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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. **15-0071**
Milk in California)

**APPENDIX TO POST - HEARING BRIEF FOR
CALIFORNIA DAIRIES, INC.,
DAIRY FARMERS OF AMERICA, INC., and
LAND O'LAKES, INC.**

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Proponents' Request for Official Notice

EXHIBIT 1

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. **15-0071**
Milk in California)

PROPONENTS' REQUEST FOR OFFICIAL NOTICE

**In Support of Proposal 1 of California Dairies, Inc.,
Dairy Farmers of America, Inc., and Land O'Lakes, Inc.**

**Proposal to Establish a Federal Milk Marketing Order for the
State of California**

Pursuant to § 900.8(d)(5) of the Rules of Practice and Procedure Governing Proceedings to Formulate Marketing Agreements and Marketing Orders, the Proponents of Proposal No. 1 to establish a Federal Milk Marketing Order in California, California Dairies, Inc., Dairy Farmers of America, Inc., and Land O'Lakes, Inc., hereby request that the United States Department of Agriculture take Official Notice of the materials, regulations, and statutes identified below. The following abbreviations are used herein: United States Department of Agriculture ("USDA"); United States Department of Agriculture Agricultural Marketing Service ("AMS"); and United States Department of Agriculture National Agricultural Statistics Service ("NASS").

Federal Register Decisions

1. Milk in Chicago, Ill., Marketing Area, 26 Fed. Reg. 7134-7141 (August 9, 1961).
2. Milk in the Greater Boston, Mass.; New York-New Jersey; Philadelphia, PA.; Southeastern New England; Springfield, Mass.; Upper Chesapeake Bay; Washington, D.C.; Worcester, Mass.; Wilmington, Del., and Connecticut Marketing Areas, 27 Fed. Reg. 799-816 (January 26, 1962).
3. Milk in Puget Sound, Wash., Marketing Area, 31 Fed. Reg. 7062, *et seq.* (May 13, 1966).
4. Milk in the Boston Regional and Certain Other Marketing Areas, 39 Fed. Reg. 11567-11571 (March 29, 1974).
5. Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Marketing Agreement and Order, 44 Fed. Reg. 48128, 48130 (August 16, 1979)
6. Milk in the Middle Atlantic and New York-New Jersey Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders, 50 Fed. Reg. 32716, 32718-32719 (August 14, 1985).
7. Milk in the Georgia and Certain Other Marketing Areas; Decision and Order to Terminate Proceeding on Proposed Amendments to Tentative Marketing Agreements and Others, 52 Fed. Reg. 15951-15960 (May 1, 1987).

8. Milk in the Great Basin and Lake Mead Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders, 53 Fed. Reg. 686-731 (January 11, 1988).
9. Milk in the Texas Marketing Area; Final Decision on Proposed Amendments to Marketing Agreement and to Order, 53 Fed. Reg. 36321-36334 (September 19, 1988).
10. Milk in the Carolina Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order, 55 Fed. Reg. 25618-25669 (June 22, 1990).
11. Milk in the Middle Atlantic Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreement and Order, 56 Fed. Reg. 57850-57864 (November 14, 1991).
12. Milk in the New England and Certain Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders, 58 Fed. Reg. 58112-58137 (October 29, 1993).
13. Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders, 59 Fed. Reg. 8546-8565 (February 23, 1994).
14. Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and Orders, 60 Fed. Reg. 7290-7333 (February 7, 1995).
15. Milk in the Georgia and Certain Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders, 60 Fed. Reg. 25014-25071 (May 10, 1995).
16. Milk in the Chicago Regional and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders, 60 Fed. Reg. 41833-41868 (August 14, 1995).
17. Milk in the Southern Michigan Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order, 60 Fed. Reg. 43066-43089 (August 18, 1995).
18. Milk in the New England and Other Marketing Areas; Proposed Rule and Opportunity to File Comments, Including Written Exceptions, on Proposed Amendments to Marketing Agreements and Orders, 63 Fed. Reg. 4802-5095 (January 30, 1998).

19. Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders, 64 Fed. Reg. 16026-16296 (April 2, 1999).
20. Milk in the New England and Other Marketing Areas: Order Amending the Orders, 64 Fed. Reg. 47898-48021 (September 1, 1999).
21. Milk in the New England and Other marketing Areas; Order Amending the Orders, 64 Fed Reg. 70868-70912 (December 17, 1999).
22. Milk in the Northeast and Other Marketing Areas; Tentative Decision on Proposed Amendments and Opportunity to File Written Exceptions to Tentative Marketing Agreements and to Orders, 65 Fed. Reg. 76832-76861 (December 7, 2000).
23. Milk in the Northeast and Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreement and To Order, 67 Fed. Reg. 67906-67947 (November 7, 2002).
24. Milk in the Pacific Northwest and Western Marketing Areas; Proposed Rule, 68 Fed. Reg. 49375-49390 (August 18, 2003).
25. Milk in the Pacific Northwest and Arizona-Las Vegas Marketing Areas, Final Decision, 70 Fed. Reg. 74166, 7418 (Dec. 14, 2005).
26. Milk in the Upper Midwest Marketing Area, Final Decision, 71 Fed. Reg. 54136 (Sept. 13, 2006).
27. Milk in the Central Marketing Area, Final Decision, 71 Fed. Reg. 54152 (Sept. 13, 2006).
28. Milk in the Mideast Marketing Area, Final Decision, 71 Fed. Reg. 54172 (Sept. 13, 2006).
29. Milk in the Northeast and Other Marketing Areas; Tentative Final Decision on Proposed Amendments and Opportunity to File Written Exceptions to Tentative Marketing Agreements and Orders, 71 Fed. Reg. 67467-67495 (November 22, 2006).
30. Milk in the Appalachian, Florida and Southeast Marketing Areas; Tentative Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders, 73 Fed. Reg. 11194-11229 (February 29, 2008).
31. Milk in the Northeast and Other Marketing Areas; Tentative Partial Final Decision on Proposed Amendments and Opportunity to File Written Exceptions to

Tentative Marketing Agreements and Orders, 73 Fed. Reg. 35306-35331 (June 20, 2008).

32. Milk in the Northeast and Other Marketing Areas; Final Decision on Proposed Amendments to Tentative Marketing Agreements and Orders, 75 Fed. Reg. 10122-10154 (March 4, 2010).
33. Milk in the Northeast and Other Marketing Areas; Order Amending the Orders, 75 Fed. Reg. 21157-21161 (April 23, 2010).
34. Milk in the Northeast and Other Marketing Areas; Final Decision on Proposed Amendments to Marketing Agreements and Orders, 75 Fed. Reg. 33534-33533 (June 14, 2010).

Code of Federal Regulations

7 C.F.R. Parts 1001-1016, 1030-1049, 1061-1079, 1090-1099, 1101-1108, 1125-1137 (Revised January 1, 1962).¹

United States Department of Agriculture Publications and Documents

1. AMS, Federal Milk Marketing Order Statistics, (Annual Summaries, 1980-2015), including those online at <https://www.ams.usda.gov/resources/marketing-order-statistics> (Dairy Public Database.zip).
2. AMS, "Federal Milk Order Marketing and Utilization Summary, Annual 2015." Dairy Market News (February 8-12, 2016).
3. NASS, "Milk Production" (Annual Reports 2000-2014).
4. NASS, "Milk Production" (Monthly Reports January 2015-February 2016).
5. NASS, "Dairy Products Annual," (Annual Reports 2000-2014).
6. NASS, "Dairy Products Annual," (Monthly Reports January 2015-February 2016).
7. AMS, Mailbox Milk Prices (January 2012-February 2016).
8. Price Structure Committee, AMS, Dairy Division, Preliminary Report (November 1, 1996).

¹ Official notice is requested of these non-current federal regulations.

9. Classification Committee, AMS, Dairy Division, Preliminary Report (November 12, 1966).
10. Identical Provisions Committee, AMS, Dairy Division, Preliminary Report (November 7, 1996).
11. Basic Formula Price Committee, AMS, Dairy Division, Preliminary Report on Alternatives to the Basic Formula Price (April 1997).
12. Pricing Milk and Dairy Products: Principles, Practices, and Problems, Agricultural Economic Report No. 207 (USDA, Economic Research Services, Washington, D.C.: 1971) available at <http://naldc.nal.usda.gov/catalog/CAT71326020>
13. "Measures of Growth in Federal Milk Orders" (USDA, AMS, June 5, 2015).
14. List of Plants and Handlers 2014 (Monthly) - 2016 (Monthly), Federal Milk Market Administrator, Pacific Northwest and Arizona Milk Orders, available at www.fmmaseattle.com
15. Plant and Handler Lists 2014-2016, Federal Market Administrator, Northeast Marketing Area, available in the Market Administrator's Annual Statistical Bulletin for 2014-2016 at www.fmmone.com
16. List of Handlers, Plants, and Cooperative Associations 2014-2016 Federal Market Administrator, Upper Midwest Marketing Area, available at www.fmma30.com
17. List of Supply Plant Systems 2014-2016, Federal Market Administrator, Upper Midwest Marketing Area, available at www.fmma30.com

California State Documents

1. California Food and Agricultural Code Division 21, Part 3, Chapter 1, sections 61301-61573 (Marketing of Milk and Other Dairy Products).
2. California Food and Agricultural Code Division 21, Part 3, Chapter 2, sections 61801-62402 (Stabilization and Marketing of Market Milk).
3. California Food and Agricultural Code Division 21, Part 3, Chapter 2.5, sections 62500-62667 (Milk Producers Security Fund).
4. California Food and Agricultural Code Division 21, Part 3, Chapter 3, sections 62700-62731 (Equalization Pools – “Gonsalves Milk Pooling Act”).

5. California Food and Agricultural Code Division 21, Part 3, Chapter 3.5, sections 62750-62731 (Equalization Pools – “quota premium provisions”).
6. Stabilization and Marketing Plan for Market Milk, as Amended, for the Northern California Marketing Area, California Secretary of Food and Agriculture Northern California Order Number Sixty-one (61), effective August 1, 2015.
7. Stabilization and Marketing Plan for Market Milk, as Amended, for the Southern California Marketing Area, California Secretary of Food and Agriculture Southern California Order Number Seventy-six (76), effective August 1, 2015.
8. Pooling Plan for Market Milk, as Amended, California Secretary of Food and Agriculture Order Number One Hundred Nine (109), effective June 1, 2013.
9. 2015-2016 Designated Supply Handlers for Procurement Region 2, available at https://www.cdfa.ca.gov/dairy/pdf/Call%20Provisions/2015-2016/S_CA_Call_Provisions_2015-16.pdf
10. 2015-2016 Designated Supply Handlers for Procurement Region 1, available at https://www.cdfa.ca.gov/dairy/pdf/Call%20Provisions/2015-2016/S_CA_Call_Provisions_2015-16.pdf

Other Resources

1. Baker, Burton A., and Rudolph K. Froker, “The Evaporated Milk Industry under Federal Marketing Agreements,” Research Bulletin 158 (University of Wisconsin, September 1945).
2. United States Energy Information Administration, Weekly Retail Gasoline and Diesel Prices January 2011-July 2015, available at http://tonto.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMD_EPD2D_PT_E_SCA_DPG&f=M
3. U.S. Department of Transportation, Federal Highway Administration, Highway Statistics Summary to 1995, FHWA-PL-97-009 (Washington, DC, July 1997) available at <http://www.fhwa.dot.gov/policyinformation/statistics.cfm> as of March 22, 2016.
4. U.S. Department of Transportation, Federal Highway Administration, Highway Statistics (Annual Issues 1995-2012) (Washington, DC), available at <http://www.fhwa.dot.gov/policyinformation/statistics.cfm> as of March 22, 2016.
5. Jacobson, Robert E., et al., Research Bulletin 1105: Pricing Grade A Milk Used in Manufactured Dairy Products (Ohio Agriculture Research and Development Center, Wooster, Ohio: 1978) available at https://kb.osu.edu/dspace/.../OARDC_research_bulletin_n1105.pdf?...1

Proposed Language for the California Milk Marketing Order

EXHIBIT 2

PROPOSED LANGUAGE FOR THE CALIFORNIA MILK MARKETING ORDER
(March 31, 2016)

Submitted by:
California Dairies, Inc.
Dairy Farmers of America, Inc.
Land O'Lakes, Inc.

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

(7 CFR. CHAPTER X)

PART 1051--MILK IN THE CALIFORNIA MARKETING AREA

Subpart--Order Regulating Handling

GENERAL PROVISIONS

§ 1051.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1051. In this part 1051, all references to sections in part 1000 refer to part 1000 of this chapter.

DEFINITIONS

§ 1051.2 California marketing area.

The marketing area means all 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: All of the State of California

§ 1051.3 Route disposition.

See § 1000.3.

§ 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.

§ 1051.4 Plant.

See § 1000.4.

§ 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.

§ 1051.5 Distributing plant.

See § 1000.5.

§ 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.

§ 1051.6 Supply plant.

See § 1000.6.

§ 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.

§ 1051.7 Pool plant.

Pool plant means a plant as specified in paragraphs (a), (b), (c), (c.1), and (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (e) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.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 15 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 plant that is located in the marketing area which during the month receives milk from a producer located in the marketing area or from a cooperative marketing the milk of a producer located in the marketing area pursuant to § 1051.9(c).

(c.1) A plant located in Churchill County Nevada which during the month receives milk from producers located in Churchill County or in the marketing area or from a cooperative marketing the milk of a producer located in the marketing area or in Churchill County pursuant to § 1051.9(c).

(d) The operators of pool plants under part (1051.7(c)) and (c.1), and cooperative handlers pooling milk pursuant to 1051.9(c), shall supply fluid milk products to pool distributing plants (qualified pursuant to 1051.7(a) and (b)) located within an area designated by the market administrator as the "procurement region" in compliance with any announcement by the market administrator requiring a minimum level of shipments, as further provided below:

(1) The market administrator may require such supplies of fluid milk products from operators of pool plants as specified above, and cooperatives

pooling milk as handlers pursuant to 1051.9(c), whenever he finds that milk supplies for Class I use at pool distributing plants within the procurement region are needed from pool plants and cooperatives. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative, at the request of the operators of pool distributing plants, or at the request of other interested persons. If his investigation shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement. Any decision shall define the procurement region for purposes of such decision and establish minimum shipping requirements as a percentage of the producer milk of the handler(s) within the procurement region for the month. The Market Administrator will set the call percentage requirements at levels appropriate to generate the milk necessary to satisfy the Class I requirements of pool distributing plants in the procurement region. The call percentage for each handler shall be calculated as the volume of shipments by such handler to Section 7(a) and 7(b) plants in the procurement region divided by the handler's total producer milk in the region. In determining whether a call for milk shall be issued and the level of the call, the Market Administrator shall consider all producer milk within the control of a Section 7(a) or 7(b) pool distributing plant handler to be available to supply the needs of such plant before milk supplies of any other handler shall be subject to a call. A decision on the required shipment of bulk fluid milk by pool plant operators and cooperative handlers must be made in writing at least one day before the effective date.

(2) Procurement regions: For purposes of required shipments pursuant to this section, there shall be two procurement regions, which are subject to further subdivision at the discretion of the market administrator. Procurement regions shall define both the location of the distributing plants to which shipments are required and the location of the farms from which supplies shall originate. The procurement regions are defined as follows:

(i) Procurement Region 1 - the California counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, and the Arizona county of Yuma;

(ii) Procurement Region 2 - the California counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Glenn, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba.

(iii) Alternative procurement region - If the market administrator finds, on the basis of the data, views, and arguments submitted to him, and all information available to him, that for purposes of any required shipments hereunder the procurement region should be a different area than the regions defined above, he shall define such area in the decision issued hereunder.

(3) For the purpose of meeting any shipping requirement announced by the market administrator, the following shall apply: Qualifying shipments to pool distributing plants within the procurement region may originate from any plant or producer milk supplies of the handler within the region; but may not result from shifting milk supplies from a pool distributing plant outside the procurement region to one within the procurement region; and

(4) Failure of a handler to comply with any announced shipping requirement, including making any significant change in his marketing operations that the market administrator determines has the impact of evading or forcing such an announcement, shall cause a per hundredweight penalty equal to the greater of \$5 per hundredweight or 25% of the non-quota blend price for the applicable month that the call was initiated multiplied by the handler's shortfall in deliveries to be assessed to the handler's account. The penalty will be deposited into the producer settlement fund.

(e) A supply plant located outside the marketing area (except a plant subject to (7)(c.1) from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (a) and (b) of this section is not less than 50 percent of the Grade A milk received from dairy farmers and handlers described in § 1000.9(c), including milk diverted pursuant to § 1051.13, subject to the following conditions:

(1) If milk is delivered directly from producers' farms that are located outside of the marketing area such producers must be grouped by state into reporting units and each reporting unit must independently meet the shipping requirements of this paragraph; and

(2) Concentrated milk transferred from the supply plant located outside the marketing area to a distributing plant shall be excluded from the supply plant's shipments in computing the percentages in paragraphs (d)(1).

(f) The applicable shipping percentages of paragraphs (e) of this section and § 1051.13(d)(2), and (d)(3) may be increased or decreased, for all or part of the marketing area, 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 or diversion percentage must be issued in writing at least one day before the effective date.

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

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

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

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section 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 located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that 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;

(6) A plant qualified pursuant to paragraph (c or e) 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 the order in this part, or the plant has automatic pooling status under the other Federal order; and

(h) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (e) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during

the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1051.8 Nonpool plant.

See § 1000.8.

§ 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.

§ 1051.8A Additional Exempt Plants

The following plants shall also be exempt plants.

(a) A plant which uses milk to produce Class II, III or IV products (as defined in §1051.40) and 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 to enable determination of the handler's exempt status; and

(1) Is a plant that meets the requirements of §1051.7 (c) or (c.1);
and

(2) Does not process or distribute packaged fluid milk products;
and

(3) Uses 300,000 pounds of milk or less per month to produce products classified as Class II, Class III or IV.

(b) A plant which processes and distributes packaged fluid milk products and uses milk to produce Class II, III or IV products (as defined in §1051.40) and 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 to enable determination of the handler's exempt status; and

(1) Is a plant that meets the requirements of §1051.7 (c) or (c.1); and

(2) Has route disposition and sales of packaged fluid milk products to other plants of 150,000 pounds or less during the month; and

(3) Uses milk to produce Class II, Class III or Class IV products; and

(4) Whose total pounds of usage under sections (2) and (3) above does not exceed 300,000 pounds per month.

§ 1051.9 Handler.

See § 1000.9.

§ 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.

§ 1051.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a milk processing plant for Class I, Class II, Class III, or Class IV products in which the milk used during the month does not exceed 3 million pounds;

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

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk or 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;

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations (for Class I, II, III and IV products) are the producer-handler's own enterprise and at its own risk; and

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter

shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 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 § 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 § 1131.7 of this chapter or § 1000.76(a).

(g) Bulk transfers and diversions to producer-handlers which produce Class II, III, or IV products shall be classified in accordance with 1000.42(c)(3).

§ 1051.11 Grade A Milk.

“Grade A milk” shall mean milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk or as “market milk” as defined under California law and regulations.

§ 1051.12 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 § 1051.13; 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 (5) of this section. A dairy farmer described in paragraph (b)(5) 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 § 1051.13(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; and

(5) A dairy farmer who having had a Grade A permit has marketed milk as other than Grade A milk for more than 30 consecutive days shall not be a producer until 12 consecutive months have passed from the time non-Grade A status started.

§ 1051.13 Producer milk.

Except as provided for in paragraph (e) of this section, Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). 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 a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a 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 a cooperative association 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 until at least five day's production of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. 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 or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion until at least five day's production of the dairy farmer has been physically received as producer milk at a pool plant during the first month the dairy farmer is re-associated with the market;

(2) The quantity of milk diverted by a handler described in § 1000.9(c) may not exceed 50 percent of the producer milk receipts reported by the handler pursuant to § 1051.30(c) provided that not less than 50 percent of such receipts are delivered to plants described in § 1051.7(a) or (b). These percentages are subject to any adjustments that may be made pursuant to § 1051.7(f); and

(3) The quantity of milk diverted to nonpool plants by the operator of a pool plant described in § 1051.7(a) or (b) may not exceed 50 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1051.12(b)) including milk diverted pursuant to § 1051.13; and further such milk is subject to the pooling requirements of § (7)(e)(1); and

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

(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 a State government maintaining marketwide pooling of returns.

(f) The quantity of milk reported by a handler pursuant to either § 1051.30(a)(1) or § 1051.30(c)(1) may not exceed 115 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool. Milk in excess of this limit received at pool plants, other than pool distributing plants, shall be classified pursuant to §1000.44(a)(3)(v) and § 1000.44(b). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants in excess of the previous month's pooled volume shall not be subject to the 115 percent limitation;

(2) The market administrator may waive the 115 percent limitation:

(i) For a new handler on the order, subject to the provisions of § 1051.13(f)(3), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(3) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

§ 1051.14 Other source milk.

See § 1000.14.

§ 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.

§ 1051.15 Fluid milk product.

See § 1000.15.

§ 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.

§ 1051.16 Fluid cream product.

See § 1000.16.

§ 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.

§ 1051.17. CDFA, quota premium, quota nonfat solids, and non-quota milk.

(a) “CDFA” refers to the California Department of Food and Agriculture, which is the agency of the State of California responsible for administration of the California dairy producer milk quota program as established in the California Food and Agriculture Code.

(b) “Quota premium” means the value established pursuant to the California Food and Agriculture Code §§ 62750 et seq. “Quota premium” and “quota premium value” mean the value per pound of nonfat solids, as adjusted by the regional quota adjusters (referenced in § 62750 (c)), where and as applicable.

(c) “Quota nonfat solids” means the pounds of nonfat solids of a producer, as determined and reported by CDFA, which qualify for the quota premium.

(d) “Non-quota milk” means pool milk not eligible for the quota premium.

(e) “Out-of-state producer” means a dairy farm physically located outside the state of California from which milk is pooled on the order and which milk is non-quota milk solely because of its location.

§ 1051.18 Cooperative association.

See § 1000.18.

§ 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.

§ 1051.19 Commercial food processing establishment.

See § 1000.19.

§ 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.

§ 1051.25 Market administrator.

See § 1000.25

§ 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

§ 1051.26 Continuity and separability of provisions.

See § 1000.26.

§ 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

§ 1051.27 Handler responsibility for records and facilities.

See § 1000.27.

§ 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.

§ 1051.28 Termination of obligations.

See § 1000.28.

§ 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 through 900.71) 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

1051.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

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

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat 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) [qualified cooperative associations]; 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;

(ii.a) Receipts of all condensed skim and dry powder; and

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

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

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, as the market administrator may prescribe, including the use of condensed skim or dry powder in fortification or reconstitution of Class I products.

(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 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 paragraphs (a) through (c) 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.

(e) Each handler shall report such additional information as deemed necessary by the market administrator.

§ 1051.31 Producer delivery and payroll reports.

(a) On or before the 9th day after the end of each month, each handler that operates a pool plant pursuant to § 1051.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer deliveries for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1051.73(f); and any other information deemed necessary by the Market Administrator.

(a.1) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1051.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1051.73(f) and any other information deemed necessary by the Market Administrator.

(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.

§ 1051.32 Other reports.

In addition to the reports required pursuant to §§ 1051.30 and 1051.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1051.40 Classes of utilization.

See § 1000.40.

§ 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 non-milk 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; and

(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.

§ 1051.41 [Reserved]

§ 1051.42 Classification of transfers and diversions.

See § 1000.42.

§ 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 of this chapter 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 except as provided in Section 1051.10(g);

- (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.

§ 1051.43 General classification rules.

See § 1000.43.

§ 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 of this chapter, 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 of this chapter 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 of this chapter 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 of this chapter. 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.

§ 1051.44 Classification of producer milk.

See § 1000.44.

§ 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 the order in this part 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 previously subtracted in this section, 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 result in paragraph (a)(5)(i) 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 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 of this chapter 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.

§ 1051.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

§ 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 of this chapter 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.

CLASS PRICES

§ 1051.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 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 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g) through (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 5th 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 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th 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 0.965 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 adjustment to Class I prices specified in § 1005.51(b), § 1006.51(b) and § 1007.51(b), 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 adjustments

to Class I prices specified in § 1005.51(b), § 1006.51(b) and § 1007.51(b) 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 \$0.007.

(h) Class III price. The Class III price per hundredweight, rounded to the nearest cent, shall be 0.965 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 0.965 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 multiplying the result 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 0.9 times the butterfat price computed pursuant to paragraph (l) of this section 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 0.0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th 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 24th 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 24th 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 24th 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 24th day of the month, subtracting 17.15 cents from this average, and multiplying the result by 1.211.

§ 1051.51 Class I differential and price.

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

§ 1051.52 Adjusted Class I differentials.

See § 1000.52.

§ 1000.52 Adjusted Class I differentials.

The Class I differential adjusted for location to be used in § 1000.50(b) and (c) shall be as follows:

[Showing selected Western US zones]

COUNTY	STATE	FIPS_CODE	MODIFIED 1A DIFF
APACHE	AZ	04001	1.90
COCHISE	AZ	04003	2.10
COCONINO	AZ	04005	1.90
GILA	AZ	04007	2.10
GRAHAM	AZ	04009	2.10
GREENLEE	AZ	04011	2.10
LA PAZ	AZ	04012	2.10
MARICOPA	AZ	04013	2.35
MOHAVE	AZ	04015	1.90
NAVAJO	AZ	04017	1.90
PIMA	AZ	04019	2.35
PINAL	AZ	04021	2.35
SANTA CRUZ	AZ	04023	2.10
YAVAPAI	AZ	04025	1.90
YUMA	AZ	04027	2.10
ALAMEDA	CA	06001	1.80
ALPINE	CA	06003	1.70
AMADOR	CA	06005	1.70
BUTTE	CA	06007	1.70
CALAVERAS	CA	06009	1.70
COLUSA	CA	06011	1.70
CONTRA COSTA	CA	06013	1.80
DEL NORTE	CA	06015	1.80
EL DORADO	CA	06017	1.70
FRESNO	CA	06019	1.60
GLENN	CA	06021	1.70
HUMBOLDT	CA	06023	1.80

IMPERIAL	CA	06025	2.00
INYO	CA	06027	1.60
KERN	CA	06029	1.80
KINGS	CA	06031	1.60
LAKE	CA	06033	1.80
LASSEN	CA	06035	1.70
LOS ANGELES	CA	06037	2.10
MADERA	CA	06039	1.60
MARIN	CA	06041	1.80
MARIPOSA	CA	06043	1.70
MENDOCINO	CA	06045	1.80
MERCED	CA	06047	1.70
MODOC	CA	06049	1.70
MONO	CA	06051	1.60
MONTEREY	CA	06053	1.80
NAPA	CA	06055	1.80
NEVADA	CA	06057	1.70
ORANGE	CA	06059	2.10
PLACER	CA	06061	1.70
PLUMAS	CA	06063	1.70
RIVERSIDE	CA	06065	2.00
SACRAMENTO	CA	06067	1.70
SAN BENITO	CA	06069	1.80
SAN	CA	06071	1.80
BERNARDINO			
SAN DIEGO	CA	06073	2.10
SAN FRANCISCO	CA	06075	1.80
SAN JOAQUIN	CA	06077	1.70
SAN LUIS	CA	06079	1.80
OBISPO			
SAN MATEO	CA	06081	1.80
SANTA	CA	06083	1.80
BARBARA			
SANTA CLARA	CA	06085	1.80
SANTA CRUZ	CA	06087	1.80
SHASTA	CA	06089	1.70
SIERRA	CA	06091	1.70
SISKIYOU	CA	06093	1.80
SOLANO	CA	06095	1.80
SONOMA	CA	06097	1.80
STANISLAUS	CA	06099	1.70
SUTTER	CA	06101	1.70
TEHAMA	CA	06103	1.70

TRINITY	CA	06105	1.80
TULARE	CA	06107	1.60
TUOLUMNE	CA	06109	1.70
VENTURA	CA	06111	1.80
YOLO	CA	06113	1.70
YUBA	CA	06115	1.70
BERNALILLO	NM	35001	2.35
CATRON	NM	35003	2.10
CHAVES	NM	35005	2.10
CIBOLA	NM	35006	1.90
COLFAX	NM	35007	2.35
CURRY	NM	35009	2.10
DE BACA	NM	35011	2.10
DONA ANA	NM	35013	2.10
EDDY	NM	35015	2.10
GRANT	NM	35017	2.10
GUADALUPE	NM	35019	2.35
HARDING	NM	35021	2.35
HIDALGO	NM	35023	2.10
LEA	NM	35025	2.10
LINCOLN	NM	35027	2.10
LOS ALAMOS	NM	35028	2.35
LUNA	NM	35029	2.10
MCKINLEY	NM	35031	1.90
MORA	NM	35033	2.35
OTERO	NM	35035	2.10
QUAY	NM	35037	2.35
RIO ARRIBA	NM	35039	1.90
ROOSEVELT	NM	35041	2.10
SAN JUAN	NM	35045	1.90
SAN MIGUEL	NM	35047	2.35
SANDOVAL	NM	35043	2.35
SANTA FE	NM	35049	2.35
SIERRA	NM	35051	2.10
SOCORRO	NM	35053	2.10
TAOS	NM	35055	1.90
TORRANCE	NM	35057	2.35
UNION	NM	35059	2.35
VALENCIA	NM	35061	2.35
CARSON CITY	NV	32510	1.70
CHURCHILL	NV	32001	1.70
CLARK	NV	32003	2.00
DOUGLAS	NV	32005	1.70

ELKO	NV	32007	1.90
ESMERALDA	NV	32009	1.60
EUREKA	NV	32011	1.70
HUMBOLDT	NV	32013	1.70
LANDER	NV	32015	1.70
LINCOLN	NV	32017	1.60
LYON	NV	32019	1.70
MINERAL	NV	32021	1.60
NYE	NV	32023	1.60
PERSHING	NV	32027	1.70
STOREY	NV	32029	1.70
WASHOE	NV	32031	1.70
WHITE PINE	NV	32033	1.90
BAKER	OR	41001	1.60
BENTON	OR	41003	1.90
CLACKAMAS	OR	41005	1.90
CLATSOP	OR	41007	1.90
COLUMBIA	OR	41009	1.90
COOS	OR	41011	1.90
CROOK	OR	41013	1.75
CURRY	OR	41015	1.90
DESCHUTES	OR	41017	1.75
DOUGLAS	OR	41019	1.90
GILLIAM	OR	41021	1.75
GRANT	OR	41023	1.60
HARNEY	OR	41025	1.60
HOOD RIVER	OR	41027	1.90
JACKSON	OR	41029	1.90
JEFFERSON	OR	41031	1.75
JOSEPHINE	OR	41033	1.90
KLAMATH	OR	41035	1.75
LAKE	OR	41037	1.75
LANE	OR	41039	1.90
LINCOLN	OR	41041	1.90
LINN	OR	41043	1.90
MALHEUR	OR	41045	1.60
MARION	OR	41047	1.90
MORROW	OR	41049	1.75
MULTNOMAH	OR	41051	1.90
POLK	OR	41053	1.90
SHERMAN	OR	41055	1.75
TILLAMOOK	OR	41057	1.90
UMATILLA	OR	41059	1.75

UNION	OR	41061	1.60
WALLOWA	OR	41063	1.60
WASCO	OR	41065	1.75
WASHINGTON	OR	41067	1.90
WHEELER	OR	41069	1.75
YAMHILL	OR	41071	1.90
BEAVER	UT	49001	1.60
BOX ELDER	UT	49003	1.90
CACHE	UT	49005	1.90
CARBON	UT	49007	1.90
DAGGETT	UT	49009	1.90
DAVIS	UT	49011	1.90
DUCHESNE	UT	49013	1.90
EMERY	UT	49015	1.90
GARFIELD	UT	49017	1.60
GRAND	UT	49019	1.90
IRON	UT	49021	1.60
JUAB	UT	49023	1.90
KANE	UT	49025	1.60
MILLARD	UT	49027	1.90
MORGAN	UT	49029	1.90
PIUTE	UT	49031	1.60
RICH	UT	49033	1.90
SALT LAKE	UT	49035	1.90
SAN JUAN	UT	49037	1.60
SANPETE	UT	49039	1.90
SEVIER	UT	49041	1.90
SUMMIT	UT	49043	1.90
TOOELE	UT	49045	1.90
UINTAH	UT	49047	1.90
UTAH	UT	49049	1.90
WASATCH	UT	49051	1.90
WASHINGTON	UT	49053	1.60
WAYNE	UT	49055	1.60
WEBER	UT	49057	1.90
ADAMS	WA	53001	1.75
ASOTIN	WA	53003	1.75
BENTON	WA	53005	1.75
CHELAN	WA	53007	1.75
CLALLAM	WA	53009	1.90
CLARK	WA	53011	1.90
COLUMBIA	WA	53013	1.75
COWLITZ	WA	53015	1.90

DOUGLAS	WA	53017	1.75
FERRY	WA	53019	1.90
FRANKLIN	WA	53021	1.75
GARFIELD	WA	53023	1.75
GRANT	WA	53025	1.75
GRAYS HARBOR	WA	53027	1.90
ISLAND	WA	53029	1.90
JEFFERSON	WA	53031	1.90
KING	WA	53033	1.90
KITSAP	WA	53035	1.90
KITTITAS	WA	53037	1.75
KLICKITAT	WA	53039	1.75
LEWIS	WA	53041	1.90
LINCOLN	WA	53043	1.90
MASON	WA	53045	1.90
OKANOGAN	WA	53047	1.75
PACIFIC	WA	53049	1.90
PEND OREILLE	WA	53051	1.90
PIERCE	WA	53053	1.90
SAN JUAN	WA	53055	1.90
SKAGIT	WA	53057	1.90
SKAMANIA	WA	53059	1.90
SNOHOMISH	WA	53061	1.90
SPOKANE	WA	53063	1.90
STEVENS	WA	53065	1.90
THURSTON	WA	53067	1.90
WAHKIAKUM	WA	53069	1.90
WALLA WALLA	WA	53071	1.75
WHATCOM	WA	53073	1.90
WHITMAN	WA	53075	1.90
YAKIMA	WA	53077	1.75

§ 1051.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

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

(a) On or before the 5th 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; and
- (10) The other solids price.

(b) On or before the 23rd 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).

§ 1051.54 Equivalent price.

See § 1000.54.

§ 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.

MARKETWIDE SERVICE PAYMENTS

§ 1051.55 Transportation credits.

(a) Payments for transportation credits to handlers and cooperative associations shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each month the market administrator shall pay to each handler, including cooperative associations acting as handlers that delivered and reported pursuant to § 1051.30(c), milk directly from producers' farms as specified in paragraph (b)(1) to plants as specified in (b)(1) and (2) of this section, an amount determined pursuant to paragraph (c) of this section.

(2) Transportation credits paid pursuant to this section shall be subject to final verification by the market administrator pursuant to § 1000.77; and

(b) Transportation credits shall apply to the following:

(1) Bulk milk delivered directly from dairy farms to pool plants described in (b)(2) in the following Transportation Zones:

(i) Transportation Zone 1 - deliveries to plants located in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura originating from dairy farms located in the counties of Riverside, , or San Bernardino;

(ii) Transportation Zone 2 - deliveries to plants located in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura originating from dairy farms located in all counties except Riverside, , and San Bernardino;

(iii) Transportation Zone 3 - deliveries to plants located in the counties of Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, Santa Cruz, San Mateo, Sacramento, Solano and Sonoma Counties originating from dairy farms located in all counties;

(2) Pool plant(s) which for the month have utilization of greater than 50% in Classes I and/or II. The utilization requirement may be met for the current month or it may be met on the basis of utilization during the preceding 12-month period ending with the current month.

(c) Transportation credits shall be calculated at the following rates:

(1) With respect to each delivery described in paragraph (b)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway mileage between the shipping farm and the receiving plant. The mileage determined by this calculation shall not be greater than 175;

(ii) Multiply the pounds determined in § 1051.55(b)(1) by the rate for the month computed pursuant to § 1051.56(a)(6) for each Transportation Zone.

§ 1051.56 Mileage rate for transportation credits.

(a) The market administrator shall compute the fuel adjustor rate and the hundredweight rate each month as follows:

(1) For the fuel adjustor rate compute the simple average rounded to three decimal places for the most recent 8 weeks of the Diesel (on Highway) – All Types Price per gallon as reported by the Energy Information Administration of the United States Department of Energy for the series California Number 2 Diesel Retail Prices;

(2) From the result in paragraph (a)(1) in this section subtract \$4.099 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.8, and round to three decimal places to compute the fuel cost adjustment factor;

(4) Divide the result in paragraph (a)(3) of this section by 520;

(5) Round the result in paragraph (a)(4) of this section to five decimal places to compute the fuel adjustor rate.

(6) Compute the per hundredweight rate as follows:

(i) For Transportation Zone 1 the sum of \$0.04497 plus the product of the miles determined in § 1051.55 (c)(1)(i) times the sum of \$0.00318 plus the amount determined in § 1051.56 (a)(5);

(ii) For Transportation Zone 2 the sum of \$0.00485 plus the product of the miles determined in § 1051.55 (c)(1)(i) times the sum of \$0.00546 plus the amount determined in § 1051.56 (a)(5);

(iii) For Transportation Zone 3 the sum of \$0.05441 plus the product of the miles determined in § 1051.55 (c)(1)(i) times the sum of \$0.00571 plus the amount determined in § 1051.56 (a)(5);

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the fuel adjustor rate pursuant to paragraph (a) of this section for the following month.

§ 1051.60 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 values computed in paragraphs (i) and (j) 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 hundredweight 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;

(3) Deduct for each pound of milk solids-not-fat in nonfat dry milk used for fortifying Class I products during the current month a maximum allowance equal to the current Class I solids not fat price [the Class I skim milk price in the \$2.10 zone divided by 9], less the current Class IV solids not fat price established in § 1051.50. In no case shall the deduction be less than zero cents (\$0.00) nor more than nineteen and eighty-five hundredths cents (\$.1985); and

(4) Deduct for each pound of milk solids-not-fat in condensed skim milk used for fortifying Class I products during the current month a maximum allowance equal to the current Class I solids not fat price [the Class I skim milk price in the \$2.10 zone divided by 9], less the current Class II solids not fat price established in § 1051.50. In no case shall the deduction be less than zero cents (\$0.00) nor more than nine and eighty-seven hundredths cents (\$.0987).

(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 and 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 plants 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).

(j) Compute the amount of credits applicable pursuant to § 1051.55.

§ 1051.61 Computation of producer component prices and producer price differential.

For each month the market administrator shall compute producer component prices per pound for butterfat, protein, and other solids. The report of any handler who has not made payments required pursuant to § 1051.71 for the preceding month shall not be included in the computation of the producer component prices, 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 conditions of this paragraph, the market administrator shall compute the producer component prices in the following manner:

(a) Combine into one total the values computed pursuant to § 1051.60 for all handlers required to file reports prescribed in § 1051.30;

(a.1) Subtract the value of quota premium for the month as reported to the market administrator by CDFA;

(a.2) Subtract an amount computed as follows:

(1) Divide the value of the quota premium for the month for producers at handlers included in these computations by the hundredweight computed in .61(d) and rounded to the second decimal. This rate will be known as the out-of-state producer ("OOS") adjustment rate.

(2) Multiply the hundredweight of OOS producer milk reported at included handlers by the rate computed in .61(a.2.i)

(b) Subtract the total 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 § 1051.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1051.60(g); and,

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the producer price differential for the month (applicable in § 1000.76(a)(2)).

(f) The producer butterfat protein, and other solids, prices shall be the result of the following computations.

(1) The percentage contribution that the value of butterfat, protein, and other solids make to the Class III price shall be computed and announced by the Market Administrator on or before January 1 of the year for which the percentages will be applicable. The percentages will be computed as an average based on the prior fiscal year of December 1st through November 30th.

(2) The producer butterfat price shall be the result of adding the price computed in § 1000.50(l) to the result of multiplying the percentage butterfat contribution announced in paragraph (f)(1) by the producer price differential value and dividing the result by the handler's total pounds of butterfat contained in the milk for which an obligation was computed pursuant to § 1051.60, and rounded to the fourth decimal place.

(3) The producer protein price shall be the result of adding the price computed in § 1000.50(n) to the result of multiplying the percentage protein contribution announced in paragraph (f)(1) by the producer price differential value and dividing the result by the handler's total pounds of protein contained in the

milk for which an obligation was computed pursuant to § 1051.60, and rounded to the fourth decimal place.

(4) The producer other solids price shall be the result of adding the price computed in § 1000.50(o) to the result of multiplying the percentage other solids contribution announced in paragraph (f)(1) by the producer price differential value and dividing the result by the handler's total pounds of other solids contained in the milk for which an obligation was computed pursuant to § 1051.60, and rounded to the fourth decimal place.

§ 1051.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer protein price;

(a.1) The quota premium for nonfat solids;

(b) The producer other solids price;

(c) The producer butterfat price; and

(d) The statistical uniform price for non-quota milk containing 3.5 percent butterfat, shall be the sum of the producer protein price multiplied by 2.9915, the producer other solids price multiplied by 5.6935, and the producer butterfat price multiplied by 3.5.

§ 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.

§ 1051.71 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 the 16th day after the end of the month (except as provided 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 § 1051.60.

(b) The sum of:

(1) An amount equal to the quota premium value of producer milk of the handler as reported by CDFA;

(1)(i) An amount equal to the hundredweight of OOS producer milk of the handler multiplied by the OOS adjustment rate;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the producer protein, producer other solids, and producer 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 § 1051.60(h) by the producer price differential as adjusted pursuant to § 1051.75 for the location of the plant from which received.

§ 1051.72 Payments from the producer-settlement fund.

No later than the 17th day after the end of each month (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 § 1051.71(b) exceeds the amount computed pursuant to § 1051.71(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.

§ 1051.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) Partial payment. For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 30th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer 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 so that it is received by each producer no later than the 18th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The pounds of butterfat received times the producer butterfat price for the month;

(i.1) The value of quota premium for nonfat solids of producer milk of the producer as reported to the Market Administrator by CDFA [net of any deductions if applicable for degraded volumes of nonfat solids otherwise entitled to a quota premium];

(i.2) For OOS producers, the hundredweight of milk times the OOS adjustment rate;

(ii) The pounds of protein received times the producer protein price for the month;

(iii) The pounds of other solids received times the producer other solids price for the month;

(iv) Less any payment made pursuant to paragraph (a)(1) of this section;

(v) Less proper deductions authorized in writing by such producer, and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(vi) Less deductions for marketing services pursuant to § 1000.86.

(b) Payments for milk received from cooperative association members. On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c). On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), 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, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids

price; and

(viii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section;

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The pounds of butterfat received times the producer butterfat price for the month;

(i.1) The value of quota premium for nonfat solids of producer milk of the producer as reported to the Market Administrator by CDFA [net of any deductions if applicable for degraded volumes of nonfat solids otherwise entitled to a quota premium];

(i.2) For OOS producers, the hundredweight of milk times the OOS adjustment rate;

(ii) The pounds of protein received times the producer protein price for the month;

(iii) The pounds of other solids received times the producer other solids price for the month; and

(iv) Add together the amounts computed in paragraphs (c)(3)(i) through (iii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1051.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by 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.

(e) 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.

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

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

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

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

(4) The pounds of quota nonfat solids in the producer's milk;

(4.1) The pounds of OOS milk;

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

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

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

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

§ 1051.74 [Reserved]

§ 1051.75 Plant location adjustments for nonpool milk.

For purposes of making payments for nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1051.51 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 § 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 of this chapter, 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 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 of this chapter 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 § _____. 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 25th 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.

§ 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.

§ 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.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1051.85 Assessment for order administration.

On or before the payment receipt date specified under § 1051.71, 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 8 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 § 1051.60(h) and (i); 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).

§ 1051.86 Deduction for marketing services.

See § 1000.86.

§ 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.

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.

**Proposed Language for the California Milk Marketing Order -
Comparison with Hearing Notice**

EXHIBIT 3

PROPOSED LANGUAGE FOR THE CALIFORNIA MILK MARKETING ORDER
(March 31, 2016)

Submitted by:
California Dairies, Inc.
Dairy Farmers of America, Inc.
Land O'Lakes, Inc.

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

(7 CFR. CHAPTER X)

PART 1051--MILK IN THE CALIFORNIA MARKETING AREA

Subpart--Order Regulating Handling

GENERAL PROVISIONS

§ 1051.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1051. In this part 1051, all references to sections in part 1000 refer to part 1000 of this chapter.

DEFINITIONS

§ 1051.2 California marketing area.

The marketing area means all 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: All of the State of California

§ 1051.3 Route disposition.

See § 1000.3.

§ 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.

§ 1051.4 Plant.

See § 1000.4.

§ 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.

§ 1051.5 Distributing plant.

See § 1000.5.

§ 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.

§ 1051.6 Supply plant.

See § 1000.6.

§ 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.

§ 1051.7 Pool plant.

Pool plant means a plant as specified in paragraphs (a), ~~(b), (c), (c.1), and (e) through (d)~~ of this section, but excluding a plant specified in paragraph ~~(f)~~ of this section.—The pooling standards described in paragraphs ~~(e)~~ of this section are subject to modification pursuant to paragraph ~~(e)~~ of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.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 15 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 plant that is located in the marketing area which during the month receives milk from a producer located in the marketing area or from a cooperative marketing the milk of a producer located in the marketing area pursuant to § 1051.9(c).

(c.1) A plant located in Churchill ~~e~~County Nevada ~~that which during the month~~ receives milk from producers located in Churchill County or in the marketing area or from a cooperative marketing the milk of a producer located in the marketing area or in Churchill County pursuant to § 1051.9(c).

(d). The operators of pool plants under part (1051.7(c)) and (c.1), and cooperative handlers pooling milk pursuant to 1051.9(c), shall supply fluid milk products to pool distributing plants (qualified pursuant to 1051.7(a) and (b)) located within an area designated by the market administrator as the “procurement region” in compliance with any announcement by the market administrator requiring a minimum level of shipments, as further provided below:

(1) The market administrator may require such supplies of fluid milk products from operators of pool plants as specified above, and cooperatives pooling milk as handlers pursuant to 1051.9(c), whenever he finds that milk supplies for Class I use at pool distributing plants within the procurement region are needed from pool plants and cooperatives. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative, at the request of the operators of pool distributing plants, or at the request of other interested persons. If his investigation

shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement. Any decision shall define the procurement region for purposes of such decision and establish minimum shipping requirements as a percentage of the producer milk of the handler(s) within the procurement region for the month. The Market Administrator will set the call percentage requirements at levels appropriate to generate the milk necessary to satisfy the Class I requirements of pool distributing plants in the procurement region. The call percentage for each handler shall be calculated as the volume of shipments by such handler to Section 7(a) and 7(b) plants in the procurement region divided by the handler's total producer milk in the region. In determining whether a call for milk shall be issued and the level of the call, the Market Administrator shall consider all producer milk within the control of a Section 7(a) or 7(b) pool distributing plant handler to be available to supply the needs of such plant before milk supplies of any other handler shall be subject to a call. A decision on the required shipment of bulk fluid milk by pool plant operators and cooperative handlers must be made in writing at least one day before the effective date.

(2) Procurement regions: For purposes of required shipments pursuant to this section, there shall be two procurement regions, which are subject to further subdivision at the discretion of the market administrator. Procurement regions shall define both the location of the distributing plants to which shipments are required and the location of the farms from which supplies shall originate. The procurement regions are defined as follows:

(i) Procurement Region 1 - the California counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, and the Arizona county of Yuma;

(ii) Procurement Region 2 - the California counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Glenn, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba.

(iii) Alternative procurement region - If the market administrator finds, on the basis of the data, views, and arguments submitted to him, and all information available to him, that for purposes of any required shipments hereunder the procurement region should be a different area than the regions defined above, he shall define such area in the decision issued hereunder.

(3) For the purpose of meeting any shipping requirement announced by the market administrator, the following shall apply: Qualifying shipments to pool distributing plants within the procurement region may originate from any plant or

producer milk supplies of the handler within the region; but may not result from shifting milk supplies from a pool distributing plant outside the procurement region to one within the procurement region; and

(4) Failure of a handler to comply with any announced shipping requirement, including making any significant change in his marketing operations that the market administrator determines has the impact of evading or forcing such an announcement, shall cause a per hundredweight penalty equal to the greater of \$5 per hundredweight or 25% of the non-quota blend price for the applicable month that the call was initiated multiplied by the handler's shortfall in deliveries to be assessed to the handler's account. The penalty will be deposited into the producer settlement fund.

(~~de~~) A supply plant located outside the marketing area (except a plant subject to (7)(c.1) from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (a) and (b) of this section is not less than 50 percent of the Grade A milk received from dairy farmers and handlers described in § 1000.9(c), including milk diverted pursuant to § 1051.13, subject to the following conditions:

(1) If milk is delivered directly from producers' farms that are located outside of the marketing area such producers must be grouped by state into reporting units and each reporting unit must independently meet the shipping requirements of this paragraph; and

(2) Concentrated milk transferred from the supply plant located outside the marketing area to a distributing plant shall be excluded from the supply plant's shipments in computing the percentages in paragraphs (d)(1).

~~(1) If milk is delivered directly from producers' farms that are located outside of the marketing area such producers must be grouped by state into reporting units and each reporting unit must independently meet the shipping requirements of this paragraph; and~~

~~(2) Concentrated milk transferred from the supply plant located outside the marketing area to a distributing plant shall be excluded from the supply plant's shipments in computing the percentages in paragraphs (d)(1).~~

(~~ef~~) The applicable shipping percentages of paragraphs (~~ed~~) of this section and § 1051.13(d)(2), and (d)(3) may be increased or decreased, for all or part of the marketing area, 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 or diversion percentage must be issued in writing at least one day before the effective date.

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

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

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

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section 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 located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that 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;

(6) A plant qualified pursuant to paragraph (c or e) 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 the order in this part, or the plant has automatic pooling status under the other Federal order; and

(gh) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (ee) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1051.8 Nonpool plant.

See § 1000.8.

§ 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.

§ 1051.8A Additional Exempt Plants

The following plants shall also be exempt plants.

(a) A plant which uses milk to produce Class II, III or IV products (as defined in §1051.40) and 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 to enable determination of the handler's exempt status; and

(1) Is a plant that meets the requirements of §1051.7 (c) or (c.1); and

(2) Does not process or distribute packaged fluid milk products; and

— (3) Uses 300,000 pounds of milk or less per month to produce products classified as Class II, Class III or IV.

(b) A plant which processes and distributes packaged fluid milk products and uses milk to produce Class II, III or IV products (as defined in §1051.40) and 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 to enable determination of the handler's exempt status; and

(1) Is a plant that meets the requirements of §1051.7 (c) or (c.1); and

(2) Has route disposition and sales of packaged fluid milk products to other plants of 150,000 pounds or less during the month; and

(3) Uses milk to produce Class II, Class III or Class IV products; and

(4) Whose total pounds of usage under sections (2) and (3) above does not exceed 300,000 pounds per month.

§ 1051.9 Handler.

See § 1000.9.

§ 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.

§ 1051.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a ~~distributing milk processing~~ plant for Class I, Class II, Class III, or Class IV products in which the milk used 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 fluid milk from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk or 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;

(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 (for Class I, II, III and IV products) are the producer-handler's own enterprise and at its own risk; and

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 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

§ 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 § 1131.7 of this chapter or § 1000.76(a).

(g) Bulk transfers and diversions to producer-handlers which produce Class II, III, or IV products shall be classified in accordance with 1000.42(c)(3).

§ 1051.11 ~~Reserved~~ Grade A Milk

“Grade A milk” shall mean milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk or as “market milk” as defined under California law and regulations.

§ 1051.12 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 § 1051.13; 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 (5) of this section. A dairy farmer described in paragraph (b)(5) 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 § 1051.13(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; and

(5) A dairy farmer who having had a Grade A permit has marketed milk as other than Grade A milk for more than 30 consecutive days shall not be a producer until 12

consecutive months have passed from the time non-Grade A status started.

§ 1051.13 Producer milk.

Except as provided for in paragraph (e) of this section, Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). 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 a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a 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 a cooperative association 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 until at least five day's production of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. 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 or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion until at least five day's production of the dairy farmer has been physically received as producer milk at a pool plant during the first month the dairy farmer is re-associated with the market;

(2) The quantity of milk diverted by a handler described in § 1000.9(c) may not exceed 50 percent of the producer milk receipts reported by the handler pursuant to § 1051.30(c) provided that not less than 50 percent of such receipts are delivered to plants described in § 1051.7(a) or (b). These percentages are subject to any adjustments that may be made pursuant to § 1051.7(e~~f~~); and

(3) The quantity of milk diverted to nonpool plants by the operator of a pool plant described in § 1051.7(a) or (b) may not exceed 50 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1051.12(b)) including milk diverted pursuant to § 1051.13; and further such milk is subject to the pooling requirements of § (7)(e~~d~~)(1); and

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

(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 a State government maintaining marketwide pooling of returns.

(f) The quantity of milk reported by a handler pursuant to either § 1051.30(a)(1) or § 1051.30(c)(1) may not exceed 115 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool. Milk in excess of this limit received at pool plants, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) and § 1000.44(b). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants in excess of the previous month's pooled volume shall not be subject to the 115 percent limitation;

(2) The market administrator may waive the 115 percent limitation:

(i) For a new handler on the order, subject to the provisions of § 1051.13(f)(3), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(3) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

§ 1051.14 Other source milk.

See § 1000.14.

§ 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.

§ 1051.15 Fluid milk product.

See § 1000.15.

§ 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.

§ 1051.16 Fluid cream product.

See § 1000.16.

§ 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.

§ 1051.17. CDFA, quota premium, quota nonfat solids, and non-quota milk.

(a) “CDFA” refers to the California Department of Food and Agriculture, which is the agency of the State of California responsible for administration of the California dairy producer milk quota program as established in the California Food and Agriculture Code.

(b) “Quota premium” means the value established pursuant to the California Food and Agriculture Code §§ 62750 et seq. “Quota premium” and “quota premium value” mean the value per pound of nonfat solids, as adjusted by the regional quota adjusters (referenced in § 62750 (c)), where and as applicable.

(c) “Quota nonfat solids” means the pounds of nonfat solids of a producer, as determined and reported by CDFA, which qualify for the quota premium.

(d) “Non-quota milk” means pool milk not eligible for the quota premium.

(e) “Out-of-state producer” means a dairy farm physically located outside the state of California from which milk is pooled on the order and which milk is non-quota milk solely because of its location.

§ 1051.18 Cooperative association.

See § 1000.18.

§ 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.

§ 1051.19 Commercial food processing establishment.

See § 1000.19.

§ 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.

§ 1051.25 Market administrator.

See § 1000.25

§ 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

§ 1051.26 Continuity and separability of provisions.

See § 1000.26.

§ 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

§ 1051.27 Handler responsibility for records and facilities.

See § 1000.27.

§ 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.

§ 1051.28 Termination of obligations.

See § 1000.28.

§ 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 through 900.71) 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

1051.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 69th day after the end of the month, in the detail and on the prescribed forms, as follows:

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

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat 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) [qualified cooperative associations]; 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;

(ii.a) Receipts of all condensed skim and dry powder; and

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

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

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, as the market administrator may prescribe, including the use of condensed skim or dry powder in fortification or reconstitution of Class I products.

(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 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 paragraphs (a) through (c) 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.

(e) Each handler shall report such additional information as deemed necessary by the market administrator.

§ 1051.31 Producer delivery and payroll reports.

(a) On or before the 69th day after the end of each month, each handler that operates a pool plant pursuant to § 1051.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer deliveries for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1051.73(f); and any other information deemed necessary by the Market Administrator.

(a.1) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1051.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1051.73(f) and any other information deemed necessary by the Market Administrator.

(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.

§ 1051.32 Other reports.

In addition to the reports required pursuant to §§ 1051.30 and 1051.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1051.40 Classes of utilization.

See § 1000.40.

§ 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 non-milk 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; and

(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.

§ 1051.41 [Reserved]

§ 1051.42 Classification of transfers and diversions.

See § 1000.42.

§ 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 of this chapter 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 except as provided in Section 1051.10(g);

(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.

§ 1051.43 General classification rules.

See § 1000.43.

§ 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 of this chapter, 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 of this chapter 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 of this chapter 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 of this chapter. 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.

§ 1051.44 Classification of producer milk.

See § 1000.44.

§ 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 the order in this part 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 previously subtracted in this section, 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 result in paragraph (a)(5)(i) 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 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 of this chapter 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.

§ 1051.45 Market administrator's reports and announcements concerning classification.
See § 1000.45.

§ 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 of this chapter 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.

CLASS PRICES

§ 1051.50 Class prices, component prices, and advanced pricing factors.
See § 1000.50.

§ 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 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g) through (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 5th 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 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th 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 0.965 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 adjustment to Class I prices specified in § 1005.51(b), § 1006.51(b) and § 1007.51(b), 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 adjustments to Class I prices specified in § 1005.51(b), § 1006.51(b) and § 1007.51(b) 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 \$0.007.

(h) Class III price. The Class III price per hundredweight, rounded to the nearest cent, shall be 0.965 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 0.965 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 multiplying the result 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 0.9 times the butterfat price computed pursuant to paragraph (l) of this section 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 0.0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th 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 24th 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 24th 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 24th 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 24th day of the month, subtracting 17.15 cents from this average, and multiplying the result by 1.211.

§ 1051.51 Class I differential and price.

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

§ 1051.52 Adjusted Class I differentials.

See § 1000.52.

§ 1000.52 Adjusted Class I differentials.

The Class I differential adjusted for location to be used in § 1000.50(b) and (c) shall be as follows:

[Showing selected Western US zones]

COUNTY	STATE	FIPS_CODE	MODIFIED 1A DIFF
APACHE	AZ	04001	1.90
COCHISE	AZ	04003	2.10
COCONINO	AZ	04005	1.90
GILA	AZ	04007	2.10
GRAHAM	AZ	04009	2.10
GREENLEE	AZ	04011	2.10
LA PAZ	AZ	04012	2.10
MARICOPA	AZ	04013	2.35
MOHAVE	AZ	04015	1.90
NAVAJO	AZ	04017	1.90
PIMA	AZ	04019	2.35
PINAL	AZ	04021	2.35

SANTA CRUZ	AZ	04023	2.10
YAVAPAI	AZ	04025	1.90
YUMA	AZ	04027	2.10
ALAMEDA	CA	06001	1.80
ALPINE	CA	06003	1.70
AMADOR	CA	06005	1.70
BUTTE	CA	06007	1.70
CALAVERAS	CA	06009	1.70
COLUSA	CA	06011	1.70
CONTRA COSTA	CA	06013	1.80
DEL NORTE	CA	06015	1.80
EL DORADO	CA	06017	1.70
FRESNO	CA	06019	1.60
GLENN	CA	06021	1.70
HUMBOLDT	CA	06023	1.80
IMPERIAL	CA	06025	2.00
INYO	CA	06027	1.60
KERN	CA	06029	1.80
KINGS	CA	06031	1.60
LAKE	CA	06033	1.80
LASSEN	CA	06035	1.70
LOS ANGELES	CA	06037	2.10
MADERA	CA	06039	1.60
MARIN	CA	06041	1.80
MARIPOSA	CA	06043	1.70
MENDOCINO	CA	06045	1.80
MERCED	CA	06047	1.70
MODOC	CA	06049	1.70
MONO	CA	06051	1.60
MONTEREY	CA	06053	1.80
NAPA	CA	06055	1.80
NEVADA	CA	06057	1.70
ORANGE	CA	06059	2.10
PLACER	CA	06061	1.70
PLUMAS	CA	06063	1.70
RIVERSIDE	CA	06065	2.00
SACRAMENTO	CA	06067	1.70
SAN BENITO	CA	06069	1.80
SAN BERNARDINO	CA	06071	1.80
SAN DIEGO	CA	06073	2.10
SAN FRANCISCO	CA	06075	1.80
SAN JOAQUIN	CA	06077	1.70

SAN LUIS	CA	06079	1.80
OBISPO			
SAN MATEO	CA	06081	1.80
SANTA BARBARA	CA	06083	1.80
SANTA CLARA	CA	06085	1.80
SANTA CRUZ	CA	06087	1.80
SHASTA	CA	06089	1.70
SIERRA	CA	06091	1.70
SISKIYOU	CA	06093	1.80
SOLANO	CA	06095	1.80
SONOMA	CA	06097	1.80
STANISLAUS	CA	06099	1.70
SUTTER	CA	06101	1.70
TEHAMA	CA	06103	1.70
TRINITY	CA	06105	1.80
TULARE	CA	06107	1.60
TUOLUMNE	CA	06109	1.70
VENTURA	CA	06111	1.80
YOLO	CA	06113	1.70
YUBA	CA	06115	1.70
BERNALILLO	NM	35001	2.35
CATRON	NM	35003	2.10
CHAVES	NM	35005	2.10
CIBOLA	NM	35006	1.90
COLFAX	NM	35007	2.35
CURRY	NM	35009	2.10
DE BACA	NM	35011	2.10
DONA ANA	NM	35013	2.10
EDDY	NM	35015	2.10
GRANT	NM	35017	2.10
GUADALUPE	NM	35019	2.35
HARDING	NM	35021	2.35
HIDALGO	NM	35023	2.10
LEA	NM	35025	2.10
LINCOLN	NM	35027	2.10
LOS ALAMOS	NM	35028	2.35
LUNA	NM	35029	2.10
MCKINLEY	NM	35031	1.90
MORA	NM	35033	2.35
OTERO	NM	35035	2.10
QUAY	NM	35037	2.35
RIO ARRIBA	NM	35039	1.90

ROOSEVELT	NM	35041	2.10
SAN JUAN	NM	35045	1.90
SAN MIGUEL	NM	35047	2.35
SANDOVAL	NM	35043	2.35
SANTA FE	NM	35049	2.35
SIERRA	NM	35051	2.10
SOCORRO	NM	35053	2.10
TAOS	NM	35055	1.90
TORRANCE	NM	35057	2.35
UNION	NM	35059	2.35
VALENCIA	NM	35061	2.35
CARSON CITY	NV	32510	1.70
CHURCHILL	NV	32001	1.70
CLARK	NV	32003	2.00
DOUGLAS	NV	32005	1.70
ELKO	NV	32007	1.90
ESMERALDA	NV	32009	1.60
EUREKA	NV	32011	1.70
HUMBOLDT	NV	32013	1.70
LANDER	NV	32015	1.70
LINCOLN	NV	32017	1.60
LYON	NV	32019	1.70
MINERAL	NV	32021	1.60
NYE	NV	32023	1.60
PERSHING	NV	32027	1.70
STOREY	NV	32029	1.70
WASHOE	NV	32031	1.70
WHITE PINE	NV	32033	1.90
BAKER	OR	41001	1.60
BENTON	OR	41003	1.90
CLACKAMAS	OR	41005	1.90
CLATSOP	OR	41007	1.90
COLUMBIA	OR	41009	1.90
COOS	OR	41011	1.90
CROOK	OR	41013	1.75
CURRY	OR	41015	1.90
DESCHUTES	OR	41017	1.75
DOUGLAS	OR	41019	1.90
GILLIAM	OR	41021	1.75
GRANT	OR	41023	1.60
HARNEY	OR	41025	1.60
HOOD RIVER	OR	41027	1.90
JACKSON	OR	41029	1.90

JEFFERSON	OR	41031	1.75
JOSEPHINE	OR	41033	1.90
KLAMATH	OR	41035	1.75
LAKE	OR	41037	1.75
LANE	OR	41039	1.90
LINCOLN	OR	41041	1.90
LINN	OR	41043	1.90
MALHEUR	OR	41045	1.60
MARION	OR	41047	1.90
MORROW	OR	41049	1.75
MULTNOMAH	OR	41051	1.90
POLK	OR	41053	1.90
SHERMAN	OR	41055	1.75
TILLAMOOK	OR	41057	1.90
UMATILLA	OR	41059	1.75
UNION	OR	41061	1.60
WALLOWA	OR	41063	1.60
WASCO	OR	41065	1.75
WASHINGTON	OR	41067	1.90
WHEELER	OR	41069	1.75
YAMHILL	OR	41071	1.90
BEAVER	UT	49001	1.60
BOX ELDER	UT	49003	1.90
CACHE	UT	49005	1.90
CARBON	UT	49007	1.90
DAGGETT	UT	49009	1.90
DAVIS	UT	49011	1.90
DUCHESNE	UT	49013	1.90
EMERY	UT	49015	1.90
GARFIELD	UT	49017	1.60
GRAND	UT	49019	1.90
IRON	UT	49021	1.60
JUAB	UT	49023	1.90
KANE	UT	49025	1.60
MILLARD	UT	49027	1.90
MORGAN	UT	49029	1.90
PIUTE	UT	49031	1.60
RICH	UT	49033	1.90
SALT LAKE	UT	49035	1.90
SAN JUAN	UT	49037	1.60
SANPETE	UT	49039	1.90
SEVIER	UT	49041	1.90
SUMMIT	UT	49043	1.90

TOOELE	UT	49045	1.90
UINTAH	UT	49047	1.90
UTAH	UT	49049	1.90
WASATCH	UT	49051	1.90
WASHINGTON	UT	49053	1.60
WAYNE	UT	49055	1.60
WEBER	UT	49057	1.90
ADAMS	WA	53001	1.75
ASOTIN	WA	53003	1.75
BENTON	WA	53005	1.75
CHELAN	WA	53007	1.75
CLALLAM	WA	53009	1.90
CLARK	WA	53011	1.90
COLUMBIA	WA	53013	1.75
COWLITZ	WA	53015	1.90
DOUGLAS	WA	53017	1.75
FERRY	WA	53019	1.90
FRANKLIN	WA	53021	1.75
GARFIELD	WA	53023	1.75
GRANT	WA	53025	1.75
GRAYS HARBOR	WA	53027	1.90
ISLAND	WA	53029	1.90
JEFFERSON	WA	53031	1.90
KING	WA	53033	1.90
KITSAP	WA	53035	1.90
KITTITAS	WA	53037	1.75
KLICKITAT	WA	53039	1.75
LEWIS	WA	53041	1.90
LINCOLN	WA	53043	1.90
MASON	WA	53045	1.90
OKANOGAN	WA	53047	1.75
PACIFIC	WA	53049	1.90
PEND OREILLE	WA	53051	1.90
PIERCE	WA	53053	1.90
SAN JUAN	WA	53055	1.90
SKAGIT	WA	53057	1.90
SKAMANIA	WA	53059	1.90
SNOHOMISH	WA	53061	1.90
SPOKANE	WA	53063	1.90
STEVENS	WA	53065	1.90
THURSTON	WA	53067	1.90
WAHKIAKUM	WA	53069	1.90
WALLA WALLA	WA	53071	1.75

WHATCOM	WA	53073	1.90
WHITMAN	WA	53075	1.90
YAKIMA	WA	53077	1.75

§ 1051.53 Announcement of class prices, component prices, and advanced pricing factors.
See § 1000.53.

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

(a) On or before the 5th 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; and
- (10) The other solids price.

(b) On or before the 23rd 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).

§ 1051.54 Equivalent price.

See § 1000.54.

§ 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.

MARKETWIDE SERVICE PAYMENTS

§ 1051.55 Transportation credits.

(a) Payments for transportation credits to handlers and cooperative associations shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each month the market administrator shall pay to each handler, including cooperative associations acting as handlers that delivered and reported pursuant to § 1051.30(c), milk directly from producers' farms as specified in paragraph (b)(1) to plants as specified in (b)(1) and (2) of this section, an amount determined pursuant to paragraph (c) of this section.

(2) Transportation credits paid pursuant to this section shall be subject to final verification by the market administrator pursuant to § 1000.77; and

(b) Transportation credits shall apply to the following:

(1) Bulk milk delivered directly from dairy farms to pool plants described in (b)(2) in the following Transportation Zones:

(i) Transportation Zone 1 - deliveries to plants located in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura originating from dairy farms located in the counties of Riverside, ~~San Diego~~, or San Bernardino;

(ii) Transportation Zone 2 - deliveries to plants located in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura originating from dairy farms located in all counties ~~within the marketing area~~ except Riverside, ~~San Diego~~, and San Bernardino;

(iii) Transportation Zone 3 - deliveries to plants located in the counties of Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, Santa Cruz, San Mateo, Sacramento, Solano and Sonoma Counties originating from dairy farms located in all counties ~~within the marketing area;~~

(2) Pool plant(s) which for the month have utilization of greater than 50% in Classes I and/or II. The utilization requirement may be met for the current month or it may be met on the basis of utilization during the preceding 12-month period ending with the current month.

(c) Transportation credits shall be calculated at the following rates:

(1) With respect to each delivery described in paragraph (b)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway mileage between the shipping farm and the receiving plant. The mileage determined by this calculation shall not be greater than ~~225~~ 175;

(ii) Multiply the pounds determined in § 1051.55(b)(1) by the rate for the month computed pursuant to § 1051.56(a)(6) for each Transportation Zone.

§ 1051.56 Mileage rate for transportation credits.

(a) The market administrator shall compute the fuel adjustor rate and the hundredweight rate each month as follows:

(1) For the fuel adjustor rate compute the simple average rounded to three decimal places for the most recent 8 weeks of the Diesel (on Highway) – All Types Price per gallon as reported by the Energy Information Administration of the United States Department of Energy for the series California Number 2 Diesel Retail Prices;

(2) From the result in paragraph (a)(1) in this section subtract \$4.099 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.8, and round to three decimal places to compute the fuel cost adjustment factor;

(4) Divide the result in paragraph (a)(3) of this section by 520;

(5) Round the result in paragraph (a)(4) of this section to five decimal places to compute the fuel adjustor rate.

(6) Compute the per hundredweight rate as follows:

(i) For Transportation Zone 1 the sum of \$0.04497 plus the product of the miles determined in § 1051.55 (c)(1)(i) times the sum of \$0.00318 plus the amount determined in § 1051.56 (a)(5);

(ii) For Transportation Zone 2 the sum of \$0.00485 plus the product of the miles determined in § 1051.55 (c)(1)(i) times the sum of \$0.00546 plus the amount determined in § 1051.56 (a)(5);

(iii) For Transportation Zone 3 the sum of \$0.05441 plus the product of the miles determined in § 1051.55 (c)(1)(i) times the sum of \$0.00571 plus the amount determined in § 1051.56 (a)(5);

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the fuel adjustor rate pursuant to paragraph (a) of this section for the following month.

§ 1051.60 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 values computed in paragraphs (i) and (j) 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~~hundredweight 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;

(3) Deduct for each pound of milk solids-not-fat in nonfat dry milk used for fortifying Class I products during the current month a maximum ~~charge~~ allowance equal to the current Class I solids not fat price [the Class I skim milk price in the \$2.10 zone divided by 9], less the current Class IV solids not fat price established in § 1051.530. In no case shall the deduction be less than zero cents (\$0.00) nor more than nineteen and

eighty-five hundredths cents (\$.1985); and

(4) Deduct for each pound of milk solids-not-fat in condensed skim milk used for fortifying Class I products during the current month a maximum charge-allowance equal to the current Class I solids not fat price [the Class I skim milk price in the \$2.10 zone divided by 9], less the current Class II solids not fat price established in § 1051.530. In no case shall the deduction be less than zero cents (\$0.00) nor more than nine and eighty-seven hundredths cents (\$.0987).

(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 and 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 plants 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).

(j) Compute the amount of credits applicable pursuant to § 1051.55.

§ 1051.61 Computation of producer component prices and producer price differential.

For each month the market administrator shall compute producer component prices per pound for butterfat, protein, and other solids. The report of any handler who has not made payments required pursuant to § 1051.71 for the preceding month shall not be included in the computation of the producer component prices, 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 conditions of this paragraph, the market administrator shall compute the producer component prices in the following manner:

(a) Combine into one total the values computed pursuant to § 1051.60 for all handlers required to file reports prescribed in § 1051.530;

(a.1) Subtract the value of quota premium for the month as reported to the market administrator by CDFA;

(a.2) Subtract an amount computed as follows:

—————(i1) Divide the value of the quota premium for the month for producers at handlers included in these computations by the hundredweight computed in .61(d) and rounded to the second decimal. This rate will be known as the out-of-state producer (“OOS”) adjustment rate.

—————(i2) Multiply the hundredweight of OOS producer milk reported at included handlers by the rate computed in .61(a.2.i)

(b) Subtract the total 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 § 1051.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1051.60(g); and,

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (ed) of this section. The result shall be known as the producer price differential for the month (applicable in § 1000.76(a)(2)).

(f) The producer butterfat protein, and other solids, prices shall be the result of the following computations.

(1) The percentage contribution that the value of butterfat, protein, and other solids make to the Class III price shall be computed and announced by the Market Administrator on or before January 1 of the year for which the percentages will be applicable. The percentages will be computed as an average based on the prior fiscal year of December 1st through November 30th.

(2) The producer butterfat price shall be the result of adding the price computed in § 1000.50(l) to the result of multiplying the percentage butterfat contribution announced in paragraph (f)(1) by the producer price differential value and dividing the result by the handler's total pounds of butterfat contained in the milk for which an obligation was computed pursuant to § 1051.60, and rounded to the fourth decimal place.

(3) The producer protein price shall be the result of adding the price computed

in § 1000.50(n) to the result of multiplying the percentage protein contribution announced in paragraph (f)(1) by the producer price differential value and dividing the result by the handler's total pounds of protein contained in the milk for which an obligation was computed pursuant to § 1051.60, and rounded to the fourth decimal place.

(4) The producer other solids price shall be the result of adding the price computed in § 1000.50(o) to the result of multiplying the percentage other solids contribution announced in paragraph (f)(1) by the producer price differential value and dividing the result by the handler's total pounds of other solids contained in the milk for which an obligation was computed pursuant to § 1051.60, and rounded to the fourth decimal place.

§ 1051.62 Announcement of producer prices.

On or before the ~~14~~¹th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer protein price;

(a.1) The quota premium for nonfat solids;

(b) The producer other solids price;

(c) The producer butterfat price; and

(d) The statistical uniform price for non-quota milk containing 3.5 percent butterfat, shall be the sum of the producer protein price multiplied by 2.9915, the producer other solids price multiplied by 5.6935, and the producer butterfat price multiplied by 3.5.

§ 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.

§ 1051.71 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 the 136th day after the end of the month (except as provided 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 § 1051.60.

(b) The sum of:

———(1) An amount equal to the quota premium value of producer milk of the handler as reported by CDFEA;

(1)(i) An amount equal to the hundredweight of OOS producer milk of the handler multiplied by the OOS adjustment rate;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the producer protein, producer other solids, and producer 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 § 1051.60(ih) by the producer price differential as adjusted pursuant to § 1051.75 for the location of the plant from which received.

§ 1051.72 Payments from the producer-settlement fund.

No later than the 147th day after the end of each month (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 § 1051.71(b) exceeds the amount computed pursuant to § 1051.71(a); ~~and to each cooperative 9(c) handler the quota premium value of its producer milk as reported by CDFEA.~~ 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.

§ 1051.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) Partial payment. For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 30th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer 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 so that it is received by each producer no later than the 15~~8~~th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The pounds of butterfat received times the producer butterfat price for the month;

(i.1) The value of quota premium for nonfat solids of producer milk of the producer as reported to the Market Administrator by CDFR [net of any deductions if applicable for degraded volumes of nonfat solids otherwise entitled to a quota premium];

(i.2) For OOS producers, the hundredweight of milk times the OOS adjustment rate;

(ii) The pounds of protein received times the producer protein price for the month;

(iii) The pounds of other solids received times the producer other solids price for the month;

(iv) Less any payment made pursuant to paragraph (a)(1) of this section;

(v) Less proper deductions authorized in writing by such producer, and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(vi) Less deductions for marketing services pursuant to § 1000.86.

(b) Payments for milk received from cooperative association members. On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c). On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), 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, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(viii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section;

_____ (3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

_____ ~~(i) The pounds of butterfat received times the producer butterfat price for the month;~~

_____ ~~(i) The pounds of butterfat received times the producer butterfat price for the month;~~
_____ (i.1) ~~The value of quota premium for nonfat solids of producer milk of the producer as reported to the Market Administrator by CDFR [net of any deductions if applicable for degraded volumes of nonfat solids otherwise entitled to a quota premium];~~

_____ ~~(i.2) For OOS producers, the hundredweight of milk times the OOS adjustment rate;~~

_____ (ii) The pounds of protein received times the producer protein price for the month;

_____ ~~(iii)~~ ~~(iii) The pounds of other solids received times the producer other solids price for the month; and~~

_____ (iv) Add together the amounts computed in paragraphs (c)(3)(i) through (iii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1051.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by 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.

(e) 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.

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

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

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

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

(4) The pounds of quota nonfat solids in the producer's milk;

(4.1) The pounds of OOS milk;

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

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

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

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

§ 1051.74 [Reserved]

§ 1051.75 Plant location adjustments for nonpool milk.

For purposes of making payments for nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1051.51 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 § 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 of this chapter, 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 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 of this chapter 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 § _____. 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 25th 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.

§ 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.

§ 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.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1051.85 Assessment for order administration.

On or before the payment receipt date specified under § 1051.71, 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 8 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 § 1051.60(h) and (i); 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).

§ 1051.86 Deduction for marketing services.

See § 1000.86.

§ 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.

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.

**Proposed Findings Regarding California Federal Order
Provisions**

EXHIBIT 4

PROPOSED FINDINGS REGARDING CALIFORNIA FEDERAL ORDER PROVISIONS

1. Section 1051.1 of Proposal No. 1 was not opposed, is substantially the same as that in Proposal No. 2, and should be adopted as set forth in Exhibit 2 of the Appendix To Post-Hearing Brief for California Dairies, Inc., Dairy Farmers of America, Inc., and Land O' Lakes, Inc. (hereinafter "Appendix Exhibit 2"). See Wegner, Tr. Vol. VIII, p. 1544 (Oct. 1, 2015); Exh. 34, p. 3. Compare Proposal No. 1, §1051.1 with Proposal No. 2, §1051.1.

2. Section 1051.2, "California marketing area" as set forth in Appendix Exhibit 2 should be adopted. It reflects the uniform language, which is not opposed. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, pp. 1544-45 (Oct. 1, 2015); Exh. 34, p. 4.

3. Section 1051.3, "Route Disposition" as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.3. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, pp. 1545-46 (Oct. 1, 2015); Exh. 34, pp. 4-5.

4. Section 1051.4, "Plant" as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.4. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, pp. 1546-48 (Oct. 1, 2015); Exh. 34, p. 5.

5. Section 1051.5, "Distributing Plant" as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.5. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, pp. 1548-49 (Oct. 1, 2015); Exh. 34, p. 6.

6. Section 1051.6, "Supply Plant" as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.6. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, pp. 1549-50 (Oct. 1, 2015); Exh. 34, pp. 6-7.

7. Section 1051.7, "Pool plant" as set forth in Appendix Exhibit 2 should be adopted. See Hollon, Tr. Vol. XIII, pp. 2712, *et seq.* (Oct. 8, 2015); Hollon, Tr. Vol. XIV, pp. 2741-2758 (Oct. 9, 2015); Exh. 63, pp. 10-17.

a. Sections 1051.7(a) and (b). See Hollon, Tr. Vol. XIII, pp. 2743-2747, (Oct. 8, 2015); Exh. 63, pp. 11-13.

b. Section 1051.7(c) (in-state pool plant). See Hollon, Tr. Vol. XIII, pp. 2747-2754 (Oct. 8, 2015). Exh. 63, pp. 13-14.

c. Section 1051.7(c.1) (Churchill County Nevada plant). See Hollon, Tr. Vol. XIII, pp. 2747-2754; Exh. 63, pp. 13-14.

d. Section 1051.7(d) (call provisions). See Schad, Tr. Vol. XXXVIII, pp 7725-7732 (November 16, 2015); Exh. 183. See *also* Hollon, Tr. Vol. XIII, pp. 2750, *et seq.* (Oct. 8, 2015); Exh. 63, p 14.

e. Section 1051.7(e) (out of state supply plant). See Hollon, Tr. Vol. XIII, pp. 2752-2755 (Oct. 8, 2015); Exh. 63, pp. 14-15.

f. Section 1051.7(f) (MA discretion re shipping requirements for 7(e) plant). See Hollon, Tr. Vol. XIII, pp. 2755-2758 (Oct. 8, 2015); Exh. 63, pp. 15-17.

g. Section 1051.(g) and (h) - not disputed definitions of non-pool plants and lock-in provision. See Hollon, Tr. Vol. XIII, pp. 2757-2758; Exh. 63, pp. 16-17.

8. Section 1051.8, “Nonpool Plant” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.8. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, pp. 1550-56 (Oct. 1, 2015); Exh. 34, pp. 7-9.

9. Section 1051.8A “Additional Exempt Plants” as set forth in Appendix Exhibit 2 should be adopted to provide for exemption of small plants processing Class II, III, and IV products. See Hollon, Tr. Vol. XXXVIII, pp. 7682-87 (Nov. 16, 2015); Exh. 182, pp. 2-4.

10. Section 1051.9, “Handler” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.9. See Wegner, Tr. Vol. VIII, pp. 1556-59 (Oct. 1, 2015); Exh. 34, pp. 9-11.

11. Section 1051.10 “Producer Handler” as set forth in Appendix Exhibit 2 should be adopted. See Hollon, Tr. Vol. XXXVIII, pp. 7687-91 (Nov. 16, 2015); Exh. 182, pp. 4-5.

12. Section 1051.12 “Producer” as set forth in Appendix Exhibit 2 should be adopted. See Hollon, Tr. Vol. XIII, pp. 2759-2763; Exh. 63, pp. 17-19.

13. Section 1051.13 “Producer Milk” as set forth in Appendix Exhibit 2 should be adopted. See Hollon, Tr. Vol. XIII, pp. 2763-2776; Exh. 63, pp. 19-24.

14. Section 1051.14, “Other source milk” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.14. See Wegner, Tr. Vol. VIII, pp. 1559-60 (Oct. 1, 2015); Exh. 34, pp. 10-

11.

15. Section 1051.15, “Fluid milk product” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.15. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, pp. 1561-62 (Oct. 1, 2015); Exh. 34, pp. 11-12.

16. Section 1051.16, “Fluid cream product” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.16. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, pp. 1562-63 (Oct. 1, 2015); Exh. 34, p. 12.

17. Section 1051.17, “CDFFA, quota premium, quota nonfat solids, and non-quota milk” as set forth in Appendix Exhibit 2 is not opposed and should be adopted. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. IX, pp. 1821-28, (Oct. 2, 2015); Exh. 42, pp. 22-24.

18. Section 1051.18, “Cooperative association” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.18. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, pp. 1563-65 (Oct. 1, 2015); Exh. 34, pp. 12-13.

19. Section 1051.19, “Commercial Food Processing Establishment” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.19. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, pp. 1566-68 (Oct. 1, 2015); Exh. 34, pp. 14-15.

20. Section 1051.25, “Market administrator” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.25. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, p. 1568 (Oct. 1, 2015); Exh. 34, p. 15.

21. Section 1051.26, “Continuity and separability of provisions” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.26. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, p. 1568 (Oct. 1, 2015); Exh. 34, p. 15.

22. Section 1051.27, “Handler responsibility for records and facilities” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.27. See Wegner, Tr. Vol. VIII, p. 1568 (Oct. 1, 2015); Exh. 34, p. 15.

23. Section 1051.28, “Termination of obligations” as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7

C.F.R. 1000.28. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Wegner, Tr. Vol. VIII, p. 1568 (Oct. 1, 2015); Exh. 34, p. 15.

24. Section 1051.30 “Reports of receipts and utilization” as set forth in Appendix Exhibit 2 should be adopted. See Erba, Tr. Vol. IX, pp. 1828, *et seq.* (Oct. 2, 2015); Exh. 42, p. 26.

25. Section 1051.31 “Producer Delivery and payroll reports” as set forth in Appendix Exhibit 2 should be adopted. See Erba, Tr. Vol. IX, pp. 1830, *et seq.* (Oct. 2, 2015); Exh. 42, p. 26.

26. Section 1051.32 “Other reports” as set forth in Appendix Exhibit 2 should be adopted. It is the same language used in Proposal No. 2 and, therefore, is not opposed. *Compare* Proposal No. 1, §1051.32 *with* Proposal No. 2, §1051.32.

27. Section 1051.40 “Classes of utilization” as set forth in Appendix Exhibit 2 should be adopted. It is the language in the uniform provisions, 7 C.F.R. 1000.40. See Schad, Tr. Vol. XV, pp. 3052-59 (Oct. 14, 2015); Exh. 70, pp. 3-5.

28. Section 1051.42, “Classification of transfers and diversions” as set forth in Appendix Exhibit 2 be adopted. It is the language in the uniform provisions, 7 C.F.R. 1000.42. See Schad, Tr. Vol. XV, pp. 3052-59 (Oct. 14, 2015); Exh. 70, pp. 3-5.

29. Section 1051.43, “General classification rules” as set forth in Appendix Exhibit 2 should be adopted. It is the language in the uniform provisions, 7 C.F.R. 1000.43. See Schad, Tr. Vol. XV, pp. 3052-59 (Oct. 14, 2015); Exh. 70, pp. 3-5. The provision would operate as Mr. Mycrantz explained. See Mycrantz, Tr. Vol. IV, pp. 689-691 (Sept. 25, 2015).

30. Section 1051.44, “Classification of producer milk” as set forth in Appendix Exhibit 2 should be adopted. It is the language in the uniform provisions, 7 C.F.R. 1000.44. See Schad, Tr. Vol. XV, pp. 3052-59 (Oct. 14, 2015); Exh. 70, pp. 3-5. The provision would operate as Mr. Mycrantz explained. See Mycrantz, Tr. Vol. IV, pp. 689-691 (Sept. 25, 2015).

31. Section 1051.45, “Market administrator’s reports and announcements concerning classification” as set forth in Appendix Exhibit 2 should be adopted. It is the language in the uniform provisions, 7 C.F.R. 1000.45. See Schad, Tr. Vol. XV, pp. 3052-59 (Oct. 14, 2015); Exh. 70, pp. 3-5. The provision would operate as Mr. Mycrantz explained. See Mycrantz, Tr. Vol. IV, pp. 689-691 (Sept. 25, 2015).

32. Section 1051.50, “Class prices, component prices, and advanced pricing factors” as set forth in Appendix Exhibit 2 should be adopted. It is the language of the uniform provisions, 7 C.F.R. 1000.50. See Wegner, Tr. Vol. VIII, p. 1568 (Oct. 1, 2015);

Schad, Tr. Vol. XV, pp. 3059, *et seq.*; Exh. 70, pp. 5-13.; Exh. 71 (Part 6A). It is essentially unopposed. *Compare* Proposal No. 1, §1051.50 *with* Proposal No. 2, §1051.50. *See also* Post-Hearing Brief for California Dairies, Inc., Dairy Farmers of America, Inc., and Land O' Lakes, Inc. at Section VI.

33. Section 1051.51, "Class I differential and price" as set forth in Appendix Exhibit 2 should be adopted. The same language is incorporated in Proposal No. 2 and, therefore, is unopposed. *Compare* Proposal No. 1, §1051.51 *with* Proposal No. 2, §1051.51. *See* Schad, Tr. Vols. XV, pp. 3059, *et seq.* (Oct. 14, 2015); XVI, pp. 3096, *et seq.* (Oct. 15, 2015); Exh. 70, pp. 27-30.

34. Section 1051.52, "Adjusted Class I differentials" as set forth in Appendix Exhibit 2 should be adopted. This is the language in the uniform provisions, 7 C.F.R. 1000.52. *See* Schad, Tr. Vol. XVI, pp. 3096, *et seq.* (Oct. 15, 2015); Exh. 70, pp. 27-30. It is not opposed. *See also* Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1.

35. Section 1051.53, "Announcement of class prices, component prices, and advanced pricing factors" as set forth in Appendix Exhibit 2 should be adopted. It is the language in the uniform provisions, 7 C.F.R. 1000.53, and is substantially unopposed. *Compare* 7 C.F.R. 1000.53 *with* Proposal No. 2, §1051.53.¹ *See also* Schad, Tr. Vol. XVI, pp. 3162, *et seq.* (Oct. 15, 2015); Exh. 70, pp. 5, *et seq.*; Exh. 71, 6.A.

36. Section 1051.54, "Equivalent price" as set forth in Appendix Exhibit 2 should be adopted. It is the language in the uniform provisions, 7 C.F.R. 1000.54, and is the same language used in Proposal No. 2. *See* Schad, Tr. Vol. XVI, pp. 3163, *et seq.* (Oct. 15, 2015); Exh. 70, pp. 5, *et seq.*; Exhibit 71.

37. Section 1051.55, "Transportation credits" as set forth in Appendix Exhibit 2 should be adopted. *See* Hollon, Tr. Vol. XVII, pp. 3301-3382 (Oct. 16, 2015); Exh. 72; Tr. Vol. XL, pp. 8063, *et seq.*; Exh. 192.

38. Section 1051.60, "Handler's value of milk" as set forth in Appendix Exhibit 2 should be adopted. *See* Wegner, Tr. Vol. VIII, pp. 1570, *et seq.* (Oct. 1, 2015); Exh. 34, pp. 16-20; Exh. 35. *See also* Erba, Tr. Vol. IX, pp. 1830, *et seq.* (Oct. 2, 2105); Exh. 42, pp. 25, *et seq.* *See also* Wegner, Tr. Vol. VIII, pp. 1571-73 (Oct. 1, 2015).

39. Section 1051.61, "Computation of producer butterfat price and component prices" as set forth in Appendix Exhibit 2 should be adopted. *See* Wegner, Tr. Vol. VIII, pp. 1570, *et seq.* (Oct. 1, 2015); Exh. 34, pp. 16-20; Exh. 35. *See also* Erba, Tr. Vol.

¹ The only difference between the uniform language and the language in Proposal No. 2, §1050.51, is that Proposal No. 2 separately lists Class I nonfat solids and Class I fluid carrier in subsection (b).

IX, pp. 182, *et seq.* (Oct. 2, 2105); Erba, Tr. Vol. IX, pp. 182, *et seq.* (Oct. 2, 2105); Exh. 42, pp. 25, *et seq.*

40. Section 1051.62, "Announcement of producer prices" as set forth in Appendix Exhibit 2 should be adopted. See Wegner, Tr. Vol. VIII, pp. 1570, *et seq.* (Oct. 1, 2015); Exh. 34, pp. 16-20; Exh. 35; Exh. 42, pp. 25, *et seq.*

41. Section 1051.70, "Producer-settlement fund" as set forth in Appendix Exhibit 2 should be adopted. It is the language in the uniform provisions, 7 C.F.R. 1000.70, and is unopposed. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1. See *also* Erba, Tr. Vol. IX, p. 1831 (Oct. 2, 2015); Exh. 42, p. 27.

42. Section 1051.71, "Payments to the producer-settlement fund" as set forth in Appendix Exhibit 2 should be adopted. See Erba, Tr. Vol. IX, pp. 1831-1832 (Oct. 2, 2015); Exh. 42, p. 27.

43. Section 1051.72, "Payments from the producer-settlement fund" as set forth in Appendix Exhibit 2 should be adopted. See Erba, Tr. Vol. IX, pp. 1831-1832 (Oct. 2, 2015); Exh. 42, p. 27. See *also* Mycrantz, Tr. Vol. XII, pp. 2415-2416 (Oct. 7, 2015).

44. Section 1051.73, "Payments to producers and to cooperative associations" as set forth in Appendix Exhibit 2 should be adopted. See Mycrantz, Tr. Vol. XII, pp. 2414, *et seq.* (Oct. 7, 2015).

45. Section 1051.75, "Plant location adjustments for nonpool milk" is substantially the same as that in Proposal No. 2, and should be adopted as set forth in Appendix Exhibit 2.

46. Section 1051.76, "Payments by a handler operating a partially regulated distributing plant" as set forth in Appendix Exhibit 2 should be adopted. It is the language in the uniform provisions, 7 C.F.R. 1000.76. See Wise, Tr. Vol. III, pp. 446-460 (Sept. 24, 2015).

47. Section 1051.77, "Adjustment of accounts" as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.77. See Wegner, Tr. Vol. VIII, p. 1569 (Oct. 1, 2015); Exh. 34, p. 15; Exh. 35; Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Mycrantz, Tr. Vol. III, pp. 548-562 (Sept. 24, 2015).

48. Section 1051.78, "Charges on overdue accounts" as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.78. See Wegner, Tr. Vol. VIII, p. 1569 (Oct. 1, 2015); Exh. 34, p. 15; Exh. 35; Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Mycrantz, Tr. Vol. III, pp. 548-562 (Sept. 24, 2015).

49. Section 1051.85, "Assessment for order administration" as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.85. See Wegner, Tr. Vol. VIII, p. 1569 (Oct. 1, 2015); Exh. 34, p. 15; Exh. 35; Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Mycrantz, Tr. Vol. III, pp. 548-562 (Sept. 24, 2015); Wegner, Tr. Vol. VIII, p. 1569 (Oct. 1, 2015).

50. Section 1051.86, "Deduction for marketing services" as set forth in Appendix Exhibit 2 should be adopted. It was unopposed and is the language in the uniform provisions, 7 C.F.R. 1000.86. See Wegner, Tr. Vol. VIII, p. 1569 (Oct. 1, 2015); Exh. 34, p. 15; Exh. 35; Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1; Mycrantz, Tr. Vol. III, pp. 548-562 (Sept. 24, 2015).

51. Section 1051.90, "Dates" as set forth in Appendix Exhibit 2 should be adopted. It is the language in the uniform provisions, 7 C.F.R. 1000.90, and is unopposed. See Zolin, Tr. Vol. XIII, p. 4693 (Oct. 26, 2015); Exh. 106, p. 1.

**Opposition to The Dairy Institute's Memorandum on
Negative Inference for Failure to Introduce Relevant Evidence**

EXHIBIT 5

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. **15-0071**
Milk in California)

**Opposition to The Dairy Institute's Memorandum on Negative Inference
for Failure to Introduce Relevant Evidence**

The Dairy Institute of California ("DIC") has not cited to, and cannot cite to, any authority demonstrating that a court has applied the negative inference for failure to produce in a rule-making, quasi-legislative proceeding such as this Hearing on a Proposal to Establish a Federal Milk Marketing Order in California. The only decisions where the negative inference has been invoked and even then, limitedly applied – and the only cases to which the DIC has cited – are individualized quasi-judicial adjudications, where a person or entity is being sued or suing for its own rights at law. This rule-making hearing is nothing like those settings.

- I. There Is No Basis To Apply The Negative Inference In These Quasi-Legislative Proceedings.**
 - A. Court and Agency Decisions Make Clear that the Distinction Between Quasi-Legislative and Quasi-Judicial Proceedings Does Not Allow for Application of the Negative Inference in this Setting.**

There has long existed in administrative law a distinction between individual adjudication ("quasi-judicial adjudications") and group policy rule-making decisions ("quasi-legislative proceedings"), evolving from two early Supreme Court decisions – *Londoner v. City & County of Denver*, 210 U.S. 373 (1908) and *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441 (1915). Under this distinction, courts

have only required due process protections, such as hearings or consideration of civil evidentiary standards and presumptions, in cases of individualized adjudications, not when making policy decisions impacting entire classifications or communities; "[a]t least as a first approximation, [the distinction] underlies both the distinction between legislation and judicial trial and the distinction between rulemaking and adjudication." (See *Admin. Law Treatise*, 5th Edition, Vol. II, 2010, Wolters Kluwer, §9.2)

In *Londoner*, the state empowered the city of Denver to assess taxes according to the specific benefits of the improvement to each landowner. (*Supra*, 210 U.S. at 374.) Before imposition of the assessment, the owners believed they had a right to an opportunity to be heard. (*Id.* at 386.) Because the assessments hinged on specific, individualized benefits, the court found that the landowners had a right to a some kind of due process in individual disputes. (*Id.*) However, in *Bi-Metallic*, a property owner argued that the refusal to grant a hearing on an across-the-board tax reassessment was a violation of due process. The court, in an opinion by Justice Holmes, held it was not. (*Supra*, 239 U.S. at 445.) In a complex society, rule-making involving a large number of people should not rely on trial-like procedures to protect people's rights. (*Id.*) By application to such a large group, and not just one or a few people, the policy decision did not require the due process protections available in an individualized adjudication. (*Id.*)

The distinction was reinforced by the Supreme Court in *United States v. Florida East Coast Railway*, 410 U.S. 224 (1973). The case involved congressional efforts to cure a freight-car shortage in the 1960s. Justice Rehnquist, in denying the need for procedural protections, relied on the distinction between rulemaking and adjudication.

Justice Rehnquist explained that the *Bi-Metallic* and *Londoner* decisions represented "a recognized distinction in administrative law between proceedings for the purpose of promulgating policy-type rules or standards, on the one hand, and proceedings designed to adjudicate disputed facts in particular cases on the other." (*Id.*)

The Courts have repeatedly noted the distinction between quasi-judicial adjudications and quasi-legislative proceedings. Quasi-legislative actions entail determination of rule-making to be applied prospectively. *Coachella Valley Unified School Dist. v. State of California*, 176 Cal. App. 4th 93, 116 (Cal. App. 1st Dist. 2009). Rule-making is a legislative process as contrasted with an administrative, judicial, or quasi-judicial process and the propriety of a procedure must be judged by the rules and cases dealing with rulemaking, rather than contested cases or adjudicatory matters. *Johnson v. Nebraska Env'tl. Control Council*, 2 Neb. App. 263, 276 (Neb. Ct. App. 1993) The Supreme Court explained that in quasi-legislative proceedings, "administrative agencies 'should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'" *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 542-45 (1978). For this reason, administrative procedure is "simpler, less formal and less technical than judicial procedure." *Foley v. Metropolitan Sanitary Dist.*, 213 Ill. App. 3d 344, 351 (Ill. App. Ct. 1st Dist. 1991). The distinction has routinely required the presiding agency, judge, or secretary to consider and apply different procedures and protections to each type of proceeding. See, *Northwest Covenant Med. Ctr. v. Fishman*, 167 N.J. 123, 135-136 (N.J. 2001).

This distinction underlies why no Court has used the negative inference for failure to produce in a quasi-legislative proceeding. The due process and evidentiary procedures, such as admissibility standards and presumptions, are not necessary for or applicable to these quasi-legislative proceedings.

B. None of the Cases Relied on by the DIC Apply the Negative Inference in a Quasi-Legislative Proceeding.

Without acknowledging any distinction between quasi-judicial adjudications and quasi-legislative proceedings in its Memorandum, the DIC has cited exclusively to cases and provisions which deal only with individualized adjudications in administrative law. In so doing, the DIC ignores key differences between adjudicative and quasi-legislative proceedings and the nature of the procedures and rules applicable to them.

Several cases on which the DIC relies, when read beyond the selective references, do not advance the DIC's argument. In *Reed v. U.S. Department of Agriculture*, 39 F.3d 1192 (10th Cir. 1994)(appeal of individual sanctions after fact-finding hearing), an unpublished disposition, the court held only that in an individualized adjudication regarding civil sanctions, the lower court did not commit reversible error by drawing a negative inference from the wrong-doers' failure to testify. (*Id.* at 1192.) First, the refusal of witnesses to testify is not an issue in this proceeding. Even then, the *Reed* holding, given its significant limitations, is a far cry from suggesting, let alone requiring, a rule-making proceeding to apply the inference in wholly different circumstances.

Furthermore, the DIC's reliance on *United States v. Roberson*, 233 F.2d 517 (5th Cir. 1956)(action to declare forfeiture of automobile seized in gambling activity), *Stagner*

v. United States, 197 F.2d 992, 992-93 (5th Cir. 1952)(action to declare forfeiture of automobile seized in whiskey transport), and *Interstate Circuit v. United States*, 306 U.S. 208 (1939)(injunction against conspiracy motion picture distributors and exhibitors), is also unfounded, as these cases speak to use of the negative inference in individualized adjudications only where the already existing evidence on a specific issue supports the inference to be drawn from the refusal to produce on that issue. In *Interstate*, the court explained that only where existing proof already supported the inference of a conspiracy, did the failure to take the witness stand suggest that the witness could not give an alternative account of his conduct consistent with his alleged denial. (*Supra*, 306 U.S. at 225-226, 298.) Likewise in *Stagner*, the court held that because of proof as it was, the claimant's failure to offer any explanation of the incriminating circumstances could be taken against him. (*Supra*, 197 F.2d at 994 (emphasis added).) In *Robertson*, the court was clear that the refusal to offer evidence "will not convert evidence otherwise insufficient into a prima facie case." (*Supra*, 233 F.2d at 519 (emphasis added).) The nature of these cases is completely different from this legislative proceeding. Here, there is no civil case, no defendant or plaintiff, no obligation to produce, and most importantly, as above, no already existing evidence on a specific issue to support the inference to be drawn from the refusal to produce on that issue. Instead, the DIC wants to use the negative inference to require a blanket finding against the Cooperatives' Proposal No. 1, which is not how any of these cases, or any court, has ever applied it.

The remaining cases on which the DIC relies, *International Union, United Automotive, Aerospace & Agriculture Implement Workers of America (UAW) v. N. L. R.*

B., 459 F.2d 1329, (D.C. Cir. 1972)(review of dismissal of complaint for unfair labor practices), *Singh v. Gonzales*, 491 F.3d 1019 (9th Cir. 2007)(review of order of deportation), and *Evis Mfg. Co. v. F.T.C.*, 287 F.2d 831 (9th Cir. 1961)(review of order directing manufacturer to cease from making specific representations re: water conditioner), also fail to support imposition of a negative inference in these non-individualized, quasi-legislative proceedings. *United Auto* applied the inference only after gross abuse of the discovery process in a Labor Code specific decision (*Supra*, 459 F.2d at 1332); *Singh* was limited to a immigration specific statutory interpretation, and even then the negative inference was only relied upon for credibility issues (*Surpa*, 491 F.3d at 1024); and *Evis* overturned the lower court's reliance on the negative inference (*Supra*, 287 F.2d at 847). In fact, *United Auto*, in contrast to the Wigmore treatise cited by the DIC, speaks to the rationale for refusing to apply a negative inference in administrative law proceedings: "But it does not therefore follow that Wigmore's treatise has been incorporated by reference into the Administrative Procedures Act. Indeed, the trend has been toward freeing administrative bodies from the shackles imposed by some of the more arbitrary rules of evidence (*Supra*, 459 F.2d at 1339). These civil action-created and implemented procedures have no application in this rule-making proceeding.

Moreover, the DIC's Memorandum itself makes the case against use of the negative inference. In discussing exemptions in the civil arena for application of the negative inference when parties do not demand the documents in discovery, the DIC stresses that "no . . . discovery requirements apply to this proceeding." This admission speaks most powerfully *against* application of the negative inference here. There are

no discovery procedures being used, ignored, or thwarted; indeed, because these mechanisms do not exist, the DIC has no basis for saying that documents or witnesses are being *withheld*. Under these circumstances, the DIC's request for the imposition of what is essentially an issue sanction for failure to comply with rules and obligations *that do not exist here* is inexplicable. In fact, during his live testimony, Mr. John H. Vetne conceded on cross-examination that these proceedings were for rule-making and legislative in nature, despite including some elements of judicial proceedings. (Need Live Transcript To Pull Citation).

The body of law developed on the distinction between quasi-legislative and quasi-judicial proceedings speaks forcefully against any application of the negative inference here. In fact, the DIC's brief and its witness Mr. Vetne confirm as much. Not one case requires, let alone suggests, that the negative inference has any application in these quasi-legislative proceedings.

II. There is no Legal Basis in Any Setting – Quasi-Legislative or Quasi-Judicial – for Application of the Negative Inference to the Sweeping Expanse Advanced by the DIC.

However, even if such a determination were made, no case justifies the DIC's position that failure to produce a document undermines the entirety of Proposal No. 1; such a broad stroke is in no way permitted, or even suggested, by the courts, the Administrative Procedures Act, or any body of adjudication. At most, the negative inference for failure to produce in civil cases, rather than quasi-legislative proceedings such as this, limits the impact to the specific evidentiary issue.

In *Welcome-American Fertilizer Co.*, 169 NLRB 862, 870 (1968), the court held only that in asserting an affirmative defense, the party who failed to produce the related

fiscal records about particular layoffs could not use the financial impact of those layoffs as a defense. (*Id.* at 870-871.)(review of fact-finding hearing on fertilizer company's unfair labor practices). In *Goldberger Foods, Inc. v. United States*, 23 Cl. Ct. 295 (1991) aff'd, 960 F.2d 155 (Fed. Cir. 1992)(action for relief from mistaken beef supply bid), the negative inference was applied only to the single piece of data on which records were not produced, not to related theories or as a form of issue preclusion, as the DIC advances here. (*Id.* at 309.) Likewise, both *Smith v. United States*, 128 F. Supp. 2d 1227, 1232 (E.D. Ark. 2000)(claim for negligence and medical malpractice) and *In Re De Graaf Dairies, Inc.*, 41 Agric. Dec. 388, 402-403 (U.S.D.A. Mar. 29, 1982)(relief from penalty for failure to report milk sales), limit the impact of the negative inference to the specific probative data at issue in the unproduced records, and not any claims or defenses writ large. Finally, *G & T Terminal Packaging Co. v. Joe Phillips, Inc.*, 798 F.2d 579, 581 (2d Cir. 1986)(appeal of reparation in connection with potato shipments) held only that on the specific issue of the condition of a particular batch of potatoes, the court may take into account any negative inferences that may be drawn by the party's failure to keep particular resale, sorting, and dumping records on those potatoes only. (Emphasis added.)

Thus, even putting aside the fact that not one of the DIC's cases applies to this type of quasi-legislative proceeding, the impact of the negative inference would never be, as the DIC suggests, "to undermine" the entirety of Proposal 1. As with its selective use of civil, individualized adjudicative cases to argue for use of a negative inference, the DIC's analysis of the impact of the inference has grossly overreached.

III. Even If the Negative Inference Were Generally Applicable in Quasi-Legislative Proceedings, the Report at Issue is Not Subject to Production as It Is a Protected Consultant Report.

What Dairy Institute sought to be produced was the confidential report of the opinions of a consultant to the Cooperatives. Even were these fully judicial proceedings and even if there were provisions for compelling discovery, neither of which is true here, the DIC could not compel production of a confidential consultant's report. As a result, the document sought by the DIC is not subject to production, and therefore could not trigger application of the negative inference here.

Under Fed. Rule of Civil Procedure 26, it is well-established that a party may not discover documents and tangible things that are prepared in anticipation of litigation by or for another party or its consultant. See, Rule 26(b)(3). The consultant's opinions are considered opinion work product, and the information relied upon goes to the core of the work product concept. *In re Cendant Corp. Sec. Litig.*, 343 F.3d 658, 661 (3d Cir. 2003).

The protection extends to a variety of consultants, including those who aid in witness preparation. See, *Ford Motor Co.*, 110 F.3d at 967 (the work product doctrine protected materials prepared by an in-house technical assistant for meetings to be attended by an outside technical consulting firm and lawyers regarding an issue in a product liability suit); *Martin v. Bally's Park Place Hotel & Casino*, 983 F.2d 1252 (3d Cir.1993) (a technical report prepared by a consulting firm was protected from discovery because the document was prepared in anticipation of litigation by a party's representative (a consultant) for that party's representative (the company's in-house lawyer)); *Sprague v. Director, Office of Workers' Compensation Programs*, 688 F.2d

862, 869–870 (1st Cir.1982) (opinion letter setting forth expert's medical opinion was protected because it was prepared to advise counsel). Furthermore, Courts have been clear that this protection includes studies and tests by consultants, similar to the one sought here. *Martin v. Monfort, Inc.*, 150 F.R.D. 172, 173 (D. Colo. 1993) (holding that motion study, even though it could have significant bearing on the determination, was privileged work product); *Interstate Prod. Credit Ass'n v. Fireman's Fund Ins. Co.*, 128 F.R.D. 273, 281 (D. Or. 1989) (holding a culpability study, along with its exhibits and appendices, covered by the attorney-client and work product privileges).

The only basis for requiring production, or in the alternative, the application of the negative inference for failure to produce, would be the DIC's showing of exceptional circumstances under which it is impracticable for it to obtain the same facts by other means. *See, In re PolyMedica Corp. Sec. Litig.*, 235 F.R.D. 28, 33 (D. Mass. 2006). The DIC can make no such showing here. The DIC cannot show, as it is patently untrue, that it would be unable to "secure factual information contained in the study through other avenues." *Interstate, supra*, 128 F.R.D. at 281. Why the DIC chose not to conduct its own study and chose not to retain such consultants cannot be speculated about – but the fact that they could have is without doubt. Therefore, this report is not discoverable, and no negative inference should apply based on the Cooperatives' decision not to produce what they have no legal obligation to produce and are, in fact, protected from producing.

Respectfully submitted,

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