

Dairy Institute of California Modified proposed section 1051.7(c)

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 10 percent of the Grade A milk received from dairy farmers (except dairy farmers described in §1051.12(b)) and handlers described in §1051.9(c) or §1051.9(d), including milk diverted pursuant to §1051.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (c)(1)(i) through (iv) of this section, except that whenever shipping requirements are increased pursuant to paragraph (f) of this section, only shipments to pool plants described in paragraphs (a), (b), and (d) of this section shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in §1051.7(a), (b), and (d);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants shall be limited to the quantity shipped to (and physically unloaded into) pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The percentage of Grade A milk received from dairy farmers by a supply plant described in paragraph (c) of this section that must be shipped to (and physically unloaded into) plants described in paragraph (c)(1)(i) through (iv) of this section shall be adjusted upward or downward based on the average Class I utilization percentage of all producer milk under the order for the three prior months for which such information is available, as described in paragraphs (c) (2) (v) through (viii) of this section. The market administrator shall announce any adjustment to the supply plant shipping percentages pursuant to this paragraph at least 15 days prior to the month that such adjustments shall be effective as follows:

(i) If the average Class I utilization percentage as described in paragraph (c) (2) of this section is between 15 percent and 19.9 percent, the required shipping percentage for a supply plant described in paragraph (c) of this section shall be 15 percent.

(ii) If the average Class I utilization percentage as described in paragraph (c) (2) of this section is between 20 percent and 24.9 percent, the required shipping percentage for a supply plant described in paragraph (c) of this section shall be 20 percent.

(iii) If the average Class I utilization percentage as described in paragraph (c) (2) of this section is between 25 percent and 29.9 percent, the required shipping percentage for a supply plant described in paragraph (c) of this section shall be 25 percent.

(iv) If the average Class I utilization percentage as described in paragraph (c) (2) of this section is between 30 percent and 34.9 percent, the required shipping percentage for a supply plant described in paragraph (c) of this section shall be 30 percent.

(v) If the average Class I utilization percentage as described in paragraph (c) (2) of this section is between 35 percent and 39.9 percent, the required shipping percentage for a supply plant described in paragraph (c) of this section shall be 35 percent.

(vi) If the average Class I utilization percentage as described in paragraph (c) (2) of this section is between 40 percent and 44.9 percent, the required shipping percentage for a supply plant described in paragraph (c) of this section shall be 40 percent.

(vii) If the average Class I utilization percentage as described in paragraph (c) (2) of this section is between 45 percent and 49.9 percent, the required shipping percentage for a supply plant described in paragraph (c) of this section shall be 45 percent.

(viii) If the average Class I utilization percentage as described in paragraph (c) (2) of this section is 50 percent or greater, the required shipping percentage for a supply plant described in paragraph (c) of this section shall be 50 percent.

(3) The operator of the supply plant supplies fluid milk products to pool distributing plants located within an area designated by the market administrator as the "call area: in compliance with any announcement by the market administrator requesting a minimum level of shipments, as further provided below:

(i) The market administrator may require such supplies of fluid milk products from operators of any supply plant within the call area whenever he finds that milk supplies for Class I use at pool distributing plants within the call area are needed from plants qualifying under this paragraph. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative or at the request of interested persons. If his investigation shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement;

(ii) For the purpose of meeting any shipping requirement announced by the market administrator:

(a) Qualifying shipments to pool distributing plants within the call area may originate from any plant or producer milk supplies of the handler provided that shipments from sources other than the plant(s) subject to the call and milk supplies for which a cooperative association is the handler pursuant to § 1051.9(c) or a proprietary bulk handler is the handler pursuant to § 1051.9(d) must be in addition to any shipments already being made by the handler and may not

result from shifting milk supplies from a pool distributing plant outside the call area to one within the call area; and

(b) Shipments from a supply plant within the call area to a pool distributing plant outside the call area or to a comparable plant regulated under another Federal order may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to announcement of a shipping requirement pursuant to this paragraph. Qualifying shipment to another order plant may not be classified pursuant to § 1051.42(b)(2) as other than Class I; and

(iii) 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 result in immediate loss of pool status for the plant pursuant to this paragraph. A plant losing pool status in this manner or a plant that requests nonpool status may not again qualify as a pool plant pursuant to this paragraph for a period of one year from the date on which pool status was last held.

~~(3) A supply plant under this paragraph and handlers described in §§1050.9(c) or 1050.9(d) that receives quota milk from producers must make qualifying shipments of no less than 60% of such milk, or an equivalent volume (including milk diverted pursuant to §1050.13), to plants described in §1050.7(a), (b), or (d).~~

~~(4) During the months of July through February, the operator of a supply plant under this paragraph shall make qualifying shipments of up to 85% of the quota milk, or an equivalent volume of non-quota milk it physically receives from producers in its own plants (including milk diverted pursuant to §1050.13) to pool distributing plants for Class I uses if requested by the operator of such pool distributing plant or as directed by the market administrator, subject to the following conditions:~~

~~(i) The operator of such a supply plant is not obligated to ship milk in excess of Class I usage to the pool distributing plant.~~

~~(ii) The maximum percentage of quota milk that must be shipped to (and physically unloaded into) pool distributing plants and the months during which such milk must be shipped may be adjusted by the market administrator subject to market conditions.~~

~~(45) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.~~