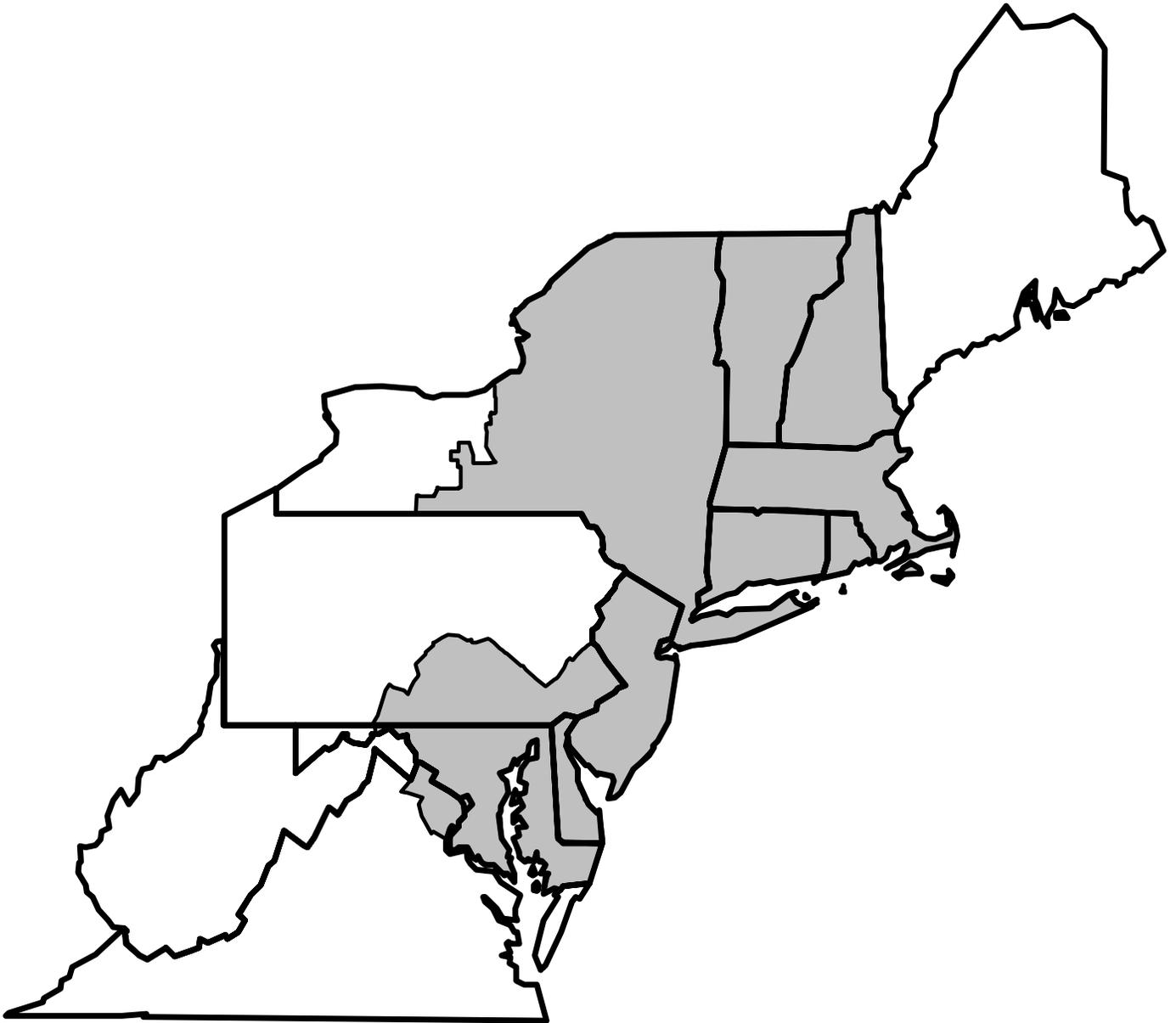


# **NORTHEAST MARKETING AREA**



**FEDERAL ORDER 1**

PART 1000--GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

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## **Subpart A--Scope and Purpose**

### **§ 1000.1 Scope and purpose of this Part 1000.**

This part sets forth certain terms, definitions, and provisions which shall be common to and part of each Federal milk marketing order in 7 CFR, chapter X, except as specifically defined otherwise, or modified, or otherwise provided, in an individual order in 7 CFR, chapter X.

### **§ 1001.1 General provisions.**

*The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1001, all references to sections in part 1000 refer to part 1000 of this chapter.*

## **Subpart B--Definitions**

### **§ 1000.2 General definitions.**

(a) 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. 601 et seq.).

(b) Order or Federal milk order means the applicable part of 7 CFR, chapter X, issued pursuant to Section 8c of the Act as a Federal milk marketing order (as amended).

(c) Department means the U.S. Department of Agriculture.

(d) 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 means any individual, partnership, corporation, association, or other business unit.

## **DEFINITIONS**

### **§ 1001.2 Northeast marketing area.**

*The marketing area means all the territory within the bounds of the following states and political subdivisions, 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 states or political subdivisions:*

Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and District of Columbia

All of the States of Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and the District of Columbia.

Maryland Counties

All of the State of Maryland except the counties of Allegany and Garrett.

New York Counties, Cities, and Townships

All counties within the State of New York except Allegany, Cattaraugus, Chataqua, Erie, Genessee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne, and Wyoming; the townships of Conquest, Montezuma, Sterling and Victory in Cayuga County; the city of Hornell, and the townships of Avoca, Bath, Bradford, Canisteo, Cohocton, Dansville, Fremont, Pulteney, Hartsville, Hornellsville, Howard, Prattsburg, Urbana, Wayland, Wayne and Wheeler in Steuben County; and the townships of Italy, Middlesex, and Potter in Yates County.

Pennsylvania Counties

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

Virginia Counties and Cities

Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

**§ 1000.3 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 in consumer-type packages or dispenser units classified as Class I milk.

**§ 1001.3 Route disposition.**

See § 1000.3.

**§ 1000.4 Plant.**

(a) Except as provided in paragraph (b) of this section, plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b) (2) of this section if the facility

receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition; or

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim or the removal of water from milk.

**§ 1001.4 Plant.**

(a) *Except as provided in paragraph (b) of this section, plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.*

(b) Plant shall not include:

(1) *A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition;*

(2) *An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim milk or the removal of water from milk; or*

(3) *Bulk reload points where milk is transferred from one tank truck to another while en route from dairy farmers' farms to a plant. If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the market administrator that the facility shall be treated as a reload point. The cooling of milk, collection of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point.*

**§ 1000.5 Distributing plant.**

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk at which fluid milk products are processed or packaged and from which there is route disposition or transfers of packaged fluid milk products to other plants.

**§ 1001.5 Distributing plant.**

See § 1000.5.

**§ 1000.6 Supply plant.**

Supply plant means a plant approved by a duly constituted regulatory agency for the handling of Grade A milk that receives milk directly from dairy farmers and transfers or diverts fluid milk products to other plants or manufactures dairy products on its premises.

**§ 1001.6 Supply plant.**

See § 1000.6.

**§ 1001.7 Pool plant.**

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant described in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which fluid milk products are transferred or diverted to plants described in paragraph (a) or (b) of this section subject to the additional conditions described in this paragraph. In the case of a supply plant operated by a cooperative association handler described in § 1000.9(c), fluid milk products that the cooperative delivers to pool plants directly from producers' farms shall be treated as if transferred from the cooperative association's plant for the purpose of meeting the shipping requirements of this paragraph.

(1) In each of the months of January through August and December, such shipments and transfers to distributing plants must not equal less than 10 percent of the total quantity of milk (except the milk of a producer described in § 1001.12(b)) that is received at the plant or diverted from it pursuant to §1001.13 during the month;

(2) In each of the months of September through November, such shipments and transfers to distributing plants must equal not less than 20 percent of the total quantity of milk (except the milk of a producer described in §1001.12(b)) that is received at the plant or diverted from it pursuant to §1001.13 during the month;

(3) If milk is delivered directly from producers' farms that are located outside of the states included in the marketing area or outside Maine or West Virginia, such producers must be grouped by state into reporting units and each reporting unit must independently meet the shipping requirements of this paragraph; and

(4) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the percentages in paragraphs (c)(1) and (2) of this section.

(d) Any distributing plant, located within the marketing area as described on April 11, 2006, in Sec. 1001.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in Sec. 1001.7(a), (b), or (e);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in Sec. 1000.8(a) or (e); or

(iv) A producer-handler described in Sec. 1001.10 with less than three million pounds during the month of route dispositions and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved].

(e) Two or more plants that are located in the marketing area and operated by the same handler may qualify as a unit by meeting the total and in-area route distribution requirements specified in paragraph (a) of this section subject to the following additional requirements:

(1) At least one of the plants in the unit qualifies as a pool distributing plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process at least 60 percent of monthly receipts of producer milk only as Class I or Class II products and must be located in the Northeast marketing area, as defined in §1001.2, in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant(s) included in the unit; and

(3) A written request to form a unit, or to add or remove plants from a unit, or to cancel a unit, must be filed with the market administrator prior to the first day of the month for which unit formation is to be effective.

(f) Two or more supply plants operated by the same handler, or by one or more cooperative associations, may qualify for pooling as a system of plants by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) A supply plant system will be effective for the period of August 1 through July 31 of the following year. Written notification must be given to the market administrator listing the plants to be included in the system prior to the first day of July preceding the effective date of the system. The plants included in the system shall be listed in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(2) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the plant subsequently fails to qualify for pooling, the handler submits a written notification to the market administrator prior to the first day of the month that the plant be deleted from the system, or that the system be discontinued. Any plant that has been so deleted from the system, or that has failed to qualify as a pool plant in any month, will not be part of the system for the remaining months through July. For any system that

qualifies in August, no plant may be added in any subsequent month through the following July unless the plant replaces another plant in the system that has ceased operations and the market administrator is notified of such replacement prior to the first day of the month for which it is to be effective.

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

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

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants

*regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order.*

**§ 1000.8 Nonpool plant.**

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

(a) A plant fully regulated under another Federal order means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) Producer-handler plant means a plant operated by a producer-handler as defined under any Federal order.

(c) Partially regulated distributing plant means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition 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 a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) An exempt plant means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through the operation of its own facilities with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 150,000 pounds or less during the month.

**§ 1001.8 Nonpool plant.**

*See § 1000.8.*

**§ 1000.9 Handler.**

Handler means:

(a) Any person who operates a pool plant or a nonpool plant.

(b) Any person who receives packaged fluid milk products from a plant for resale and distribution to retail or wholesale outlets, any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any pool or nonpool plant, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. Persons who qualify as handlers only under this paragraph under any Federal milk order are not subject to the payment provisions of §§ ---.70, ----.71, ----.72, ----.73, ----.76, and ----.85 of that order.

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer and delivers to pool plants or diverts to nonpool plants pursuant to § ----.13 of the order. The operator of a pool plant receiving milk from a cooperative association may be the handler for such milk if both parties notify the market administrator of this agreement prior to the time that the milk is delivered to the pool plant and the plant operator purchases the milk on the basis of farm bulk tank weights and samples.

**§ 1001.9 Handler.**

See § 1000.9.

**§ 1001.10 Producer-handler.**

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds;

(b) Receives milk solely from own farm production or receives milk that is fully subject to the pricing and pooling provisions of this or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) 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 handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in Sec. 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to Sec. 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in Sec. 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in Sec. 1131.7 of this chapter or Sec. 1000.76(a).

**§ 1001.11 [Reserved]**

**§ 1001.12 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 (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1001.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include a dairy farmer described in paragraphs (b)(1) through (6) of this section. A dairy farmer described in paragraphs (b)(5) or (6) of this section shall be known as a dairy farmer for other markets.

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1001.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order;

(5) For any month of December through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under this order or any other Federal milk order, during the same month, either of the 2 preceding months, or during any of the preceding months of July through November; and

(6) For any month of July through November, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under this order or any other Federal milk order, during the same month.

**§ 1001.13 Producer milk.**

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or from a handler described in § 1000.9(c). Any milk which is picked up from the producer's farm in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) 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 farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by the operator of a pool plant or a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants subject to the following conditions:

(1) The producers whose farms are outside of the states included in the marketing area and outside the states of Maine or West Virginia shall be organized into state units and each such unit shall be reported separately; and

(2) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1001.7(c);

(c) Diverted by a proprietary pool plant operator to another

pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or by a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless one day's milk production of such dairy farmer was physically received as producer milk and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion unless milk of the dairy farmer has been physically received as producer milk at a pool plant during the month;

(2) Of the total quantity of producer milk received during the month (including diversion but excluding the quantity of producer milk received from a handler described in §1000.9(c) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 80 percent during each of the months of September through November and 90 percent during each of the months of January through August and December. In the event that a handler causes the milk of a producer to be over diverted, a dairy farmer will not lose producer status;

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

(4) Any milk diverted in excess of the limits set forth in paragraph (d)(2) 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

(5) The delivery day requirement and the diversion percentages in paragraphs (d)(1) and (d)(2) of this section may be increased or decreased by the Market Administrator if 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 either on the Market Administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired to be effective. 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 or delivery day requirement must be issued in writing at least one day before the effective date.

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of another government entity.

**§ 1000.14 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 § 1000.9(c) and § 1135.11, or pool plants;

(b) Products (other than fluid milk products, fluid cream products, 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

(c) Receipts of any milk product (other than a fluid milk product or a fluid cream product) for which the handler fails to establish a disposition.

**§ 1001.14 Other source milk.**

See § 1000.14.

**§ 1000.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, fluid milk product shall mean any milk products in fluid or frozen form that are intended to be used as beverages containing less than 9 percent butterfat and 6.5 percent or more nonfat solids or 2.25 percent or more true milk protein. Sources of such nonfat solids/protein include but are not limited to: Casein, whey protein concentrate, milk protein concentrate, dry whey, caseinates, lactose, and any similar dairy derived ingredient. Such products include, but are not limited to: Milk, fat-free milk, lowfat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added or reduced nonfat solids, sterilized, concentrated, or reconstituted. As used in this part, the term concentrated milk means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

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

(1) Any product that contains less than 6.5 percent nonfat milk solids and contains less than 2.25 percent true milk protein; whey; plain or sweetened evaporated milk/skim milk; sweetened condensed

milk/skim milk; yogurt containing beverages with 20 or more percent yogurt by weight and kefir; products especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers; and products that meet the compositional standards specified in paragraph (a) of this section but contain no fluid milk products included in paragraph (a) of this section.

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

**§ 1001.15 Fluid milk product.**

*See § 1000.15.*

**§ 1000.16 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.

**§ 1001.16 Fluid cream product.**

*See § 1000.16.*

**§ 1000.17 [Reserved]**

**§ 1001.17 [Reserved]**

**§ 1000.18 Cooperative association.**

Cooperative association means any cooperative marketing association of producers which the Secretary determines is qualified under the provisions of the Capper-Volstead Act, has full authority in the sale of milk of its members, and is engaged in marketing milk or milk products for its members. A federation of 2 or more cooperatives incorporated under the laws of any state will be considered a cooperative association under any Federal milk order if all member cooperatives meet the requirements of this section.

**§ 1001.18 Cooperative association.**

*See § 1000.18.*

**§ 1000.19 Commercial food processing establishment.**

Commercial food processing establishment means any facility, other than a milk plant, to which fluid milk products and fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no other disposition of fluid milk products other than those received in

consumer-type packages (1 gallon or less). 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, §§ ----.13 and ----.52 of each Federal milk order.

**§ 1001.19 Commercial food processing establishment.**

See § 1000.19.

**Subpart C--Rules of Practice and Procedure Governing Market Administrators**

**§ 1000.25 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/her administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Maintain and invest funds outside of the United States Department of the Treasury for the purpose of administering the order;

(3) Make rules and regulations to effectuate the terms and provisions of the order;

(4) Receive, investigate, and report complaints of violations to the Secretary; and

(5) 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/her administration, including, but not limited to, the following:

(1) Employ and fix the compensation of persons necessary to enable him/her to exercise the powers and perform the duties of the office;

(2) 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 the office and in the performance of the duties of the office, including the market administrator's

compensation;

(3) Keep records which will clearly reflect the transactions provided for in the order and upon request by the Secretary, surrender the records to a successor or such other person as the Secretary may designate;

(4) Furnish information and reports requested by the Secretary and submit office records for examination by the Secretary;

(5) Announce publicly at his/her discretion, unless otherwise directed by the Secretary, by such means as he/she deems appropriate, the name of any handler who, after the date upon which the handler is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order; or

(iii) Made available records and facilities as required pursuant to § 1000.27;

(6) 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;

(7) 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

(8) 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.

#### **Subpart D--Rules Governing Order Provisions**

##### **§ 1000.26 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/she 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/her 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.

**Subpart E--Rules of Practice and Procedure Governing Handlers**  
**§ 1000.27 Handler responsibility for records and facilities.**

Each handler shall maintain and retain records of its operations and make such records and its 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 skim milk and butterfat required to be reported by such handler for which adequate records are not available shall be considered as used in the highest-priced class.

(a) Records to be maintained.

(1) Each handler shall maintain records of its operations (including, but not limited to, records of purchases, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers, and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) Availability of records and facilities. Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary, or other obligation under the order. Each handler shall permit the market administrator to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his/her duties.

(c) Retention of records. All records required under the order to be made available to the market administrator shall be retained by the handler for a 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.

**§ 1000.28 Termination of obligations.**

(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 to a cooperative association, 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 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.

(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 is due 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.

HANDLER REPORTS

**§ 1001.30 Reports of receipts and utilization.**

Each handler shall report monthly so that the market administrator's office receives the report on or before the 10<sup>th</sup> day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of nonfat solids other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

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

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids 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. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraph (a) or (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

**§ 1001.31 Payroll reports.**

(a) On or before the 22<sup>nd</sup> day after the end of each month, each handler that operates a pool plant pursuant to § 1001.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1001.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(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.

**§ 1001.32 Other reports.**

In addition to the reports required pursuant to §§ 1001.30 and 1001.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

**Subpart F--Classification of Milk**

**§ 1000.40 Classes of Utilization.**

Except as provided in § 1000.42, all skim milk and butterfat required to be reported pursuant to § ----.30 of each Federal milk order shall be classified as follows:

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

(1) Disposed of in the form of fluid milk products, except as otherwise provided in this section;

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

(3) In shrinkage assigned pursuant to § 1000.43(b).

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

(1) In fluid milk products in containers larger than 1 gallon and 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;

(2) 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 half-gallon 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, including yogurt containing beverages with 20 percent or more yogurt by weight and kefir, and any other semi-solid product resembling a Class II product;

(iv) Custards, puddings, pancake mixes, coatings, batter, and similar products;

(v) Buttermilk biscuit mixes and other buttermilk for baking that contain food starch in excess of 2% of the total solids, provided that the product is labeled to indicate the food starch content;

(vi) Products especially prepared for infant feeding or dietary use (meal replacements) that are packaged in hermetically sealed containers and products that meet the compositional standards of § 1000.15(a) but contain no fluid milk products included in § 1000.15(a);

(vii) 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;

(viii) A fluid cream product or any product containing artificial fat or fat substitutes that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section; and

(ix) Any product not otherwise specified in this section; and

(3) In shrinkage assigned pursuant to § 1000.43(b).

(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;

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

(2) In shrinkage assigned pursuant to § 1000.43(b).

(d) Class IV milk shall be all skim milk and butterfat:

- (1) Used to produce:
  - (i) Butter;
  - (ii) Evaporated or sweetened condensed milk in a consumer-type package; and
  - (iii) Any milk product in dried form;
- (2) In inventory at the end of the month of fluid milk products and fluid cream products in bulk form;
- (3) In the skim milk equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I; and
- (4) In shrinkage assigned pursuant to § 1000.43(b).
- (e) Other uses. Other uses include skim milk and butterfat used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the handler's control. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator.

**§ 1001.40 Classes of utilization.**

See § 1000.40.

**§ 1000.41 [Reserved]**

**§ 1001.41 [Reserved]**

**§ 1000.42 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 transferred in the form of a bulk fluid cream product from a pool plant or a handler described in § 1135.11 to another pool plant shall be classified as Class I milk unless the handlers both request the same classification in another class. In either case, the classification 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 receiving plant after the computations pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b);

(2) If the transferring plant received during the month other source milk to be allocated pursuant to § 1000.44(a)(3) or the

corresponding step of § 1000.44(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 transferring handler received during the month other source milk to be allocated pursuant to § 1000.44(a)(8) or (9) or the corresponding steps of § 1000.44(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 receiving plant.

(b) Transfers and diversions to a plant regulated under another Federal order. 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 a plant regulated under another Federal order 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 a plant regulated under another Federal order 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) or (2) of this section:

(1) As Class I milk, if transferred as packaged fluid milk products;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order:

(i) 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 other than Class I to the extent that such utilization is available for such classification pursuant to the allocation provisions of the other order;

(ii) If diverted, the diverting handler must request a classification other than Class I. If the plant receiving the diverted milk does not have sufficient utilization available for the requested classification and some of the diverted milk is consequently assigned to Class I use, the diverting handler shall be given the option of designating the entire load of diverted milk as producer milk at the plant physically receiving the milk. Alternatively, if the diverting handler so chooses, it may designate which dairy farmers whose milk was diverted during the month will be designated as producers under the order physically receiving the milk. If the diverting handler declines to accept either of these options, the market administrator will prorate the portion of diverted milk in excess of Class II, III, and IV use among all the dairy farmers whose milk was received from the diverting handler on the last day of the month, then the second-to-last day, and continuing in that fashion until the excess diverted milk has been

assigned as producer milk under the receiving order; and

(iii) 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.

(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 any 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; and

(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 transferred in the form of a bulk fluid cream product to an exempt plant. For this purpose, the receiving handler's utilization of skim milk and butterfat in each class, in series beginning with Class IV, shall be assigned to the extent possible to its receipts of skim milk and butterfat, in bulk fluid cream products, and bulk fluid milk products, respectively, 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 a plant regulated under another order, an exempt 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 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, excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month, to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The transferring handler or diverting handler claims such classification in such handler's report of receipts and utilization filed pursuant to § ----.30 of each Federal milk order 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 plants regulated under other Federal orders;

(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 plants regulated under other Federal orders;

(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 plants regulated under other Federal orders;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal 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 receiving 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 plants regulated under other Federal orders;

(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 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 plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization and then to all other utilization, in sequence beginning with Class IV at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible to any remaining utilization, in sequence beginning with Class IV 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 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.

**§ 1001.42 Classification of transfers and diversions.**

See § 1000.42.

**§ 1000.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1000.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § ----.30 of each Federal milk order and shall compute separately for each pool plant, for each handler described in § 1000.9(c) and § 1135.11, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1000.40 and 1000.42, and paragraph (b) of this section.

(b) Shrinkage and Overage. For purposes of classifying all milk reported by a handler pursuant to § ----.30 of each Federal milk order the market administrator shall determine the shrinkage or overage of skim milk and butterfat for each pool plant and each handler described in § 1000.9(c) and § 1135.11 by subtracting total utilization from total receipts. Any positive difference shall be shrinkage, and any negative difference shall be overage.

(1) Shrinkage incurred by pool plants qualified pursuant to § ---.7 of any Federal milk order shall be assigned to the lowest-priced class to the extent that such shrinkage does not exceed:

(i) Two percent of the total quantity of milk physically received at the plant directly from producers' farms on the basis of farm weights and tests;

(ii) Plus 1.5 percent of the quantity of bulk milk physically received on a basis other than farm weights and tests, excluding

concentrated milk received by agreement for other than Class I use;

(iii) Plus .5 percent of the quantity of milk diverted by the plant operator to another plant on a basis other than farm weights and tests; and

(iv) Minus 1.5 percent of the quantity of bulk milk transferred to other plants, excluding concentrated milk transferred by agreement for other than Class I use.

(2) A handler described in § 1000.9(c) or § 1135.11 that delivers milk to plants on a basis other than farm weights and tests shall receive a lowest-priced-class shrinkage allowance of .5 percent of the total quantity of such milk picked up at producers' farms.

(3) Shrinkage in excess of the amounts provided in paragraphs (b)(1) and (2) of this section shall be assigned to existing utilization in series starting with Class I. The shrinkage assigned pursuant to this paragraph shall be added to the handler's reported utilization and the result shall be known as the gross utilization in each class.

(c) If any of the water but none of the nonfat solids 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. If any of the nonfat solids contained in the milk from which a product is made are 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 and nonfat solids originally associated with such solids determined on a protein equivalent basis.

(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 § 1000.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1000.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

**§ 1001.43 General classification rules.**

See § 1000.43.

**§ 1000.44 Classification of producer milk.**

For each month the market administrator shall determine for each handler described in § 1000.9(a) for each pool plant of the handler separately and for each handler described in § 1000.9(c) and § 1135.11 the classification of producer milk by allocating the handler's receipts of skim milk and butterfat to the handler's gross utilization of such receipts pursuant to § 1000.43(b)(3) as follows:

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

(1) Subtract from the 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 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 order in the immediately preceding month;

(iii) Fluid milk products received in packaged form from plants regulated under other Federal orders; and

(iv) To the extent that the receipts described in paragraphs (a)(1)(i) through (iii) of this section exceed the gross Class I utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

(2) Subtract from the pounds of skim milk in Class II the pounds of skim milk in the receipts 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 in Class II (excluding the quantity of such skim milk that was classified as Class IV milk pursuant to § 1000.40(d)(3)). To the extent that the receipts described in this paragraph exceed the gross Class II utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in:

(i) Receipts of bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product);

(ii) Receipts of fluid milk products and bulk fluid cream

products for which appropriate health approval is not established and from unidentified sources;

(iii) Receipts of fluid milk products and bulk fluid cream products from an exempt plant;

(iv) Fluid milk products and bulk fluid cream products received from a producer-handler as defined under this order or any other Federal order;

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

(vi) The excess receipts specified in paragraphs (a)(1)(iv) and (a)(2) of this section.

(4) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the receipts of fluid milk products from an unregulated supply plant that were not previously subtracted in this section for which the handler requests classification other than Class I, but not in excess of the pounds of skim milk remaining in these other classes combined.

(5) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, receipts of fluid milk products from an unregulated supply plant that were not subtracted in previous paragraphs, and which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(5)(i) and (ii) of this section;

(i) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step; and

(ii) Subtract from the above result the pounds of skim milk in receipts of producer milk and fluid milk products from other pool plants.

(6) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order that are in excess of bulk fluid milk products transferred or diverted to such handler, if other than Class I classification is requested, but not in excess of the pounds of skim milk remaining in these classes combined.

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in fluid milk products and bulk fluid cream products in inventory at the beginning of the month that were not previously subtracted in this section.

(8) Subtract from the pounds of skim milk remaining in each class at the plant receipts of skim milk in fluid milk products from an unregulated supply plant that were not previously subtracted in this section and that were not offset by transfers or diversions of

fluid milk products to the unregulated supply plant from which fluid milk products to be allocated at this step were received. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV.

(9) 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 a handler regulated under another Federal order that are in excess of bulk fluid milk products transferred or diverted to such handler that were not subtracted in paragraph (a)(6) of this section. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(i) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1000.45(a); or

(ii) The total pounds of skim milk remaining in each class at this allocation step.

(10) 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 handler described in § 1135.11 according to the classification of such products pursuant to § 1000.42(a).

(11) 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 IV.

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

(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 paragraphs (a) and (b) of this section.

#### **§ 1001.44 Classification of producer milk.**

See § 1000.44.

#### **§ 1000.45 Market administrator's reports and announcements concerning classification.**

(a) Whenever required for the purpose of allocating receipts from plants regulated under other Federal orders pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b), the market administrator shall estimate and publicly announce the

utilization (to the nearest whole percentage) in Class I during the month of skim milk and butterfat, respectively, in producer milk of all handlers. The estimate shall be based upon the most current available data and shall be final for such purpose.

(b) The market administrator shall report to the market administrators of other Federal orders as soon as possible after the handlers' reports of receipts and utilization are received, the class to which receipts from plants regulated under other Federal orders are allocated pursuant to §§ 1000.43(d) and 1000.44 (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter any change in allocation required to correct errors disclosed on the verification of such report.

(c) The market administrator shall furnish each handler operating a pool plant and each handler described in § 1135.11 who has shipped fluid milk products or bulk fluid cream products to a plant fully regulated under another Federal order the class to which the shipments were allocated by the market administrator of the other Federal order on the basis of the report by the receiving handler and, as necessary, any changes in the allocation arising from the verification of such report.

(d) The market administrator shall report to each cooperative association which so requests, the percentage of producer milk delivered by members of the association that was used in each class by each handler receiving the 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 the handler.

**§ 1001.45 Market administrator's reports and announcements concerning classification.**

*See § 1000.45.*

**Subpart G--Class Prices**

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f), and (q) of this section shall be based on a weighted average of the most recent 2 weekly prices announced by the National Agricultural Statistical Service (NASS) before the 24<sup>th</sup> day of the month. These prices shall be announced on or before the 23<sup>rd</sup> day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g)-(p) of this

section shall be based on a weighted average for the preceding month of weekly prices announced by NASS on or before the 5<sup>th</sup> day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23<sup>rd</sup> day of the month preceding the month to which it applies and the butterfat price announced on or before the 5<sup>th</sup> day of the month following the month to which it applies.

(a) Class I price. The Class I price per hundredweight, rounded to the nearest cent, shall be .965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) Class I skim milk price. The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced pricing factors computed in paragraph (q) (1) or (2) of this section.

(c) Class I butterfat price. The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q) (3) of this section.

(d) The Class II price per hundredweight, rounded to the nearest cent, shall be .965 times the Class II skim milk price plus 3.5 times the Class II butterfat price.

(e) Class II skim milk price. The Class II skim milk price per hundredweight shall be the advanced Class IV skim milk price computed in paragraph (q) (2) of this section plus 70 cents.

(f) Class II nonfat solids price. The Class II nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the Class II skim milk price divided by 9.

(g) Class II butterfat price. The Class II butterfat price per pound shall be the butterfat price plus \$.007.

(h) Class III price. The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the butterfat price.

(i) Class III skim milk price. The Class III skim milk price per hundredweight, rounded to the nearest cent, shall be the protein price per pound times 3.1 plus the other solids price per pound times 5.9.

(j) Class IV price. The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the butterfat price.

(k) Class IV skim milk price. The Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be the nonfat solids price per pound times 9.

(l) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month, less

17.15 cents, with the result multiplied by 1.211.

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, less 16.78 cents and the result multiplied by 0.99.

(n) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract 20.03 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 20.03 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and

(ii) Subtract the butterfat price computed pursuant to paragraph (1) of this section and multiplied by 0.9 from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.17.

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 19.91 cents, with the result multiplied by 1.03.

(p) Somatic cell adjustment. The somatic cell adjustment per hundredweight of milk shall be determined as follows:

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5<sup>th</sup> decimal place;

(2) Subtract the somatic cell count of the milk (reported in thousands) from 350; and

(3) Multiply the amount computed in paragraph (p)(1) of this section by the amount computed in paragraph (p)(2) of this section and round to the nearest full cent.

(q) Advanced pricing factors. For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II

nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24<sup>th</sup> day of the month:

(1) An advanced Class III skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24<sup>th</sup> day of the month, compute a protein price and an other solids price;

(ii) Multiply the protein price computed in paragraph (q)(1)(i) of this section by 3.1;

(iii) Multiply the other solids price per pound computed in paragraph (q)(1)(i) of this section by 5.9; and

(iv) Add the amounts computed in paragraphs (q)(1)(ii) and (iii) of this section.

(2) An advanced Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraph (m) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24<sup>th</sup> day of the month, compute a nonfat solids price; and

(ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24<sup>th</sup> day of the month, subtracting 17.15 cents from this average, and multiplying the result by 1.211.

#### *CLASS PRICES*

#### ***§ 1001.50 Class prices, component prices, and advanced pricing factors.***

*See § 1000.50.*

#### ***§ 1000.51 [Reserved]***

#### ***§ 1001.51 Class I differential and price.***

*The Class I differential shall be the differential established for Suffolk County, Massachusetts, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Suffolk County, Massachusetts.*

**§ 1000.52 Adjusted Class I differentials.**

**(See attached appendix)**

**§ 1000.53 Announcement of class prices, component prices, and advanced pricing factors.**

(a) On or before the 5<sup>th</sup> day of the month, the market administrator for each Federal milk marketing order shall announce the following prices (as applicable to that order) for the preceding month:

- (1) The Class II price;
- (2) The Class II butterfat price;
- (3) The Class III price;
- (4) The Class III skim milk price;
- (5) The Class IV price;
- (6) The Class IV skim milk price;
- (7) The butterfat price;
- (8) The nonfat solids price;
- (9) The protein price;
- (10) The other solids price; and
- (11) The somatic cell adjustment rate.

(b) On or before the 23<sup>rd</sup> day of the month, the market administrator for each Federal milk marketing order shall announce the following prices and pricing factors for the following month:

- (1) The Class I price;
- (2) The Class I skim milk price;
- (3) The Class I butterfat price;
- (4) The Class II skim milk price;
- (5) The Class II nonfat solids price; and
- (6) The advanced pricing factors described in § 1000.50(q).

**§ 1001.53 Announcement of class prices, component prices, and advanced pricing factors.**

*See § 1000.53.*

**§ 1000.54 Equivalent price.**

If for any reason a price or pricing constituent required for computing the prices described in § 1000.50 is not available, the market administrator shall use a price or pricing constituent determined by the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to be equivalent to the price or pricing constituent that is required.

**§ 1001.54 Equivalent price.**

See § 1000.54.

**PRODUCER PRICE DIFFERENTIAL**

**§ 1001.60 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 § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(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.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV 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 § 1000.43(d).

**§ 1001.61 Computation of producer price differential.**

For each month, the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report 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 the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75.

(d) Add an amount equal to not less than one-half of 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 § 1001.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the producer price differential for the month.

**§ 1001.62 Announcement of producer prices.**

On or before the 14<sup>th</sup> day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, 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.

(h) If the 14<sup>th</sup> falls on a Saturday, Sunday, or national holiday, the Market Administrator may have up to two additional business days to announce the producer price differential and the statistical uniform price.

## **Subpart H--Payments for Milk**

### **§ 1000.70 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 §§ ----.71, ----.76, and ----.77 of each Federal milk order and out of which the market administrator shall make all payments pursuant to §§ ----.72 and ----.77 of each Federal milk order. Payments due any handler shall be offset by any payments due from that handler.

#### *PAYMENTS FOR MILK*

### **§ 1001.70 Producer-settlement fund.**

See § 1000.70.

### **§ 1001.71 Payments to the producer-settlement fund.**

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than two days after the announcement of the producer price differential and the statistical uniform price pursuant to **§1001.62** (except as provided for in **§1000.90**). Payment shall be 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 value of milk to the handler for the month as determined pursuant to § 1001.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1001.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential as adjusted pursuant to § 1001.75 for the location of the plant from which received.

### **§ 1001.72 Payments from the producer-settlement fund.**

No later than the day after the due date required for payment to the Market Administrator pursuant to **§ 1001.71**(except as provided in § 1000.90), the Market Administrator shall pay to each handler

the amount, if any, by which the amount computed pursuant to § 1001.71(b) exceeds the amount computed pursuant to § 1001.71(a). 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 the payments as soon as the funds are available.

**§ 1001.73 Payments to producers and to cooperative associations.**

(a) Each handler that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) Partial payment. For each producer who has not discontinued shipments as of the 23<sup>rd</sup> day of the month, payment shall be made so that it is received by the producer on or before the 26<sup>th</sup> day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) Final payment. For milk received during the month, payment shall be made during the following month so it is received by each producer no later than the day after the required date of payment by the Market Administrator, pursuant to § 1001.72, in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received by the producer price differential for the month as adjusted pursuant to § 1001.75;

(ii) Multiply the pounds of butterfat received by the butterfat price for the month;

(iii) Multiply the pounds of protein received by the protein price for the month;

(iv) Multiply the pounds of other solids received by the other solids price for the month; and

(v) Add the amounts computed in paragraphs (a)(2)(i) through (iv) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each handler shall pay a cooperative association for milk received as follows:

(1) Partial payment to a cooperative association for bulk milk received directly from producers' farms. For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) Partial payment to a cooperative association for milk transferred from its pool plant. For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the handler's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) Final payment to a cooperative association for milk transferred from its pool plant. Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) Multiply the hundredweight of Class I skim milk by the Class I skim milk price for the month at the receiving plant;

(ii) Multiply the pounds of Class I butterfat by the Class I butterfat price for the month at the receiving plant;

(iii) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iv) Multiply the pounds of butterfat in Class II times the Class II butterfat price;

(v) Multiply the pounds of nonfat solids in Class IV milk by the nonfat solids price for the month;

(vi) Multiply the pounds of butterfat in Class III and IV milk by the butterfat price for the month;

(vii) Multiply the pounds of protein in Class III milk by the protein price for the month;

(viii) Multiply the pounds of other solids in Class III milk by the other solids price for the month; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section.

(4) Final payment to a cooperative association for bulk milk received directly from producers' farms. For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1001.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made 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, the 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 the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer (except for a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or 9(c)) a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

**§ 1001.74 [Reserved]**

**§ 1001.75 Plant location adjustments for producer milk and nonpool milk.**

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1001.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1001.73 and 1000.76.

**§ 1000.76 Payments by a handler operating a partially regulated distributing plant.**

On or before the 25th day after the end of the month (except as provided in § 1000.90), the operator of a partially regulated distributing plant, other than a plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program, shall pay to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section or, if the handler submits the information specified in §§ ----.30(b) and ----.31(b) of the order, the handler may elect to pay the amount computed pursuant to paragraph (b) of this section. A partially regulated distributing plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program shall pay the amount computed pursuant to paragraph (c) of this section.

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

(1) From the plant's route disposition in the marketing area:

(i) Subtract receipts of fluid milk products classified as Class I milk from pool plants, plants fully regulated under other Federal orders, and handlers described in § 1000.9(c) and § 1135.11, except those receipts subtracted under a similar provision of another Federal milk order;

(ii) Subtract receipts of fluid milk products from another nonpool plant that is not a plant fully regulated under another

Federal order to the extent that an equivalent amount of fluid milk products disposed of to the nonpool 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 payment obligation under any order; and

(iii) Subtract the pounds of reconstituted milk made from nonfluid milk products which are disposed of as route disposition in the marketing area;

(2) For orders with multiple component pricing, compute a Class I differential price by subtracting Class III price from the current month's Class I price. Multiply the pounds remaining after the computation in paragraph (a)(1)(iii) of this section 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 except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero;

(3) For orders with skim milk and butterfat pricing, multiply the remaining pounds by the amount by which the Class I price exceeds the uniform price, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I price nor the adjusted uniform price differential shall be less than the lowest announced class price; and

(4) Unless the payment option described in paragraph (d) is selected, add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(1)(iii) of this section by any positive difference between the Class I price applicable at the location of the partially regulated distributing plant (less \$1.00 if the reconstituted milk is labeled as such) and the Class IV price.

(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 § ----.60 of the order 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 plant from a pool plant, a plant fully regulated under another Federal order, and handlers described in § 1000.9(c) and § 1135.11 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 a plant fully regulated under another Federal order 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 the pool plant and plants fully regulated under other Federal orders 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 pursuant to § ----.60 of the order for the partially regulated distributing plant shall be priced at the statistical uniform price or uniform price, whichever is applicable, of the respective order regulating the handling of milk at the receiving plant, with such statistical uniform price or uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest announced class price of the respective order); and

(iii) If the operator of the partially regulated distributing plant so requests, the handler's value of milk determined pursuant to § ----.60 of the order shall include a value of milk determined for each nonpool plant that is not a plant fully regulated under another Federal order which serves as a supply plant for the partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of section 7(c) of the order subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ ----.30(b) and ----.31(b) of the order similar reports for each such nonpool supply plant;

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

(C) The value of milk determined pursuant to § ----.60 for the unregulated supply plant shall be determined in the same manner prescribed for computing the obligation of the 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 that were made for milk 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 the 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 Federal order under which the plant is also a partially regulated

distributing plant and, if paragraph (b) (1) (iii) of this section applies, payments made by the operator of the nonpool supply plant to the producer-settlement fund of any order.

(c) The operator of a partially regulated distributing plant that is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a State government shall pay on or before the 25<sup>th</sup> day after the end of the month (except as provided in § 1000.90) to the market administrator for the producer-settlement fund an amount computed as follows:

After completing the computations described in paragraphs (a) (1) (i) and (ii) of this section, determine the value of the remaining pounds of fluid milk products disposed of as route disposition in the marketing area by multiplying the hundredweight of such pounds by the amount, if greater than zero, that remains after subtracting the State program's class prices applicable to such products at the plant's location from the Federal order Class I price applicable at the location of the plant.

(d) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients that are reconstituted for fluid use. 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 positive difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed and the Class IV 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.

***§ 1001.76 Payments by a handler operating a partially regulated distributing plant.***

*See § 1000.76.*

***§ 1000.77 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.

**§ 1001.77 Adjustment of accounts.**

See § 1000.77.

**§ 1000.78 Charges on overdue accounts.**

Any unpaid obligation due the market administrator, producers, or cooperative associations from a handler pursuant to the provisions of the order shall be increased 1.0 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 succeeding 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 computed pursuant to this section. The late charges shall accrue to the administrative assessment fund. 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.

**§ 1001.78 Charges on overdue accounts.**

See § 1000.78.

**Subpart I--Administrative Assessment and Marketing Service Deduction**

**§ 1000.85 Assessment for order administration.**

On or before the payment receipt date specified under § --- -.71 of each Federal milk order each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 5 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(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 § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § ----.60(d) and (e) of Parts 1005, 1006, and 1007 or § ----.60(h) and (i) of Parts

1001, 1030, 1032, 1033, 1124, 1126, 1131, and 1135; and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii).

*ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION*

**§ 1001.85 Assessment for order administration.**

*See § 1000.85.*

**§ 1000.86 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 § ----.73 of each Federal milk order shall deduct an amount specified by the market administrator that is no more than 7 cents per hundredweight and shall pay the amount deducted to the market administrator not later than the payment receipt date specified under § ----.71 of each Federal milk order. The 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. The 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 the market administrator has determined that a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make 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 the producers. On or before the 15th day after the end of the month (except as provided in § 1000.90), such deductions shall be paid to the cooperative association rendering the services accompanied by a statement showing the amount of any deductions and the amount of milk for which the deduction was computed for each producer. These deductions shall be made in lieu of the deduction specified in paragraph (a) of this section.

**§ 1001.86 Deduction for marketing services.**

*See § 1000.86.*

## **Subpart J--Miscellaneous Provisions**

### **§ 1000.90 Dates.**

If a date required for a payment contained in a Federal milk order falls on a Saturday, Sunday, or national holiday, such payment will be due on the next day that the market administrator's office is open for public business.

### **§ 1000.91 [Reserved]**

### **§ 1000.92 [Reserved]**

### **§ 1000.93 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.

Authority: 7 U.S.C. 601 - 674, and 7253.