

UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

ORDER REGULATING THE HANDLING OF MILK IN THE SOUTHEAST MARKETING AREA

Parts 1000 and 1007

As Of March 18, 2008

(changes and effective dates are shown below)

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Subpart--Order Regulating Handling

GENERAL PROVISIONS

§ 1000.1 Scope and purpose of Part 1000.

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

§ 1007.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1007. In this part, 1007.1, all references to sections in part 1000 refer to part 1000 of this chapter.

DEFINITIONS

§ 1000.2 General definitions.

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

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

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

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

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

§ 1007.2 Southeast 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:

Alabama, Arkansas, Louisiana, and Mississippi

All of the States of Alabama, Arkansas, Louisiana, and Mississippi.

Florida Counties

Escambia, Okaloosa, Santa Rosa, and Walton.

Georgia Counties

All of the State of Georgia except for the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Kentucky Counties

Allen, Ballard, Barren, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Livingston, Logan, Lyon, Marshall, McCracken, Metcalfe, Monroe, Simpson, Todd, Trigg, and Warren.

Missouri Counties

Barry, Barton, Bollinger, Butler, Cape Girardeau, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Greene, Howell, Iron, Jasper, Laclede, Lawrence, Madsion, McDonald, Mississippi, New Madrid, Newton, Oregon, Ozark, Pemiscot, Perry, Polk, Reynolds, Ripley, Scott, Shannon, St. Francois, Stoddard, Stone, Taney, Texas, Vernon, Washington, Wayne, Webster, and Wright.

Tennessee Counties

All of the State of Tennessee except for the counties of Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

§ 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.

§ 1007.3 Route disposition.

See § 1000.3.

§ 1000.4 Plant.

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

(b) Plant shall not include:

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

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

§ 1007.4 Plant.

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See § 1000.4.

§ 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.

§ 1007.5 Distributing plant.

See § 1000.5.

§ 1000.6 Supply plant.

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

§ 1007.6 Supply plant.

See § 1000.6.

§ 1007.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, a unit of plants as specified in paragraph (e) of this section, or a plant specified in paragraph (h) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) 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 50 percent or more of the fluid milk products physically received at such 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 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in §1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. 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 plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

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

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

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

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

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

(1) A producer-handler plant;

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

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of

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another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under the order in this part, or such plant has automatic pooling status under such other order.

(h) Any distributing plant, located within the marketing area as described on May 1, 2006, in §1007.2;

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

(i) The plant is described in §1007.7(a), (b), or (e);

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

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

(iv) A producer handler described in §1007.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

§ 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.

§ 1007.8 Nonpool plant.

See § 1000.8.

§ 1000.9 Handler.

Handler means:

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

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

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

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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.

§ 1007.9 Handler.

See § 1000.9.

§ 1007.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

(e) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in §1131.2 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 three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in §1131.7 or §1000.76(a).

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1007.13; or

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

(b) Producer shall not include:

(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 § 1007.13(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; and

(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.

§ 1007.13 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) and butterfat contained 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 handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of January through June, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through December, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting for conditions as described in § 1007.82 (c)(2)(ii) and (iii), and for which a transportation credit is requested;

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(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7 (e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9 (c), excluding the total pounds of bulk milk received directly from producers meeting for conditions as described in § 1007.82 (c)(2)(ii) and (iii), and for which a transportation credit is requested; (eff 3/18/2008)

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

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

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

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

§ 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.

§ 1007.14 Other source milk.

See § 1000.14.

§ 1000.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, fluid milk product means any milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages. 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 nonfat milk 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) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk 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.

§ 1007.15 Fluid milk product.

See § 1000.15.

§ 1000.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1007.16 Fluid cream product.

See § 1000.16.

§ 1000.17 [Reserved]

§ 1007.17 [Reserved]

§ 1000.18 Cooperative association.

Cooperative association means any cooperative

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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.

§ 1007.18 Cooperative association.

See § 1000.18.

§ 1000.19 Commercial food processing establishment.

Commercial food processing establishment means any facility, other than a milk plant, to which fluid milk products and fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no other disposition of fluid milk products other than those received in consumer-type packages (1 gallon or less). Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, §§ ----.13 and ----.52 of each Federal milk order.

§ 1007.19 Commercial food processing establishment.

See § 1000.19.

RULES OF PRACTICE AND PROCEDURE GOVERNING MARKET ADMINISTRATORS

§ 1000.25 Market administrator.

(a) Designation. The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) Powers. The market administrator shall have the following powers with respect to each order under his/her administration:

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

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

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

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

(5) Recommend amendments to the Secretary.

(c) Duties. The market administrator shall

perform all the duties necessary to administer the terms and provisions of each order under his/her administration, including, but not limited to, the following:

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

(2) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of the office and in the performance of the duties of the office, including the market administrator's compensation;

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

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

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

(i) Made reports required by the order;

(ii) Made payments required by the order; or

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

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

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

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

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RULES GOVERNING ORDER PROVISIONS

§ 1000.26 Continuity and separability of provisions.

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

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

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

(d) Liquidation.

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

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

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

RULES OF PRACTICE AND PROCEDURE GOVERNING HANDLERS

§ 1000.27 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of its operations and make such records and its facilities available to the market administrator. If adequate records of a handler, or of any other persons, that are relevant to

the obligation of such handler are not maintained and made available, any skim milk and butterfat required to be reported by such handler for which adequate records are not available shall be considered as used in the highest-priced class.

(a) Records to be maintained.

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

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

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

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

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

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

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

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longer necessary in connection therewith.

HANDLER REPORTS

§ 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.

§ 1007.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

- (1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);
- (2) Receipts of milk from handlers described in § 1000.9(c);
- (3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;
- (4) Receipts of other source milk;
- (5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1005, for which a transportation credit is requested pursuant to § 1007.82;
- (6) Receipts of producer milk described in § 1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;
- (7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;
- (8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and
- (9) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a)(1), (a)(2), (a)(3), (a)(4), and (a)(8) 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 quantities of all skim milk and butterfat contained in receipts of milk from producers;
- (2) The utilization or disposition of all such receipts; and
- (3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraph (a)(5), (a) (6), and (a)(7) of this section.

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(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.

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to §1007.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1007.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in §1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1007.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1007.30, 31, and 32(a), 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

§ 1000.40 Classes of Utilization.

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

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

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

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

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

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

(1) In fluid milk products in containers larger than 1 gallon and fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(2) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in half-gallon containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, 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) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers;

(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

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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.

§ 1007.40 Classes of utilization.

See § 1000.40.

§ 1000.41 [Reserved]

§ 1007.41 [Reserved]

§ 1000.42 Classification of transfers and diversions.

(a) Transfers and diversions to pool plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant or a handler described in §1135.11 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;

(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

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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.

§ 1007.42 Classification of transfers and diversions.

See § 1000.42.

§ 1000.43 General classification rules

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

(a) Each month the market administrator shall

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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 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.

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under § 1000.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1000.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1007.43 General classification rules

See § 1000.43.

§ 1000.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1000.9(a) for each pool plant of the handler separately and for each handler described in § 1000.9(c) and §1135.11 of this chapter 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

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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.

§ 1007.44 Classification of producer milk.

See § 1000.44.

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

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(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.

§ 1007.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

CLASS PRICES

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

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f), and (q) of this section shall be based on a weighted average of the most recent 2 weekly prices announced by the National Agricultural Statistical Service (NASS) before the 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 .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. (eff. 3/18/2008)

(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. (eff. 3/18/2008)

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

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

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

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

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

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

(j) Class IV price. The Class IV price per hundredweight, rounded to the nearest cent, shall be .965

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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 12.02 cents, with the result multiplied by 1.20.

(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 15.70 cents and multiplying the result by .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 16.82 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 16.82 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572;

(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 19.56 cents, with the result multiplied by 1.03.

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

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 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).

(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 12.02 cents from this average, and multiplying the result by 1.20.

§ 1007.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1000.51 [Reserved]

§ 1007.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52. The Class I price shall be the price

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computed pursuant to § 1007.50(a) for Fulton County, Georgia. (eff. 5/1/2008)

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to § 1000.50(a), (b) and (c) using the following adjustments: (eff. 5/1/2008)

[Adjustments to Class I prices table is removed to Appendix A]

§ 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:

[Class I Differential table is removed to Appendix B]

§ 1007.52 Adjusted Class I differentials.

See § 1000.52.

§ 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;
- (10) The other solids price; and
- (11) The somatic cell adjustment rate.

(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).

§ 1007.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1000.54 Equivalent price.

If for any reason a price or pricing constituent required for computing the prices described in § 1000.50 is not available, the market administrator shall use a

price or pricing constituent determined by the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to be equivalent to the price or pricing constituent that is required.

§ 1007.54 Equivalent price.

See § 1000.54.

UNIFORM PRICES

§ 1007.60 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 (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in § 1000.50(b) plus \$0.04 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in § 1000.50(c) plus \$0.0004 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to paragraphs (g)(1) through (5) and paragraph (g)(7) of this section will be less than the amount computed pursuant to paragraph (g)(6) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be announced along with the prices announced in §1000.53(b);

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, 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);

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

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) 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; and

(f) 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).

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory to the market administrator to determine eligibility for reimbursement of transportation costs, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant which were delivered as a result of hurricanes Charley, Frances, Ivan, and Jeanne;

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant that was then transferred to a pool distributing plant which were delivered as a result of hurricanes Charley, Frances, Ivan, and Jeanne;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant which were delivered as a result of hurricanes Charley, Frances, Ivan, and Jeanne;

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from another order plant which were delivered as a result of hurricanes Charley, Frances, Ivan, and Jeanne; and

(5) The cost of transportation on loads of bulk milk transferred or diverted to a plant regulated under another Federal order or to other nonpool plants which were delivered as a result of hurricanes Charley, Frances, Ivan, and Jeanne.

(6) The total amount of payment to all handlers under this section shall be limited for each month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to § 1000.44(c) times \$0.04 per hundredweight.

(7) If the cost of transportation computed pursuant to paragraphs (g)(1) through (5) of this section exceeds the amount computed pursuant to paragraph (g)(6) of this section, the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section. Transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section until paid, or until the time period for such payments has concluded.

(8) The reimbursement of transportation costs pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section, or the miles of transportation on loads of bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section multiplied by \$2.25 per loaded mile, whichever is less.

(9) For each handler, the reimbursement of transportation costs pursuant to paragraph (g) of this section for bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section shall be reduced by the amount of payments received for such milk movements from the transportation credit balancing fund pursuant to § 1007.82.

§ 1007.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to §1007.71 for the preceding month shall not be included in the computation of these 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.

(a) Uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of

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butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) Uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to §1007.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to §1007.75;

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

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

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

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1007.60(e); and

(6) Subtract not less than 4 cents not more than 5 cents.

(c) Uniform price. The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1007.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month pursuant to § 1007.61.

PAYMENTS FOR MILK

§ 1000.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the producer-settlement fund into which the market administrator shall deposit all payments made by handlers pursuant to §§ ---.71, ----.76, and ----.77 of each Federal milk order and out of which the market administrator shall make all payments pursuant to §§ ----.72 and ----.77 of each Federal milk order. Payments due any handler shall be offset by any payments due from that handler.

§ 1007.70 Producer-settlement fund.

See § 1000.70.

§ 1007.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th 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 (a) of this section exceeds the amount specified in (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1007.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1007.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60(e).

§ 1007.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1007.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(b) exceeds the amount computed pursuant to § 1007.71(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.

§ 1007.73 Payments to producers and to cooperative associations.

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

(1) Partial payment. For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75 and proper deductions authorized in writing by the producer.

(2) Final payment. For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1007.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received

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times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1007.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of the section, and from that sum:

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

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

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

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

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

(1) Partial payment to a cooperative association for bulk milk received directly from producers' farms. For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75.

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

(3) Final payment to a cooperative association for milk transferred from its pool plant. For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to §1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) Final payment to a cooperative association for bulk milk received directly from producers' farms. For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market

administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to §1007.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

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

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

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

(3) The total pounds of butterfat in the producer's milk;

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

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

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

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

§ 1007.74 [Reserved]

§ 1007.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified

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in § 1007.51 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 §§ 1007.73 and 1000.76.

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

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

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

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

(i) Subtract receipts of fluid milk products classified as Class I milk from pool plants, plants fully regulated under other Federal orders, and handlers described in §1000.9(c) and §1135.11 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 producer price differential, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero;

(3) For orders with skim milk and butterfat

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

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

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

(1) Determine the value that would have been computed pursuant to § ----.60 of the order for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the plant from a pool plant, a plant fully regulated under another Federal order, and handlers described in § 1000.9(c) and §1135.11 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

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regulated distributing plant during the month equivalent to the requirements of section §____.7(c) of the order subject to the following conditions:

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

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

(C) The value of milk determined pursuant to § -- --.60 for the unregulated supply plant shall be determined in the same manner prescribed for computing the obligation of the partially regulated distributing plant; and

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

(i) The gross payments that were made for milk that would have been producer milk had the plant been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of the nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

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

(c) The operator of a partially regulated distributing plant that is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a State government shall pay on or before the 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.

§ 1007.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1000.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1007.77 Adjustment of accounts.

See § 1000.77.

§ 1000.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator, producers, or cooperative associations from a handler pursuant to the provisions of the order shall be increased 1.0 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each succeeding month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously computed pursuant to this section. The late charges shall accrue to the administrative assessment fund. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

§ 1007.78 Charges on overdue accounts.

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See § 1000.78.

MARKETWIDE SERVICE PAYMENTS

§ 1007.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to §1007.81 and out of which shall be made the payments due handlers pursuant to § 1007.82. Payments due a handler shall be offset against payments due from the handler.

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9 (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by \$0.30 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–February period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June–February period. In the event that during any month of the June–February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient. (eff. 3/18/2008)

(b) The market administrator shall announce publicly on or before the 5th day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

§ 1007.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January, February and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk

directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section. (eff. 3/18/2008)

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the month of June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Deputy Administrator of Dairy Programs and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in

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writing prior to the first day of the month for which the extension is to be effective. (eff. 3/18/2008)

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received at a pool distributing plant from a plant regulated under another Federal order, except Federal Order 1005; and (eff. 3/18/2008)

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The dairy farmer was not a "producer" under this order for more than 45 days during the immediately preceding months of March through May, or not more than 50 percent of the production of the dairy farmer during those 3 months, in aggregate, was received as producer milk under this order during those 3 months; and (eff. 3/18/2008)

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing area of Federal Order 1005.

(iii) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(i) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date. (eff. 3/18/2008)

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to

§1007.83(a)(6);

(iii) Subtract the applicable Class I price specified in § 1000.50(a) for the county in which the shipping plant is located from the Class I price applicable for the county in which the receiving plant is located; (eff. 3/18/2008)

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to §1007.83(a)(6);

(v) Subtract the Class I price specified in § 1000.50(a) applicable for the county in which the origination point is located from the Class I price applicable at the receiving pool plant's location; (eff. 3/18/2008)

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) by the hundredweight of milk described in paragraph (d)(3) of this section.

§ 1007.83 Mileage rate for the transportation credit balancing fund.

(a) The market administrator shall compute the mileage rate each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent 4 weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract \$1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this

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section to \$1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the MRF.

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

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1000.85 Assessment for order administration.

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

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

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of §1000.44(b), except other source milk that is excluded from the computations pursuant to § ----.60(d) and (e) of Parts 1005, 1006, and 1007 of this chapter or § ----.60(h) and (i) of Parts 1001, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 of this chapter; 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).

§ 1007.85 Assessment for order administration.

See § 1000.85.

§ 1000.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of such handler's own production) pursuant to § ----.73 of each Federal milk order shall deduct an amount specified by the market administrator that is no more than 7 cents per hundredweight and shall

pay the amount deducted to the market administrator not later than the payment receipt date specified under § ----.71 of each Federal milk order. The money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. The services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator.

(b) In the case of producers for whom the market administrator has determined that a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and the producers. On or before the 15th day after the end of the month (except as provided in § 1000.90), such deductions shall be paid to the cooperative association rendering the services accompanied by a statement showing the amount of any deductions and the amount of milk for which the deduction was computed for each producer. These deductions shall be made in lieu of the deduction specified in paragraph (a) of this section.

§ 1007.86 Deduction for marketing services.

See § 1000.86.

MISCELLANEOUS PROVISIONS

§ 1000.90 Dates.

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

§ 1000.91 [Reserved]

§ 1000.92 [Reserved]

§ 1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

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

Compiled by the Market Administrator, March 18, 2008.