
<tr>
<td>1032.19</td>
<td>Added</td>
<td>27811</td>
</tr>
<tr>
<td>1032.40</td>
<td>Revised</td>
<td>27811</td>
</tr>
<tr>
<td>1032.42</td>
<td>(a)(1) amended; (d)(2)(vi) and (vii) revised</td>
<td>27812</td>
</tr>
<tr>
<td>1032.43</td>
<td>Revised</td>
<td>27812</td>
</tr>
<tr>
<td>1032.44</td>
<td>(a)(2), (6), (7)(i) and (9) revised; (a)(5), (7)(v), (8)(i), (ii) introductory text and (11) introductory text amended</td>
<td>27812</td>
</tr>
<tr>
<td>1032.45</td>
<td>(b) revised</td>
<td>27813</td>
</tr>
<tr>
<td>1032.60</td>
<td>(d), (f) and (g) revised; (h) and (i) added</td>
<td>27813</td>
</tr>
<tr>
<td>1032.76</td>
<td>(a)(3) and (5) revised; (c) added</td>
<td>27813</td>
</tr>
<tr>
<td>1033</td>
<td>Undesignated center heading removed</td>
<td>27823</td>
</tr>
<tr>
<td>1033.1</td>
<td>Undesignated center heading added</td>
<td>27823</td>
</tr>
<tr>
<td>1033.2</td>
<td>Redesignated from 1033.6</td>
<td>27823</td>
</tr>
<tr>
<td></td>
<td>Undesignated center heading added</td>
<td>27823</td>
</tr>
<tr>
<td>1033.3</td>
<td>Redesignated from 1033.8 and amended</td>
<td>27823</td>
</tr>
<tr>
<td>1033.4</td>
<td>Redesignated from 1033.9</td>
<td>27823</td>
</tr>
<tr>
<td>1033.5</td>
<td>Redesignated as 1033.19; new 1033.5 redesignated from 1033.10</td>
<td>27824</td>
</tr>
<tr>
<td>1033.6</td>
<td>Redesignated as 1033.2; new 1033.6 redesignated from 1033.11</td>
<td>27824</td>
</tr>
<tr>
<td>1033.7</td>
<td>Redesignated as 1033.15</td>
<td>27824</td>
</tr>
<tr>
<td></td>
<td>Redesignated from 1033.12; introductory text and (b) introductory text amended; (d) added</td>
<td>27824</td>
</tr>
<tr>
<td></td>
<td>(b) introductory text revised; (b)(2) and (3) redesignated as (b)(3) and (4); new (b)(2) added; (c) introductory text and (2) amended</td>
<td>27825</td>
</tr>
<tr>
<td>1033.8</td>
<td>Redesignated as 1033.3; new 1033.8 redesignated from 1033.13</td>
<td>27824</td>
</tr>
<tr>
<td>1033.9</td>
<td>Redesignated as 1033.4; new 1033.9 redesignated from 1033.16; (b), (e) and (f) amended</td>
<td>27824</td>
</tr>
<tr>
<td>1033.10</td>
<td>Redesignated as 1033.5; new 1033.10 redesignated from 1033.17</td>
<td>27824</td>
</tr>
<tr>
<td>1033.11</td>
<td>Redesignated as 1033.6</td>
<td>27824</td>
</tr>
<tr>
<td>1033.12</td>
<td>Redesignated as 1033.7; new 1033.12 redesignated from 1033.14; (a)(2), (3) and (b)(2) amended</td>
<td>27824</td>
</tr>
<tr>
<td>1033.13</td>
<td>Redesignated as 1033.8; new 1033.13 redesignated from 1033.15 and amended</td>
<td>27824</td>
</tr>
<tr>
<td>1033.14</td>
<td>Redesignated as 1033.12; new 1033.14 redesignated from 1033.18; (b) amended</td>
<td>27825</td>
</tr>
<tr>
<td>1033.15</td>
<td>Redesignated as 1033.13; new 1033.15 redesignated from 1033.17 and revised</td>
<td>27824</td>
</tr>
<tr>
<td>1033.16</td>
<td>Redesignated as 1033.9</td>
<td>27824</td>
</tr>
<tr>
<td></td>
<td>Added</td>
<td>27815</td>
</tr>
<tr>
<td>1033.17</td>
<td>Redesignated as 1033.10</td>
<td>27824</td>
</tr>
<tr>
<td>1033.18</td>
<td>Redesignated as 1033.14</td>
<td>27825</td>
</tr>
<tr>
<td>1033.19</td>
<td>Removed; new 1033.19 redesignated from 1033.5</td>
<td>27824</td>
</tr>
<tr>
<td>1033.20</td>
<td>Redesignated as 1033.17; new 1033.20 redesignated from 1033.21; introductory text amended</td>
<td>27824</td>
</tr>
<tr>
<td>1033.21</td>
<td>Redesignated as 1033.20; new 1033.21 added</td>
<td>27825</td>
</tr>
<tr>
<td>1033.27</td>
<td>Removed</td>
<td>27825</td>
</tr>
<tr>
<td>1033.30</td>
<td>(a)(1)(iv), (2), (b)(1) introductory text and (2) amended</td>
<td>27825</td>
</tr>
<tr>
<td></td>
<td>Undesignated center heading added</td>
<td>27823</td>
</tr>
<tr>
<td></td>
<td>(a)(1)(i), (3)(ii), (4) and (b) revised</td>
<td>43506</td>
</tr>
<tr>
<td>1033.31</td>
<td>Redesignated as 1033.32; new 1033.31 redesignated from former 1033.32; (b) amended</td>
<td>27825</td>
</tr>
<tr>
<td></td>
<td>(a)(2) and (c) revised; (b) amended</td>
<td>43506</td>
</tr>
<tr>
<td>1033.32</td>
<td>Redesignated as 1033.31; new 1033.32 redesignated from former 1033.31; (c)(4), (d)(3), (e)(4) and (g) amended</td>
<td>27825</td>
</tr>
<tr>
<td></td>
<td>(e)(2), (4), (5) and (f) revised</td>
<td>43506</td>
</tr>
<tr>
<td>1033.40</td>
<td>Removed; new 1033.40 redesignated from 1033.41 and revised</td>
<td>27824</td>
</tr>
</tbody>
</table>
Chapter X—Continued

7 CFR (1-1-99 Edition)

7 CFR—Continued

Chapter X—Continued

58 FR Page

Undesignated center heading added
27823
(c)(1)(iii) revised; (d) added 63287
1033.41 Redesignated as 1033.40 27815
Redesignated from 1033.42 and revised 27816
(c) amended 43506
1033.42 Redesignated as 1033.41; new 1033.42 redesignated from 1033.43 and revised 27816
1033.43 Redesignated as 1033.42 27816
Redesignated from 1033.45 and revised 27818
(d) revised 43507
(f) added 63287
1033.44 Added 27818
1033.45 Redesignated as 1033.43 27818
Added 27820
1033.46 Removed 27820
1033.50 Removed; new 1033.50 redesignated from 1033.51; introductory text, (b) introductory text, (1) and (2) amended 27820
Undesignated center heading added 27823
Heading and introductory text revised; (d), (e) and (f) added 43507
(g) added 63287
1033.51 Redesignated as 1033.50; new 1033.51 added 27820
1033.51a Removed 27821
1033.52 Redesignated from 1033.53; (a) introductory text and (1) amended; (b) revised 27821
1033.53 Redesignated as 1033.52; new 1033.53 added 27821
Revised 43507
(a)(2) revised 63287
1033.56 Removed 27821
1033.57 Redesignated as 1033.76 27822
1033.60—1033.61 Undesignated center heading added 27823
Undesignated center heading revised 43507
1033.60 Revised 27821, 43507
(m) added 63287
1033.61 (f)(2) amended 27822
Revised 43508
1033.62 Added 43508
1033.63 Added 43508
1033.64 Added 43508
1033.65 Added 43508
1033.66 Added 43509
1033.70 (c) removed; (a) revised 27822
(b) added 27822

1033.71 (a), (b) introductory text and (1) amended; (c) redesignated as (d); new (c) added; (d) introductory text revised 27822
(b) introductory text and (1) revised 43509
1033.72 (b)(2) and (e)(2) amended 27822
(b) introductory text and (d)(2) revised 43509
1033.74 Revised 27822
1033.75 Redesignated as 1033.86 27822
1033.76 Redesignated as 1033.85 27822
Redesignated from 1033.57; heading, (b)(3) and (5) revised; introductory text, (a)(1)(i) and (ii) amended; (c) added 27822
1033.85 Redesignated from 1033.76; heading and (c) revised; (a), (b) and (d)(2) amended 27822
Undesignated center heading added 27823
1033.86 Redesignated from 1033.75; heading revised 27822
(a) revised 43509
1036.7 (d) introductory text and (2) amended 40725
(b) revised 43509
1036.13 (a)(3) and (b) amended; (e), (f) and (h) revised; (g) removed 43509
1036.15 Revised 27823
1036.16 Revised 27823
1036.21 Added 27823
1036.30 (a)(1), (3)(ii), (4) and (b) revised 43510
1036.31 (a)(2) and (b)(3) revised 43510
1036.32 (c)(2) and (d) revised 43510
1036.40 Revised 27823
(c)(1)(iii) revised; (d) added 63287
1036.41 Revised 27824
(c) amended 43510
1036.42 (a)(1) amended; (c)(3)(iv) revised 27825
1036.43 Revised 27825
(e) added 63287
1036.44 (a)(1), (2), (3)(i), (5), (6), (7)(i) and (8) through (15) revised; (a)(7)(i) and (c) amended; (a)(16) removed 27825
1036.45 (b) revised 27827
### List of CFR Sections Affected

#### 7 CFR—Continued

<table>
<thead>
<tr>
<th>7 CFR—Continued</th>
<th>58 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter X—Continued</td>
<td></td>
</tr>
<tr>
<td>1036.50 Heading and introductory text revised; (d), (e) and (f) added ...........................................</td>
<td>43510</td>
</tr>
<tr>
<td>(g) added ..................................................</td>
<td>63287</td>
</tr>
<tr>
<td>(a)(2) revised ..................................................</td>
<td></td>
</tr>
<tr>
<td>1036.60–1036.62 Undesignated center heading revised ..................................................</td>
<td></td>
</tr>
<tr>
<td>1036.60 (d), (e) and (f) revised; (g) and (h) added ..................................................</td>
<td>27827</td>
</tr>
<tr>
<td>(m) added ..................................................</td>
<td></td>
</tr>
<tr>
<td>1036.61 Revised ..................................................</td>
<td>43512</td>
</tr>
<tr>
<td>1036.62 Revised ..................................................</td>
<td>43512</td>
</tr>
<tr>
<td>1036.63 Added ..................................................</td>
<td>43512</td>
</tr>
<tr>
<td>1036.64 Added ..................................................</td>
<td>43512</td>
</tr>
<tr>
<td>1036.65 Added ..................................................</td>
<td>43512</td>
</tr>
<tr>
<td>1036.66 Added ..................................................</td>
<td>43512</td>
</tr>
<tr>
<td>1036.71 (b) introductory text, (1) and (c) revised ..................................................</td>
<td>43512</td>
</tr>
<tr>
<td>1036.72 Revised ..................................................</td>
<td>43513</td>
</tr>
<tr>
<td>1036.73 (a)(2) introductory text, (b)(2), (d)(2) and (3) revised ..................................................</td>
<td>43513</td>
</tr>
<tr>
<td>1036.76 (b)(3) and (5) revised; (c) added ..................................................</td>
<td>27827</td>
</tr>
<tr>
<td>1036.85 (a) revised ..................................................</td>
<td>27828</td>
</tr>
<tr>
<td>Introductory text amended ..................................................</td>
<td>43513</td>
</tr>
<tr>
<td>1036.86 (a) amended ..................................................</td>
<td>43513</td>
</tr>
<tr>
<td>1040.15 Revised ..................................................</td>
<td>27828</td>
</tr>
<tr>
<td>1040.16 Revised ..................................................</td>
<td>27828</td>
</tr>
<tr>
<td>1040.19 Revised ..................................................</td>
<td>27828</td>
</tr>
<tr>
<td>1040.40 Revised ..................................................</td>
<td>27828</td>
</tr>
<tr>
<td>(c)(1)(iii) revised; (d) added ..................................................</td>
<td>63287</td>
</tr>
<tr>
<td>1040.41 (a)(2) revised ..................................................</td>
<td>27829</td>
</tr>
<tr>
<td>1040.42 (a)(1) amended; (d)(2)(vi) and (vii) revised ..................................................</td>
<td>27829</td>
</tr>
<tr>
<td>1040.43 (e) added ..................................................</td>
<td>27829</td>
</tr>
<tr>
<td>(f) added ..................................................</td>
<td>63287</td>
</tr>
<tr>
<td>1040.44 (a)(12)(i)(a) and (b) redesignated as (a)(12)(i)(A) and (B); (a)(2), (5), (6), (7)(i) through (iv), (8)(i)(v) through (iv), (9), (11), (12)(i)(B) and (ii) revised; (a)(7)(v), (8)(i) and (12)(i) introductory text amended; (a)(12)(iii) and (iv) added ..................................................</td>
<td>27829</td>
</tr>
<tr>
<td>1040.45 (b) revised ..................................................</td>
<td>27831</td>
</tr>
<tr>
<td>1040.50 (d) added ..................................................</td>
<td>63287</td>
</tr>
<tr>
<td>1040.53 Revised ..................................................</td>
<td>63287</td>
</tr>
<tr>
<td>1040.60 (d), (f), (g) and (h) revised; (i) added ..................................................</td>
<td>27831</td>
</tr>
<tr>
<td>1040.76 (a)(3) and (5) revised; (c) added ..................................................</td>
<td>27831</td>
</tr>
<tr>
<td>1040.85 (b) revised ..................................................</td>
<td>27832</td>
</tr>
<tr>
<td>1044.16 Revised ..................................................</td>
<td>27832</td>
</tr>
<tr>
<td>1044.18 Added ..................................................</td>
<td>27832</td>
</tr>
<tr>
<td>1044.20 Added ..................................................</td>
<td>27832</td>
</tr>
<tr>
<td>1044.21 Added ..................................................</td>
<td>27832</td>
</tr>
<tr>
<td>1044.22 (l)(1)(ii) and (i) revised; (i)(3) added ..................................................</td>
<td>27832</td>
</tr>
<tr>
<td>(l)(1)(iii) revised ..................................................</td>
<td>63288</td>
</tr>
<tr>
<td>1044.40 Removed; new 1044.40 redesignated from 1044.41 and revised ..................................................</td>
<td>27833</td>
</tr>
<tr>
<td>(c)(1)(iii) revised; (d) added ..................................................</td>
<td>63288</td>
</tr>
<tr>
<td>1044.41 Redesignated as 1044.40; new 1044.41 redesignated from 1044.42 and revised ..................................................</td>
<td>27833</td>
</tr>
<tr>
<td>1044.42 Redesignated as 1044.41 ..................................................</td>
<td>27833</td>
</tr>
<tr>
<td>Redesignated from 1044.43 and revised ..................................................</td>
<td>27834</td>
</tr>
<tr>
<td>1044.43 Redesignated as 1044.42 ..................................................</td>
<td>27834</td>
</tr>
<tr>
<td>Redesignated from 1044.45 and revised ..................................................</td>
<td>27835</td>
</tr>
<tr>
<td>(f) added ..................................................</td>
<td>63288</td>
</tr>
<tr>
<td>1044.44 Redesignated from 1044.46 and revised ..................................................</td>
<td>27835</td>
</tr>
<tr>
<td>1044.45 Redesignated as 1044.43 ..................................................</td>
<td>27835</td>
</tr>
<tr>
<td>1044.46 Redesignated as 1044.44 ..................................................</td>
<td>27835</td>
</tr>
<tr>
<td>1044.50 Removed; new 1044.50 redesignated from 1044.51; introductory text amended; (b) revised; (c) added ..................................................</td>
<td>27837</td>
</tr>
<tr>
<td>(d) added ..................................................</td>
<td>63288</td>
</tr>
<tr>
<td>1044.51 Redesignated as 1044.50; new 1044.51 redesignated ..................................................</td>
<td>27837</td>
</tr>
<tr>
<td>1044.60 (a), (b), (c) introductory text, (1) and (2) amended ..................................................</td>
<td>27838</td>
</tr>
<tr>
<td>1044.63 Amended ..................................................</td>
<td>27838</td>
</tr>
<tr>
<td>1044.71 Revised ..................................................</td>
<td>27838</td>
</tr>
<tr>
<td>1044.15 Revised ..................................................</td>
<td>27838</td>
</tr>
<tr>
<td>1046.16 Revised ..................................................</td>
<td>27838</td>
</tr>
<tr>
<td>1046.19 Added ..................................................</td>
<td>27838</td>
</tr>
<tr>
<td>1046.40 Revised ..................................................</td>
<td>27838</td>
</tr>
<tr>
<td>(c)(1)(iii) revised; (d) added ..................................................</td>
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</tr>
<tr>
<td>1046.42 (a)(1) amended; (d)(2)(vi) and (vii) revised ..................................................</td>
<td>27839</td>
</tr>
<tr>
<td>1046.43 (d) added ..................................................</td>
<td>27839</td>
</tr>
<tr>
<td>(e) added ..................................................</td>
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<td>1046.44 (a)(2), (6), (7)(i) and (9) revised; (a)(5), (7)(v), (8)(i), (ii) introductory text and (11) introductory text amended ..................................................</td>
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<td>1046.45 (b) revised ..................................................</td>
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</tr>
<tr>
<td>1046.50 (d) added ..................................................</td>
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</tr>
<tr>
<td>1046.53 Revised ..................................................</td>
<td>63288</td>
</tr>
<tr>
<td>1046.60 (d), (f) and (g) revised; (h) and (i) added ..................................................</td>
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</tr>
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<td>1046.76 (a)(3) and (5) revised; (c) added ..................................................</td>
<td>27840</td>
</tr>
<tr>
<td>1046.85 (b) revised ..................................................</td>
<td>27840</td>
</tr>
<tr>
<td>1049.3 Revised ..................................................</td>
<td>43513</td>
</tr>
</tbody>
</table>
### 7 CFR—Continued

<table>
<thead>
<tr>
<th>Chapter X—Continued</th>
<th>58 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1049.6 Revised ................. 43513</td>
<td></td>
</tr>
<tr>
<td>1049.7 (a) and (b) revised; (c) redesignated as (d); new (c) added ..................... 43513</td>
<td></td>
</tr>
<tr>
<td>1049.13 Revised ................. 43514</td>
<td></td>
</tr>
<tr>
<td>1049.15 Revised ................ 27841</td>
<td></td>
</tr>
<tr>
<td>1049.16 Revised ................ 27841</td>
<td></td>
</tr>
<tr>
<td>1049.19 Added ................... 27841</td>
<td></td>
</tr>
<tr>
<td>1049.30 (a)(1), (6) and (c) revised .................................. 43514</td>
<td></td>
</tr>
<tr>
<td>1049.31 (a)(3) and (4) revised .... 43515</td>
<td></td>
</tr>
<tr>
<td>1049.32 (a) and (b) designation removed; amended .......... 43515</td>
<td></td>
</tr>
<tr>
<td>1049.40 Revised ................. 27842</td>
<td></td>
</tr>
<tr>
<td>(c)(1)(iii) revised; (d) added ........ 63288</td>
<td></td>
</tr>
<tr>
<td>1049.41 (c) amended .............. 43515</td>
<td></td>
</tr>
<tr>
<td>1049.42 (a)(1) amended; (d)(2)(vi) and (vii) revised .......... 27842</td>
<td></td>
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<tr>
<td>1049.43 (d) added ................ 27842</td>
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</tr>
<tr>
<td>(e) added ....................... 63288</td>
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</tr>
<tr>
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<td>1049.45 (b) revised .............. 27842</td>
<td></td>
</tr>
<tr>
<td>1049.50 Heading, introductory text and (a) revised; (d), (e) and (f) added .................. 43515</td>
<td></td>
</tr>
<tr>
<td>(g) added ....................... 63288</td>
<td></td>
</tr>
<tr>
<td>1049.52 (a) and (b) revised .... 43515</td>
<td></td>
</tr>
<tr>
<td>1049.53 Revised ................. 43515</td>
<td></td>
</tr>
<tr>
<td>(a)(2) revised .................. 63288</td>
<td></td>
</tr>
<tr>
<td>1049.60—1049.62 Undesignated center heading revised .......... 43515</td>
<td></td>
</tr>
<tr>
<td>1049.60 (d) and (f) revised; (g), (h) and (i) added ................ 27842</td>
<td></td>
</tr>
<tr>
<td>Revised ....................... 43516</td>
<td></td>
</tr>
<tr>
<td>(l) added ....................... 63288</td>
<td></td>
</tr>
<tr>
<td>1049.61 Revised ................ 43516</td>
<td></td>
</tr>
<tr>
<td>1049.62 Revised ................. 43517</td>
<td></td>
</tr>
<tr>
<td>1049.63 Added ................... 43517</td>
<td></td>
</tr>
<tr>
<td>1049.64 Added ................... 43517</td>
<td></td>
</tr>
<tr>
<td>1049.65 Added ................... 43517</td>
<td></td>
</tr>
<tr>
<td>1049.66 Added ................... 43517</td>
<td></td>
</tr>
<tr>
<td>1049.71 (a)(1) and (2) revised ........ 43517</td>
<td></td>
</tr>
<tr>
<td>1049.73 (a)(2) amended; (c)(2)(ii) and (d)(2) revised .................. 43517</td>
<td></td>
</tr>
<tr>
<td>1049.75 Revised ................ 43518</td>
<td></td>
</tr>
<tr>
<td>1049.76 (a)(3) and (5) revised; (c) added ................ 27843</td>
<td></td>
</tr>
<tr>
<td>1049.78 Revised ................ 43518</td>
<td></td>
</tr>
<tr>
<td>1049.85 (b) revised .............. 27843</td>
<td></td>
</tr>
<tr>
<td>1049.86 (a) amended ............. 43518</td>
<td></td>
</tr>
<tr>
<td>1050.15 Revised ................ 27843</td>
<td></td>
</tr>
<tr>
<td>1050.16 Revised ................ 27843</td>
<td></td>
</tr>
<tr>
<td>1050.19 Added ................... 27844</td>
<td></td>
</tr>
<tr>
<td>CFR Section</td>
<td>Revised/Added/Removed</td>
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<tr>
<td>-------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>7 CFR—Continued</td>
<td>58 FR</td>
</tr>
<tr>
<td>Chapter X—Continued</td>
<td>27852</td>
</tr>
<tr>
<td>1068.40 Revised</td>
<td>27852</td>
</tr>
<tr>
<td>(c)(1)(iii) revised; (d) added</td>
<td>63289</td>
</tr>
<tr>
<td>1068.42 (a)(1) amended; (d)(2)(vi) and (vii) revised</td>
<td>27853</td>
</tr>
<tr>
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<td>27853</td>
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<tr>
<td>(f) added</td>
<td>63289</td>
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<td>27853</td>
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<td>27853</td>
</tr>
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<td>1068.60 (d) and (f) revised; (g) amended; (h), (i) and (j) added</td>
<td>27853</td>
</tr>
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<td>27853</td>
</tr>
<tr>
<td>1068.70 (d) revised</td>
<td>27854</td>
</tr>
<tr>
<td>1075 Determination</td>
<td>50511</td>
</tr>
<tr>
<td>1075.1—1075.23 Undesignated center heading removed; new undesignated center heading added</td>
<td>27855</td>
</tr>
<tr>
<td>1075.2 Redesignated from 1075.6</td>
<td>27855</td>
</tr>
<tr>
<td>Undesignated center heading removed; new undesignated center heading added</td>
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</tr>
<tr>
<td>1075.3 Redesignated from 1075.20</td>
<td>27855</td>
</tr>
<tr>
<td>and amended</td>
<td>27855</td>
</tr>
<tr>
<td>1075.5 Redesignated as 1075.18; new 1075.5 redesignated from 1075.9</td>
<td>27855</td>
</tr>
<tr>
<td>1075.6 Redesignated as 1075.2; new 1075.6 redesignated from 1075.10</td>
<td>27855</td>
</tr>
<tr>
<td>and amended</td>
<td>27855</td>
</tr>
<tr>
<td>1075.7 Removed; new 1075.7 redesignated from 1075.12</td>
<td>27855</td>
</tr>
<tr>
<td>(c) added</td>
<td>27855</td>
</tr>
<tr>
<td>1075.8 Redesignated as 1075.12</td>
<td>27855</td>
</tr>
<tr>
<td>new 1075.8 redesignated from 1075.13</td>
<td>27855</td>
</tr>
<tr>
<td>and revised</td>
<td>27855</td>
</tr>
<tr>
<td>1075.9 Redesignated as 1075.5; new 1075.9 redesignated from 1075.14</td>
<td>27855</td>
</tr>
<tr>
<td>1075.10 Redesignated as 1075.6; new 1075.10 redesignated from 1075.15</td>
<td>27855</td>
</tr>
<tr>
<td>1075.11 Removed</td>
<td>27855</td>
</tr>
<tr>
<td>1075.12 Redesignated as 1075.7; new 1075.12 redesignated from 1075.8 and revised</td>
<td>27855</td>
</tr>
<tr>
<td>1075.13 Redesignated as 1075.8; new 1075.13 redesignated from 1075.17 and revised</td>
<td>27855</td>
</tr>
<tr>
<td>1075.14 Redesignated as 1075.9; new 1075.14 redesignated from 1075.19 and revised</td>
<td>27855</td>
</tr>
<tr>
<td>1075.15 Redesignated as 1075.10; new 1075.15 redesignated from 1075.18 and revised</td>
<td>27855</td>
</tr>
<tr>
<td>1075.16 Revised</td>
<td>27855</td>
</tr>
<tr>
<td>1075.17 Redesignated as 1075.13; new 1075.17 redesignated from 1075.23</td>
<td>27855</td>
</tr>
<tr>
<td>1075.18 Redesignated as 1075.18; new 1075.18 redesignated from 1075.5</td>
<td>27855</td>
</tr>
<tr>
<td>1075.19 Redesignated as 1075.14; added</td>
<td>27856</td>
</tr>
<tr>
<td>1075.20 Redesignated as 1075.3; added</td>
<td>27856</td>
</tr>
<tr>
<td>1075.22 Removed</td>
<td>27856</td>
</tr>
<tr>
<td>1075.23 Redesignated as 1075.17; removed</td>
<td>27856</td>
</tr>
<tr>
<td>1075.27 Removed</td>
<td>27856</td>
</tr>
<tr>
<td>1075.30—1075.31 Undesignated center heading removed</td>
<td>27865</td>
</tr>
<tr>
<td>1075.30 Revised</td>
<td>27865</td>
</tr>
<tr>
<td>Undesignated center heading added</td>
<td>27865</td>
</tr>
<tr>
<td>1075.31 Heading revised; (a) removed; (b) redesignated as (a) and amended; new (b) added</td>
<td>27865</td>
</tr>
<tr>
<td>1075.32 Added</td>
<td>27865</td>
</tr>
<tr>
<td>1075.40—1075.46 Undesignated center heading removed</td>
<td>27865</td>
</tr>
<tr>
<td>1075.40 Redesignated as 1075.42; new 1075.40 redesignated from 1075.41 and revised</td>
<td>27857</td>
</tr>
<tr>
<td>Undesignated center heading added</td>
<td>27865</td>
</tr>
<tr>
<td>1075.41 Redesignated as 1075.40; new 1075.41 redesignated from 1075.42 and revised</td>
<td>27857</td>
</tr>
<tr>
<td>1075.42 Redesignated as 1075.41; redesignated from 1075.44 and revised</td>
<td>27858</td>
</tr>
<tr>
<td>1075.43 Redesignated from 1075.45 and revised</td>
<td>27859</td>
</tr>
<tr>
<td>1075.44 Redesignated as 1075.42; redesignated from 1075.46 and revised</td>
<td>27859</td>
</tr>
<tr>
<td>1075.45 Redesignated as 1075.43; added</td>
<td>27861</td>
</tr>
<tr>
<td>1075.46 Redesignated as 1075.44; redesignated from 1075.50—1075.54 Undesignated center heading removed</td>
<td>27865</td>
</tr>
<tr>
<td>1075.50 Removed; new 1075.50 redesignated from 1075.51; introductory text amended; (b) revised; (c) added</td>
<td>27861</td>
</tr>
</tbody>
</table>
### 7 CFR—Continued

<table>
<thead>
<tr>
<th>Section</th>
<th>Action</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1075.51</td>
<td>Redesignated as 1075.50</td>
<td>27861</td>
</tr>
<tr>
<td>1075.52</td>
<td>Redesignated from 1075.53 and revised</td>
<td>27862</td>
</tr>
<tr>
<td>1075.53</td>
<td>Redesignated as 1075.52; new 1075.53 added</td>
<td>27862</td>
</tr>
<tr>
<td>1075.60</td>
<td>Removed; new 1075.60 redesignated from 1075.70</td>
<td>27862</td>
</tr>
<tr>
<td>1075.62</td>
<td>Redesignated as 1075.60; new 1075.62 added</td>
<td>27863</td>
</tr>
<tr>
<td>1075.70</td>
<td>Redesignated center heading removed</td>
<td>27863</td>
</tr>
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<td>1075.72</td>
<td>Undesignated center heading added</td>
<td>27863</td>
</tr>
<tr>
<td>1075.71</td>
<td>Removed; new 1075.71 redesignated from 1075.72 and revised</td>
<td>27863</td>
</tr>
<tr>
<td>1075.73</td>
<td>Redesignated from 1075.70; heading revised; (a) and (b) amended</td>
<td>27864</td>
</tr>
<tr>
<td>1075.74</td>
<td>Redesignated from 1075.71</td>
<td>27864</td>
</tr>
<tr>
<td>1075.75</td>
<td>Undesignated center heading removed</td>
<td>27864</td>
</tr>
<tr>
<td>1075.77</td>
<td>Added</td>
<td>64110</td>
</tr>
<tr>
<td>1075.80</td>
<td>Undesignated center heading added</td>
<td>27865</td>
</tr>
<tr>
<td>1075.81</td>
<td>Redesignated as 1075.73</td>
<td>27864</td>
</tr>
<tr>
<td>1075.82</td>
<td>Redesignated as 1075.74</td>
<td>27864</td>
</tr>
<tr>
<td>1075.83</td>
<td>Redesignated as 1075.75</td>
<td>27864</td>
</tr>
<tr>
<td>1075.84</td>
<td>Redesignated as 1075.76</td>
<td>27863</td>
</tr>
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<td>1075.85</td>
<td>Redesignated as 1075.77</td>
<td>27864</td>
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</table>

### 7 CFR—Continued

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<tr>
<th>Section</th>
<th>Action</th>
<th>Page</th>
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<tbody>
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<td>1075.87</td>
<td>Removed</td>
<td>27865</td>
</tr>
<tr>
<td>1075.88</td>
<td>Redesignated as 1075.85</td>
<td>27865</td>
</tr>
<tr>
<td>1076.15</td>
<td>Revised</td>
<td>27866</td>
</tr>
<tr>
<td>1076.16</td>
<td>Revised</td>
<td>27866</td>
</tr>
<tr>
<td>1076.19</td>
<td>Added</td>
<td>27866</td>
</tr>
<tr>
<td>1076.40</td>
<td>Revised</td>
<td>27866</td>
</tr>
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<td>1076.42</td>
<td>(a)(1) amended; (d)(2)(vi) and (vii) revised</td>
<td>27866</td>
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<td>1076.43</td>
<td>(d) added</td>
<td>27867</td>
</tr>
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<td>1076.44</td>
<td>(a)(2), (6), (7)(i) and (9) revised; (a)(5), (7)(v), (8)(i), (ii) introductory text and (11) introductory text amended</td>
<td>27867</td>
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<td>1076.45</td>
<td>(b) revised</td>
<td>27867</td>
</tr>
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<td>1076.52</td>
<td>(b)(1) revised</td>
<td>27867</td>
</tr>
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<td>1076.60</td>
<td>(d) and (f) revised; (g), (h), and (i) added</td>
<td>27867</td>
</tr>
<tr>
<td>1076.76</td>
<td>(a)(3) and (5) revised; (c) added</td>
<td>27868</td>
</tr>
<tr>
<td>1076.85</td>
<td>(b) revised</td>
<td>27868</td>
</tr>
<tr>
<td>1079.16</td>
<td>Revised</td>
<td>27866</td>
</tr>
<tr>
<td>1079.19</td>
<td>Added</td>
<td>27866</td>
</tr>
<tr>
<td>1079.40</td>
<td>Revised</td>
<td>27866</td>
</tr>
<tr>
<td>1079.42</td>
<td>(a)(1) amended; (d)(2)(vi) and (vii) revised; (e) added</td>
<td>63289</td>
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<td>1079.43</td>
<td>(d) added</td>
<td>63289</td>
</tr>
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<td>1079.44</td>
<td>(a)(2), (5), (6), (7)(i) and (9) revised; (a)(7)(v), (8)(i), (ii) introductory text and (11) introductory text amended</td>
<td>27869</td>
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<td>1079.49</td>
<td>(b) revised</td>
<td>27870</td>
</tr>
<tr>
<td>1079.50</td>
<td>(d) added</td>
<td>63289</td>
</tr>
<tr>
<td>1079.52</td>
<td>(d)(1) revised</td>
<td>27870</td>
</tr>
<tr>
<td>1079.53</td>
<td>Revised</td>
<td>63289</td>
</tr>
<tr>
<td>1079.60</td>
<td>(d) and (f) revised; (g) amended; (h), (i) and (j) added</td>
<td>27870</td>
</tr>
<tr>
<td>1079.76</td>
<td>(a)(3) and (5) revised; (c) added</td>
<td>27870</td>
</tr>
<tr>
<td>1079.85</td>
<td>(d) revised</td>
<td>27871</td>
</tr>
<tr>
<td>1093.15</td>
<td>Revised</td>
<td>27871</td>
</tr>
<tr>
<td>1093.16</td>
<td>Revised</td>
<td>27871</td>
</tr>
<tr>
<td>1093.19</td>
<td>Added</td>
<td>27871</td>
</tr>
<tr>
<td>1093.40</td>
<td>Revised</td>
<td>27871</td>
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<td>1093.42</td>
<td>(a)(1) amended; (d)(2)(vi) and (vii) revised</td>
<td>63289</td>
</tr>
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<td>1093.43</td>
<td>(d) added</td>
<td>27872</td>
</tr>
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<td>(a)(2), (6), (7)(i) and (9) revised; (a)(5), (7)(v), (8)(i), (ii) introductory text and (11) introductory text amended</td>
<td>27872</td>
</tr>
</tbody>
</table>
List of CFR Sections Affected

7 CFR—Continued

<table>
<thead>
<tr>
<th>Chapter X—Continued</th>
<th>58 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1093.45 (b) revised</td>
<td>27873</td>
</tr>
<tr>
<td>1093.50 (d) added</td>
<td>63289</td>
</tr>
<tr>
<td>1093.52 (b)(1) introductory text revised</td>
<td>27873</td>
</tr>
<tr>
<td>1093.53 Revised</td>
<td>63290</td>
</tr>
<tr>
<td>1093.60 (d), (f) and (g) revised; (h) and (i) added</td>
<td>27873</td>
</tr>
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<td>1093.76 (a)(3) and (5) revised; (c) added</td>
<td>27873</td>
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7 CFR—Continued

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<th>Chapter X—Continued</th>
<th>58 FR Page</th>
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**7 CFR (1-1-99 Edition)**

Chapter X—Continued

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### List of CFR Sections Affected

#### 7 CFR—Continued

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### 7 CFR—Continued

#### Chapter X—Continued

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</tr>
<tr>
<td>1002.81</td>
<td>Revised</td>
<td>18955</td>
</tr>
<tr>
<td>1002.100—1002.260 (Subpart)</td>
<td>Removed</td>
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</tr>
<tr>
<td>1002.300—1002.353 (Subpart)</td>
<td>Removed</td>
<td>62019</td>
</tr>
<tr>
<td>1002.400—1002.444 (Subpart)</td>
<td>Removed</td>
<td>62019</td>
</tr>
<tr>
<td>1002.500—1002.501 (Subpart)</td>
<td>Removed</td>
<td>62018</td>
</tr>
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<td>1004.7</td>
<td>(a) introductory text and (e) introductory text stayed in part; eff. 9-1-95 through 2-29-96</td>
<td>43954</td>
</tr>
<tr>
<td>1004.12</td>
<td>(d) introductory text, (1) and (2) stayed in part; eff. 9-1-95 through 2-29-96</td>
<td>43954</td>
</tr>
<tr>
<td>1004.21</td>
<td>Removed</td>
<td>6607</td>
</tr>
<tr>
<td>1004.50</td>
<td>(b) revised</td>
<td>6607</td>
</tr>
<tr>
<td>1004.13</td>
<td>(d)(2) stayed in part; eff. 1-1-95 through 2-28-95</td>
<td>320</td>
</tr>
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<td>1005.20</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1005.50</td>
<td>(b) revised</td>
<td>6608</td>
</tr>
<tr>
<td>1005.51</td>
<td>Revised</td>
<td>18956</td>
</tr>
<tr>
<td>1005.52</td>
<td>Removed</td>
<td>6608</td>
</tr>
</tbody>
</table>

#### Chapter X—Continued

<table>
<thead>
<tr>
<th>Section</th>
<th>Action</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1005.54</td>
<td>Revised</td>
<td>6608</td>
</tr>
<tr>
<td>1005.74</td>
<td>Revised</td>
<td>18956</td>
</tr>
<tr>
<td>1006.19</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1006.50</td>
<td>(b) revised</td>
<td>6608</td>
</tr>
<tr>
<td>1006.51</td>
<td>Revised</td>
<td>18956</td>
</tr>
<tr>
<td>1006.51a</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1006.53</td>
<td>Revised</td>
<td>6608</td>
</tr>
<tr>
<td>1006.74</td>
<td>Revised</td>
<td>18957</td>
</tr>
<tr>
<td>1007</td>
<td>Revised</td>
<td>29437</td>
</tr>
<tr>
<td>1007.7</td>
<td>(e)(3) and (4) stayed in part; eff. 3-1-95 through 2-28-96</td>
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</tr>
<tr>
<td>1007.20</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1007.50</td>
<td>(b) revised</td>
<td>6608</td>
</tr>
<tr>
<td>1007.51</td>
<td>Revised</td>
<td>18957</td>
</tr>
<tr>
<td>1007.51a</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1007.53</td>
<td>Revised</td>
<td>6608</td>
</tr>
<tr>
<td>1007.74</td>
<td>Revised</td>
<td>18959</td>
</tr>
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<td>1011.7</td>
<td>(b) amended; eff. 3-1-95 through 7-31-95</td>
<td>6395</td>
</tr>
<tr>
<td>1011.20</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1011.50</td>
<td>(b) revised</td>
<td>6608</td>
</tr>
<tr>
<td>1011.51</td>
<td>Revised</td>
<td>18958</td>
</tr>
<tr>
<td>1011.51a</td>
<td>Removed</td>
<td>6608</td>
</tr>
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<td>1011.51a</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1011.51a</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1012.19</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1012.50</td>
<td>(b) revised</td>
<td>6608</td>
</tr>
<tr>
<td>1012.51</td>
<td>Revised</td>
<td>18959</td>
</tr>
<tr>
<td>1012.51a</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1012.53</td>
<td>Revised</td>
<td>6608</td>
</tr>
<tr>
<td>1012.74</td>
<td>Revised</td>
<td>18959</td>
</tr>
<tr>
<td>1013.19</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1013.50</td>
<td>(b) revised</td>
<td>6608</td>
</tr>
<tr>
<td>1013.51</td>
<td>Revised</td>
<td>18959</td>
</tr>
<tr>
<td>1013.51a</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1013.53</td>
<td>Revised</td>
<td>6608</td>
</tr>
<tr>
<td>1013.74</td>
<td>Revised</td>
<td>18960</td>
</tr>
<tr>
<td>1030.20</td>
<td>Removed</td>
<td>6608</td>
</tr>
<tr>
<td>1030.30</td>
<td>(a) and (c) revised; (d) removed</td>
<td>57149</td>
</tr>
<tr>
<td>1030.31</td>
<td>(a) revised</td>
<td>57149</td>
</tr>
<tr>
<td>1030.50</td>
<td>(b) revised</td>
<td>6608</td>
</tr>
<tr>
<td>1030.61</td>
<td>Heading, introductory text and (a) revised; (e) through (l) added</td>
<td>57149</td>
</tr>
<tr>
<td>1030.61</td>
<td>Heading, introductory text and (a) revised</td>
<td>57149</td>
</tr>
<tr>
<td>1030.65</td>
<td>Undesignated center heading, heading, introductory text, (a) and (f) revised</td>
<td>57150</td>
</tr>
<tr>
<td>1030.65</td>
<td>Heading, introductory text and (a) revised</td>
<td>57150</td>
</tr>
<tr>
<td>1030.62</td>
<td>Revised</td>
<td>57151</td>
</tr>
</tbody>
</table>
Chapter X—Continued

1049.53 Introductory text and (b) revised; (a) introductory text removed; (a)(1) and (2) through (5) redesignated as (a) and (c) through (f) ............................................ 6610
1049.74 Revised ................................ 18966
1050.13 (d)(2) stayed in part .... 7345, 18344
1050.20 Removed............................. 6610
1050.50 (b) revised........................... 6610
1050.51 Revised............................... 6610
1050.71 (a)(2) revised...................... 57154
1050.74 Revised................................ 57154
1050.75 Revised............................... 57154
1050.76 (a)(4) revised; (b)(1)(ii) and (iii) amended.................................57158
1050.77 Introductory text amended ..............57158
1050.78 (a) and (b) amended................ 57158
1075.20 Removed............................. 6610
1075.50 (b) revised........................... 6610
1075.51 Heading revised; (a) designation and (b) removed..............6610
1075.52 Revised............................... 6610
1075.53 Revised............................... 6610
1075.54 Revised............................... 6610
1075.55 Revised............................... 6610
1075.56 Revised............................... 6610
1075.57 Revised............................... 6610
1075.58 Revised............................... 6610
1075.59 Revised............................... 6610
1075.60 Undesignated center heading, heading, introductory text, (a), (f) and (g) revised............................................57156
1068.50 (b) revised........................... 6610
1068.60 Undesignated center heading, heading, introductory text, (a), (f) and (g) revised............................................57156
1068.61 Heading, introductory text, (a) and (e) revised..................57156
1068.70 Removed............................. 6610
1068.71 (a) revised........................... 57157
1068.72 Amended.............................. 57157
1068.73 Revised............................... 57157
1068.74 Revised ..................................18966, 57158
1068.75 Revised............................... 57158
1068.76 (a)(4) revised; (b)(1)(ii) amended.................................57158
1068.85 Introductory text amended ..............57158
1076.50 (b) revised........................... 6610
1076.51 Heading revised; (a) designation and (b) removed..............6610
1076.52 Revised............................... 6610
1076.53 Revised............................... 6610
1076.54 Revised............................... 6610
1076.55 Revised............................... 6610
1076.56 Revised............................... 6610
1076.57 Revised............................... 6610
1076.58 Revised............................... 6610
1076.59 Revised............................... 6610
1076.60 Undesignated center heading, heading, introductory text, (a) and (f) revised.........57153
1076.61 Heading, introductory text, (a) and (f) revised ..............57153
1076.62 Revised............................... 57154
1076.63 Revised............................... 57154
1076.64 Revised............................... 57154
1076.65 Revised............................... 57154
1076.66 Revised............................... 57154
1076.67 Revised............................... 57154
1076.68 Revised............................... 57154
1076.69 Revised............................... 57154
1076.70 Revised............................... 57154
1076.71 (a)(2) revised.........................57155
1076.72 Amended.............................. 57155
1076.73 (a), (c), (d) and (e) revised .......... 57155
1076.74 Revised............................... 57155
1076.75 Revised............................... 57155
1076.76 (a)(4) revised; (b)(1)(ii) and (iii) amended.................................57160
1076.77 (a), (c), (d) and (e) revised .......... 57160
1076.78 Revised............................... 57160
1076.79 Revised............................... 57160
1076.80 Revised............................... 57160
1076.81 Revised............................... 57160
1076.82 Revised............................... 57160
1076.83 Revised............................... 57160
1076.84 Revised............................... 57160
1076.85 Revised............................... 57160
1076.86 Revised............................... 57160
1076.87 Revised............................... 57160
1076.88 Revised............................... 57160
1076.89 Revised............................... 57160
1076.90 Revised............................... 57160
1076.91 Revised............................... 57160
1076.92 Revised............................... 57160
1076.93 Revised............................... 57160
1076.94 Revised............................... 57160
1076.95 Revised............................... 57160
1076.96 Revised............................... 57160
1076.97 Revised............................... 57160
1076.98 Revised............................... 57160
1076.99 Revised............................... 57160
1079.10 Introductory text, (a) and (c) revised; (5) redesignated as (a) and (c) through (f) ............................................ 6610
1079.11 Revised............................... 6610
1079.12 Revised............................... 6610
1079.13 Revised............................... 6610
1079.14 Revised............................... 6610
1079.15 Revised............................... 6610
1079.16 Revised............................... 6610
1079.17 Revised............................... 6610
1079.18 Revised............................... 6610
List of CFR Sections Affected

7 CFR—Continued

Chapter X—Continued

7 CFR—Continued

Chapter X—Continued

Heading, introductory text and
(a) revised; (e) through (l)
added..................................57161
1079.51 Revised ..................18970
1079.51a Removed ..................6611
1079.53 Revised ..................6611, 57162
1079.60 Undesignated center
heading, heading, intro-
ductive text, (a), (f) and (g) re-
vised..................................57162
1079.61 Heading, introductory
text, (a) and (e) revised ..........57162
1079.62 Revised ..................57163
1079.71 (a)(2) revised ..........57163
1079.73 Revised ..................57163
1079.74 Revised ..................18971, 57164
1079.75 Revised ..................18971, 57164
1079.76 (a)(4) revised; (b)(1)(ii) and
(iii) amended........................57161
1093 Removed ..................29453
1093.20 Removed ..................6611
1093.50 (b) revised ..........6611
1093.51 Revised ..................18971
1093.51a Removed ..................6611
1093.53 Revised ..................6611
1093.74 Revised ..................18971
1094 Removed ..................29453
1094.20 Removed ..................6611
1094.50 (b) revised ..........6611
1094.51 Revised ..................18971
1094.51a Removed ..................6611
1094.53 Revised ..................6611
1094.74 Revised ..................18972
1096 Removed ..................29453
1096.20 Removed ..................6611
1096.50 (b) revised ..........6611
1096.50a Removed..................6611
1096.51 Revised ..................18972
1096.51a Removed ..................6611
1096.53 Revised ..................6611
1096.74 Revised ..................18973
1099 Removed ..................6613
1099.2 Removed ..................55180
1099.3 Removed ..................55180
1099.5 Removed ..................55180
1099.6 Removed ..................55180
1099.7 Removed ..................55180
1099.8 Removed ..................55180
1099.9 Removed ..................55180
1099.10 Removed ..................55180
1099.12 Removed ..................55180
1099.13 Removed ..................55180
1099.14 Removed ..................55180
1099.15 Removed ..................55180
1099.16 Removed ..................55180
1099.17 Removed ..................55180
1099.18 Removed ..................55180
1099.19 Removed..................55180
1099.20 Removed..................29466, 55180
1099.30 Removed..................55180
1099.31 Removed..................55180
1099.32 Removed..................55180
1099.40 Removed..................55180
1099.41 Removed..................55180
1099.42 Removed..................55180
1099.43 Removed..................55180
1099.44 Removed..................55180
1099.45 Removed..................55180
1099.50 (b) revised..................29466
1099.51 Removed..................18973, 29466
1099.51a Removed.................29467, 55180
1099.52 Removed..................55180
1099.53 Removed..................29467
1099.60 Removed..................55180
1099.61 Removed..................55180
1099.62 Removed..................55180
1099.64 Removed..................55180
1099.65 Removed..................55180
1099.66 Removed..................55180
1099.67 Removed..................55180
1099.68 Removed..................55180
1099.69 Revised...............18974, 29467
1099.70 Removed..................55180
1099.71 Removed..................55180
1099.72 Removed..................55180
1099.73 Removed..................55180
1099.74 Revised...............18973, 29467
1099.75 Removed..................55180
1099.76 Removed..................55180
1099.77 Removed..................55180
1099.78 Removed..................55180
1099.79 Removed..................55180
1099.80 Removed..................55180
1099.81 Removed..................55180
1099.82 Removed..................55180
1099.83 Removed..................55180
1099.84 Removed..................55180
1099.85 Removed..................55180
1099.86 Removed..................55180
1106.20 Removed...............6611
1106.50 (b) revised..................6611
1106.51 Revised..................18974
1106.51a Removed.................6611
1106.53 Revised..................6611
1106.74 Revised..................18974
1106.75 Removed..................55180
1106.20 Removed...............6611
1108.20 Removed..................6611
1108.50 (b) revised..................6611
1108.51 Revised..................18974
1108.51a Removed.................6611
1108.53 Revised..................6611
1108.74 Revised..................18974
1108.75 Removed..................55180
1108.76 Removed..................55180
1124.19 Revised..................6611
1124.50 (b) revised; (e) and (f)(2)
amended.........................6611
1124.51 Heading revised; (a) des-
ignation and (b) removed; new
designated text amended........6612
1124.51a Revised..........18975
1124.51b Revised..........18975

### 7 CFR—Continued

**7 CFR (1-1-99 Edition)**

<table>
<thead>
<tr>
<th>Chapter X—Continued</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1124.53 (a) revised; (b) removed; (c) redesignated as (b)</td>
<td>6612</td>
</tr>
<tr>
<td>1124.75 (a)(2)(i) amended</td>
<td>6612, 18976</td>
</tr>
<tr>
<td>1126 Authority citation revised</td>
<td>40261</td>
</tr>
<tr>
<td>1126.7 (d) introductory text and (e) introductory text stayed in part; eff. 8-1-95 through 7-31-97</td>
<td>40261</td>
</tr>
<tr>
<td>1126.13 (e)(2) stayed; eff. 3-1-95 through 7-31-95</td>
<td>17192</td>
</tr>
<tr>
<td>1126.20 Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1126.50 (b) revised</td>
<td>6612</td>
</tr>
<tr>
<td>1126.51 Revised</td>
<td>18976</td>
</tr>
<tr>
<td>1126.51a Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1126.53 Revised</td>
<td>6612</td>
</tr>
<tr>
<td>1126.74 Revised</td>
<td>18976</td>
</tr>
<tr>
<td>1131.7 (c) stayed in part; eff. 4-1-95 through 3-31-96</td>
<td>17193</td>
</tr>
<tr>
<td>1131.10 (a)(1)(ii) revised; (a)(3) redesignated as (a)(4); new (a)(3) added</td>
<td>55990</td>
</tr>
<tr>
<td>1131.13 (a)(2) and (b)(1) amended</td>
<td>55990</td>
</tr>
<tr>
<td>1131.20 Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1131.21 Removed</td>
<td>55990</td>
</tr>
<tr>
<td>1131.22 Removed</td>
<td>55990</td>
</tr>
<tr>
<td>1131.30 (d) redesignated as (e) and amended; new (d) added</td>
<td>55990</td>
</tr>
<tr>
<td>1131.33 Removed</td>
<td>55990</td>
</tr>
<tr>
<td>1131.42 (c) introductory text and (1) revised; (d)(2)(vi) amended</td>
<td>55990</td>
</tr>
<tr>
<td>1131.44 (a)(4) amended</td>
<td>55990</td>
</tr>
<tr>
<td>1131.50 (b) revised</td>
<td>6612</td>
</tr>
<tr>
<td>(a) revised</td>
<td>55990</td>
</tr>
<tr>
<td>1131.51 Revised</td>
<td>18976</td>
</tr>
<tr>
<td>1131.51a Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1131.53 Revised</td>
<td>6612</td>
</tr>
<tr>
<td>1131.61 (b) removed; (c) through (f) redesignated as (b) through (e); new (d)(1) and (2) revised; new (d)(3) removed</td>
<td>55990</td>
</tr>
<tr>
<td>1131.72 Heading revised; (b) removed; (c) redesignated as (b)</td>
<td>55991</td>
</tr>
<tr>
<td>1131.74 Revised</td>
<td>18977</td>
</tr>
<tr>
<td>1131.77 Amended</td>
<td>55991</td>
</tr>
<tr>
<td>1131.85 (b) removed</td>
<td>55991</td>
</tr>
<tr>
<td>1134.19 Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1134.50 (b) revised</td>
<td>6612</td>
</tr>
<tr>
<td>1134.51 Revised</td>
<td>18977</td>
</tr>
<tr>
<td>1134.51a Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1134.53 Revised</td>
<td>6612</td>
</tr>
<tr>
<td>1137.12 (a)(1) stayed in part; eff. 9-1-95 through 8-31-96</td>
<td>46215</td>
</tr>
<tr>
<td>1137.19 Revised</td>
<td>18976</td>
</tr>
<tr>
<td>1137.50 (b) revised; (c) redesignated as (b)</td>
<td>6612</td>
</tr>
<tr>
<td>1137.51 Revised</td>
<td>18979</td>
</tr>
<tr>
<td>1137.51a Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1137.53 Revised</td>
<td>6612</td>
</tr>
<tr>
<td>1137.74 Revised</td>
<td>18979</td>
</tr>
<tr>
<td>1138.7 (a)(1) and (c) introductory text stayed in part; eff. 10-1-95 through 9-31-97</td>
<td>50088</td>
</tr>
<tr>
<td>1138.13 (d)(1), (2) and (5) stayed in part; eff. 10-1-95 through 9-31-97</td>
<td>50089</td>
</tr>
<tr>
<td>1138.20 Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1138.50 (b) revised</td>
<td>6613</td>
</tr>
<tr>
<td>1138.51 Revised</td>
<td>18979</td>
</tr>
<tr>
<td>1138.52 Removed</td>
<td>6613</td>
</tr>
<tr>
<td>1138.54 Revised</td>
<td>6613</td>
</tr>
<tr>
<td>1138.74 Revised</td>
<td>18980</td>
</tr>
<tr>
<td>1139.19 Removed</td>
<td>6613</td>
</tr>
<tr>
<td>1139.50 (b) revised</td>
<td>6613</td>
</tr>
<tr>
<td>(d) amended; (e) revised</td>
<td>18980</td>
</tr>
<tr>
<td>1139.51 Heading revised; (a) designation and (b) removed</td>
<td>6613</td>
</tr>
<tr>
<td>Revised</td>
<td>18980</td>
</tr>
<tr>
<td>1139.53 (a) revised; (b) removed; (c) redesignated as (b)</td>
<td>6613</td>
</tr>
<tr>
<td>1150 Authority citation revised</td>
<td>61198</td>
</tr>
<tr>
<td>1150.132 (b) revised</td>
<td>53253</td>
</tr>
<tr>
<td>1150.200—1150.212 (Subpart) Removed</td>
<td>61198</td>
</tr>
<tr>
<td>1150.250—1150.252 (Subpart) Removed</td>
<td>37325</td>
</tr>
<tr>
<td>1160.650—1160.652 (Subpart) Removed</td>
<td>37325</td>
</tr>
</tbody>
</table>

### 7 CFR—Continued

<table>
<thead>
<tr>
<th>Chapter X—Continued</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1134.53 Revised</td>
<td>6612</td>
</tr>
<tr>
<td>1134.75 (a)(2) amended</td>
<td>6612</td>
</tr>
<tr>
<td>1134.75 (b) and (c) removed</td>
<td>6612</td>
</tr>
<tr>
<td>1134.75 (d) and (e) redesignated as (a)(2); new (a)(3) added</td>
<td>6612</td>
</tr>
<tr>
<td>1134.75 (f)(2) amended</td>
<td>6612</td>
</tr>
<tr>
<td>1134.75 (f)(3) added</td>
<td>18978</td>
</tr>
<tr>
<td>1135.51 Heading revised; (a) designation and (b) removed; new undesignated text amended</td>
<td>6612</td>
</tr>
<tr>
<td>Revised</td>
<td>18978</td>
</tr>
<tr>
<td>1135.53 (a) revised; (b) removed; (c) redesignated as (b)</td>
<td>6612</td>
</tr>
<tr>
<td>1135.74 (b)(2)(i) and (ii) amended</td>
<td>6612</td>
</tr>
<tr>
<td>1137.7 (b) stayed in part; eff. 9-1-95 through 2-29-96</td>
<td>46215</td>
</tr>
<tr>
<td>1137.12 (a)(1) stayed in part; eff. 9-1-95 through 8-31-96</td>
<td>46215</td>
</tr>
<tr>
<td>1139.19 Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1139.50 (b) revised</td>
<td>6612</td>
</tr>
<tr>
<td>1139.51 Revised</td>
<td>18979</td>
</tr>
<tr>
<td>1139.51a Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1139.53 Revised</td>
<td>6612</td>
</tr>
<tr>
<td>1139.74 Revised</td>
<td>18979</td>
</tr>
<tr>
<td>1139.8 Revised</td>
<td>18978</td>
</tr>
<tr>
<td>1139.13 (d)(1), (2) and (5) stayed in part; eff. 10-1-95 through 9-31-97</td>
<td>50088</td>
</tr>
<tr>
<td>1139.31 (b) removed; (c) through (f) redesignated as (b) through (e); new (d)(1) and (2) revised; new (d)(3) removed</td>
<td>55990</td>
</tr>
<tr>
<td>1139.72 Heading revised; (b) removed; (c) redesignated as (b)</td>
<td>55991</td>
</tr>
<tr>
<td>1139.74 Revised</td>
<td>18977</td>
</tr>
<tr>
<td>1139.77 Amended</td>
<td>55991</td>
</tr>
<tr>
<td>1139.85 (b) removed</td>
<td>55991</td>
</tr>
<tr>
<td>1139.19 Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1139.50 (b) revised</td>
<td>6612</td>
</tr>
<tr>
<td>1139.51 Revised</td>
<td>18977</td>
</tr>
<tr>
<td>1139.51a Removed</td>
<td>6612</td>
</tr>
<tr>
<td>1139.53 Revised</td>
<td>6612</td>
</tr>
<tr>
<td>1140.74 Revised</td>
<td>6612</td>
</tr>
</tbody>
</table>
### List of CFR Sections Affected

#### 1996

**7 CFR**

#### Chapter X—Continued

<table>
<thead>
<tr>
<th>Section</th>
<th>Action</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1002.14 (d)</td>
<td>stayed; eff. 5-1-96 through 9-30-96</td>
<td>20721</td>
</tr>
<tr>
<td>1002.77</td>
<td>Regulation at 60 FR 62019 confirmed</td>
<td>11294</td>
</tr>
<tr>
<td>1002.300—1002.353 (Subpart) Regulation at 60 FR 62019 confirmed</td>
<td>11294</td>
<td></td>
</tr>
<tr>
<td>1002.400—1002.444 (Subpart) Regulation at 60 FR 62019 confirmed</td>
<td>11294</td>
<td></td>
</tr>
<tr>
<td>1004.61</td>
<td>Heading and introductory text revised; (b) removed</td>
<td>69017</td>
</tr>
<tr>
<td>1004.63</td>
<td>Amended; heading revised</td>
<td>69017</td>
</tr>
<tr>
<td>1004.73 (a)</td>
<td>introductory text and (1) amended; (b) removed</td>
<td>69017</td>
</tr>
<tr>
<td>1004.75 (a)</td>
<td>amended</td>
<td>69017</td>
</tr>
<tr>
<td>1004.90—1004.95</td>
<td>Undesignated center heading removed</td>
<td>69017</td>
</tr>
<tr>
<td>1004.90</td>
<td>Removed</td>
<td>69017</td>
</tr>
<tr>
<td>1004.91</td>
<td>Removed</td>
<td>69017</td>
</tr>
<tr>
<td>1004.92 (c)</td>
<td>stayed in part; eff. 5-1-96 through 9-30-96</td>
<td>20721</td>
</tr>
<tr>
<td>1004.93</td>
<td>Removed</td>
<td>69017</td>
</tr>
<tr>
<td>1004.94</td>
<td>Removed</td>
<td>69017</td>
</tr>
<tr>
<td>1005.30 (a) and (c)</td>
<td>revised; interim</td>
<td>41490</td>
</tr>
<tr>
<td>1005.32 (a)</td>
<td>amended</td>
<td>1148</td>
</tr>
<tr>
<td>1005.50 (d)</td>
<td>amended</td>
<td>20125</td>
</tr>
<tr>
<td>1005.61 (a)(4), (5), (b)(5) and (6) redesignated as (a)(5), (6), (b)(6) and (7); new (a)(4) and new (b)(5) added; (b)(3), new (6) and new (7) amended; interim</td>
<td>41490</td>
<td></td>
</tr>
<tr>
<td>1005.62 (b)</td>
<td>revised</td>
<td>69018</td>
</tr>
<tr>
<td>1005.63</td>
<td>(a)(2)(i) amended</td>
<td>69018</td>
</tr>
<tr>
<td>1005.70—1005.82</td>
<td>Undesignated center heading added; interim</td>
<td>41490</td>
</tr>
<tr>
<td>1005.80</td>
<td>Added; interim</td>
<td>41490</td>
</tr>
<tr>
<td>1005.81</td>
<td>Added; interim</td>
<td>41490</td>
</tr>
<tr>
<td>1005.82</td>
<td>Added; interim</td>
<td>41490</td>
</tr>
<tr>
<td>1005.90—1005.94</td>
<td>Undesignated center heading removed</td>
<td>69018</td>
</tr>
<tr>
<td>1005.90</td>
<td>Amended</td>
<td>1148</td>
</tr>
<tr>
<td>1005.91</td>
<td>Amended</td>
<td>1148</td>
</tr>
<tr>
<td>1005.92</td>
<td>Removed</td>
<td>69018</td>
</tr>
<tr>
<td>1005.93 (b) and (e)</td>
<td>introductory text amended</td>
<td>1148</td>
</tr>
<tr>
<td>1005.94</td>
<td>Amended</td>
<td>1148</td>
</tr>
<tr>
<td>1005.95</td>
<td>Amended</td>
<td>1148</td>
</tr>
<tr>
<td>1007.2</td>
<td>Amended</td>
<td>20125</td>
</tr>
<tr>
<td>1007.30 (a) and (c)</td>
<td>revised; interim</td>
<td>41491</td>
</tr>
<tr>
<td>1007.32 (a)</td>
<td>removed</td>
<td>69018</td>
</tr>
<tr>
<td>1007.50 (d)</td>
<td>amended</td>
<td>20125</td>
</tr>
<tr>
<td>1007.61 (a)(4), (5), (b)(5) and (6) redesignated as (a)(5), (6), (b)(6) and (7); new (a)(4) and new (b)(5) added; (b)(3), new (6) and new (7) amended; interim</td>
<td>41491</td>
<td></td>
</tr>
<tr>
<td>1007.62 (b)</td>
<td>amended</td>
<td>69018</td>
</tr>
<tr>
<td>1007.63</td>
<td>(a)(2)(i) amended</td>
<td>69018</td>
</tr>
<tr>
<td>1007.70—1007.82</td>
<td>Undesignated center heading added; interim</td>
<td>41490</td>
</tr>
<tr>
<td>1007.80</td>
<td>Added; interim</td>
<td>41492</td>
</tr>
<tr>
<td>1007.81</td>
<td>Added; interim</td>
<td>41492</td>
</tr>
<tr>
<td>1007.82</td>
<td>Added; interim</td>
<td>41492</td>
</tr>
<tr>
<td>1007.90—1007.94</td>
<td>Undesignated center heading removed</td>
<td>69018</td>
</tr>
<tr>
<td>1007.90</td>
<td>Removed</td>
<td>69018</td>
</tr>
<tr>
<td>1007.91</td>
<td>Removed</td>
<td>69018</td>
</tr>
<tr>
<td>1007.92 (c)</td>
<td>introductory text amended</td>
<td>20125</td>
</tr>
<tr>
<td>1007.93</td>
<td>Removed</td>
<td>69018</td>
</tr>
<tr>
<td>1007.94</td>
<td>Removed</td>
<td>69018</td>
</tr>
<tr>
<td>1011.2 (b)</td>
<td>revised</td>
<td>1148</td>
</tr>
</tbody>
</table>
### 7 CFR—Continued

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>61 FR</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter X—Continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>1011.7 Introductory text amended; (d) redesignated as (e); (b) and new (e) revised; new (d) added</td>
</tr>
<tr>
<td>1011.13 (e)(3) amended</td>
</tr>
<tr>
<td>1011.30 (a) and (c) revised; interim</td>
</tr>
<tr>
<td>1011.32 (a) removed</td>
</tr>
<tr>
<td>1011.52 (a)(3) revised</td>
</tr>
<tr>
<td>1011.61 (a)(4), (5), (b)(5) and (6) redesignated as (a)(5), (6), (b)(6) and (7); new (a)(4) and new (b)(5) added; (b)(3), new (6) and new (7) amended; interim</td>
</tr>
<tr>
<td>Heading revised; (a) introductory text amended; (b) removed</td>
</tr>
<tr>
<td>1011.62 (b) amended</td>
</tr>
<tr>
<td>1011.71 (a)(2)(i) amended</td>
</tr>
<tr>
<td>1011.73 (a)(2) introductory text, (c)(2), (d)(4) and (5) amended; (d)(3) removed</td>
</tr>
<tr>
<td>1011.74 Amended</td>
</tr>
<tr>
<td>1011.75 (a) amended</td>
</tr>
<tr>
<td>1011.80—1011.82 Undesignated center heading added; interim</td>
</tr>
<tr>
<td>1011.80 Added; interim</td>
</tr>
<tr>
<td>1011.81 Added; interim</td>
</tr>
<tr>
<td>1011.82 Added; interim</td>
</tr>
<tr>
<td>1011.90—1011.94 Undesignated center heading removed</td>
</tr>
<tr>
<td>1011.90 Removed</td>
</tr>
<tr>
<td>1011.91 Removed</td>
</tr>
<tr>
<td>1011.92 Removed</td>
</tr>
<tr>
<td>1011.93 Removed</td>
</tr>
<tr>
<td>1011.94 Removed</td>
</tr>
<tr>
<td>1046.2 Amended</td>
</tr>
<tr>
<td>1046.30 (a) and (c) revised; interim</td>
</tr>
<tr>
<td>1046.32 (d) removed</td>
</tr>
<tr>
<td>1046.61 (a)(4), (5), (b)(5) and (6) redesignated as (a)(5), (6), (b)(6) and (7); new (a)(4) and new (b)(5) added; (b)(3), new (6) and new (7) amended; interim</td>
</tr>
<tr>
<td>Heading revised; (a) introductory text amended; (b) removed</td>
</tr>
<tr>
<td>1046.62 (b) amended</td>
</tr>
<tr>
<td>1046.71 (a)(2)(i) amended</td>
</tr>
<tr>
<td>1046.73 (f)(2) revised; interim</td>
</tr>
<tr>
<td>(a), (b) introductory text, (d)(4) and (5) amended; (d)(3) removed</td>
</tr>
<tr>
<td>1046.74 Amended</td>
</tr>
</tbody>
</table>
List of CFR Sections Affected

7 CFR—Continued

Chapter X—Continued

1075.60 Removed .................................. 47039
1075.61 Removed .................................. 47039
1075.62 Removed .................................. 47039
1075.63 (c)(3), (d), (e) and (f) redesignated as (c)(4); (a)(1) and (2) redesignated as (a)(2) and (a)(3); new (a)(8) added ................................. 39727
1075.64 Section added .............................. 47039
1075.70—1075.77 Undesignated center heading removed ............ 47039
1075.71 Removed .................................. 47039
1075.72 Removed .................................. 47039
1075.73 Removed .................................. 47039
1075.74 Removed .................................. 47039
1075.75 Removed .................................. 47039
1075.76 Removed .................................. 47039
1075.77 Removed .................................. 47039
1075.85 Undesignated center heading and section removed ............................. 47039
1079.7 (b) introductory text amended; eff. in part 12±1±96 through 3±31±97 and in part 4±1±97............................ 55733
1106.6 Stayed in part; eff. 9±1±96 through 8±31±98..................... 35596
1106.7 (b)(3) stayed in part; eff. 9±1±96 through 2±28±97................. 55206
1111.2—1011.19 Undesignated center heading and sections re¬ moved ........................................... 47927
1997

7 CFR—Continued

Chapter X

1005.30 (a)(5), (6) and (c)(3) revised; (a)(7) and (8) redesignated as (a)(8) and (9); new (a)(7) added................................. 39730
1005.31 (a) added .................................. 39740
1005.61 (a)(4) removed; (a)(5) and (e) redesignated as (a)(4) and (5).......................... 39740
1005.77 Revised .................................. 39740
1005.78 Introductory text amended ................................. 39740
1005.81 (a) and (b) revised; (c) removed .................................. 39740
1005.82 Revised .................................. 39740
1006.7 (c) introductory text and (2) stayed in part .......................... 36651
1007.30 (a)(5), (6) and (c)(3) revised; (a)(7) and (8) redesignated as (a)(8) and (9); new (a)(7) added................................. 39741
1007.32 (a) added .................................. 39742
1007.61 (a)(4) removed; (a)(5) and (6) redesignated as (a)(4) and (5).......................... 39742
1007.78 Amended .................................. 39742
1007.81 (a) and (b) revised; (c) removed .................................. 39742
1007.82 Revised .................................. 39742
1011.2—1011.19 Undesignated center heading and sections re¬ moved ........................................... 47927
1011.30—1011.32 Undesignated center heading and sections removed ............................. 47927
1011.40—1011.45 Undesignated center heading and sections removed ............................. 47927
1011.50—1011.54 Undesignated center heading and sections removed ............................. 47927
1011.60—1011.62 Undesignated center heading and sections removed ............................. 47927
1011.61 Heading revised; (a) introductory text and (6) amended; (b) removed...................... 918
(a)(4) suspended .................................. 46666
1011.70—1011.77 Undesignated center heading and sections removed ............................. 47927
1011.80—1011.82 Undesignated center heading and sections removed ............................. 47927
1011.81 (b) suspended ................................ 46666
1011.85—1011.86 Undesignated center heading and sections removed ............................. 47927
1046.30 (a)(5), (6) and (c)(3) revised; (a)(7) and (8) redesignated as (a)(8) and (9); new (a)(7) added................................. 39743
1046.32 (c) redesignated as (d); new (c) added .................................. 39743
1046.61 Heading revised; (a) introductory text and (6) amended; (b) removed...................... 918
(a)(4) removed; (a)(5) and (6) redesignated as (a)(4) and (5).......................... 39743
1046.77 Revised .................................. 39743
1046.78 Amended .................................. 39744
1046.81 (a) and (b) revised; (c) removed .................................. 39744
7 CFR (1-1-99 Edition)

7 CFR—Continued

Chapter X—Continued

1046.82 Revised .................................. 39744
1079.7 (b) introductory text amended; eff. 12-1-96 through 3-31-97 ............................... 920
1124.2 Amended .................................. 2
1124.30 (a)(1)(i), (ii), (c)(1) and (3) revised ................................................. 2
1124.31 (a)(1) and (b)(1) revised ............... 2
1124.50 (f) introductory text and (g) revised; (h) added ................................. 3
1124.53 Revised .................................. 3
1126.60—1124.63 Undesignated center heading revised .................................. 3
1124.60 (f) through (m) redesignated as (g) through (n); heading, (e), new (g) introductory text, new (3), new (h)(3) and new (6) revised; new (f) added; new (h) introductory text amended ................................................. 3
1124.61 Heading, introductory text, (a), (d) and (e) revised ......................... 3
1124.62 Removed; new 1124.62 redesignated from 1124.63 and revised ......................... 3
1124.63 Redesignated as 1124.62 .......... 3
1124.71 (a)(1) and (b)(3) revised; (b)(1) amended ................................................. 3
1124.73 (a)(2)(i) through (vi), (c) introductory text, (1) and (f)(2) revised; (a)(2)(vii) added; (c)(2) and (d)(2) amended ................................................. 4
1124.74 (c) amended ......................................... 4
1124.75 (a)(1)(i) amended ................................................. 4
1124.85 (b) amended ................................................. 4
1126.7 (d) introductory text and (e) introductory text stayed in part; eff. 8-1-97 through 7-31-99................................................. 41812
1126.13 (e)(1) and (3) stayed in part; (e)(2) stayed; eff. 8-1-97 through 7-31-99................................................. 41812
1131.7 (c) stayed in part; eff. 4-1-97 through 3-31-99................................................. 26736
1137.7 (b) stayed in part; eff. 9-1-97 through 2-28-99................................................. 35948

7 CFR—Continued

Chapter X—Continued

1137.12 (a)(1) stayed in part; eff. 9-1-97 through 8-31-99 ................................................. 35948
1138.7 (a)(1) and (c) suspended in part; eff. 10-1-97 through 9-30-99................................. 50486
1138.13 (d)(1), (2) and (5) suspended; eff. 10-1-97 through 9-30-99 ................................. 50486
1160.108 (a) revised .................................. 3983
1160.112 Revised .................................. 3983
1160.113 Revised .................................. 3983
1160.116 Removed .................................. 3983
1160.200 (a) amended .................................. 3983
1160.201 (b) revised .................................. 3983
1160.209 (b) revised .................................. 3983
1160.211 (a)(1) and (2) revised .................. 3983
1160.501 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c); new (a) and new (b)(2) revised; new (c) amended ................................................. 3983
1160.604 (a) amended .................................. 3984
1160.605 Revised .................................. 3984

1998

7 CFR

Chapter X

1065.73 (a)(2)(viii) amended ........... 70996
1065.107 Removed.................................. 70996
1065.121 (e) removed ............................ 70996
1065.105—1065.122 Undesignated center heading and sections removed; eff. 3-1-99 ............ 70996
1106.7 (b)(1) suspended in part; eff. 9-1-98 through 8-31-99................................................. 46868
1106.13 (d)(1) suspended in part; eff. 9-1-98 through 8-31-99................................................. 46868
1150.131 (a)(2), (3), (6) and (7) revised ........................................................................ 57895
1160.200 (a) revised .................................. 46639
1160.201 (b) revised .................................. 46639
1160.208 (g) revised .................................. 46639
1160.505 Existing text designated as (a); (b) added ................................................. 46640