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Subpart—Order Regulating Handling**General Provisions****§ 1126.1 General provisions.**

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part, 1126, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions**§ 1126.2 Southwest 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:

New Mexico and Texas

All of the States of New Mexico and Texas.

Colorado Counties

Archuleta, LaPlata, and Montezuma.

§ 1126.3 Route disposition.

See § 1000.3.

§ 1126.4 Plant.

See § 1000.4.

§ 1126.5 Distributing plant.

See § 1000.5.

§ 1126.6 Supply plant.

See § 1000.6.

§ 1126.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (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 section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

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

(c) A supply plant from which 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 as producer milk to other plants, 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 30 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 month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in

writing at least one day before the effective date.

(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 that is located within the marketing area if the plant also meets the pooling requirements of another Federal order, and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

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

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

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

(7) That portion of a pool plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1126.8 Nonpool plant.

See § 1000.8.

§ 1126.9 Handler.

See § 1000.9.

§ 1126.10 Producer-handler.

Producer-handler means a person who:

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

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

(c) Receives no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order, including such products received at a location other than the producer-handler's processing plant for distribution on routes. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

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

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

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for 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 § 1126.13; 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 § 1126.13(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 the 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.

§ 1126.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, 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 for the account of the handler operating such plant 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) Milk of a dairy farmer shall not be eligible for diversion unless a delivery of at least 40,000 pounds or one day's milk production, whichever is less, of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time;

(2) The total quantity of milk diverted during the month by a cooperative association shall not exceed 50 percent of the total quantity of producer milk that the cooperative association caused to be received at pool plants and diverted;

(3) 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 this paragraph. The total quantity of milk so diverted during the month shall not exceed 50 percent of the total quantity 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 § 1126.7(e)) and diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) 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;

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

(6) The delivery requirement in paragraph (d)(1) and the diversion

percentages in paragraphs (d)(2) and (3) of this section may be increased or decreased by the market administrator if there is a finding that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or any diversion percentage must be issued in writing at least one day before the effective date.

§ 1126.14 Other source milk.

See § 1000.14.

§ 1126.15 Fluid milk product.

See § 1000.15.

§ 1126.16 Fluid cream product.

See § 1000.16.

§ 1126.17 [Reserved]

§ 1126.18 Cooperative association.

See § 1000.18.

§ 1126.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1126.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 8th day after the end of the month, in the detail and on prescribed forms, as follows:

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

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of nonfat solids other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p) contained in or represented by:

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

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

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

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

(ii) Receipts of other source milk; and

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

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

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

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

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

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

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1126.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1126.73(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.

§ 1126.32 Other reports.

In addition to the reports required pursuant to §§ 1126.30 and 1126.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1126.40 Classes of utilization.

See § 1000.40.

§ 1126.41 [Reserved]

§ 1126.42 Classification of transfers and diversions.

See § 1000.42.

§ 1126.43 General classification rules.

See § 1000.43.

§ 1126.44 Classification of producer milk.

See § 1000.44.

§ 1126.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1126.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1126.51 Class I differential and price.

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

§ 1126.52 Adjusted Class I differentials.

See § 1000.52.

§ 1126.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1126.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1126.60 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 (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the

skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

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

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

(b) Class II value.

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

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

(c) Class III value.

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

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

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

(d) Class IV value.

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

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

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1126.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

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

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

(h) Multiply the difference between the Class I price applicable at the

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

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) 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).

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1126.75;

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

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

§ 1126.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1126.70 Producer-settlement fund.

See § 1000.70.

§ 1126.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in

§ 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1126.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1126.75;

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

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

§ 1126.72 Payments from the producer-settlement fund.

No later than the 17th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1126.71(b) exceeds the amount computed pursuant to § 1126.71(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.

§ 1126.73 Payments to producers and to cooperative associations.

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

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 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 lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be

made so that it is received by each producer no later than the 18th day after the end of the month (except as provided in § 1000.90) in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1126.75;

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

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

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

(v) Multiply the hundredweight of milk received times the somatic cell adjustment for the month;

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

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

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

(C) Add or subtract for errors made in previous payments to the producer subject to approval by the market administrator; and

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

(b) On or before the day prior to the dates specified for partial and final payments pursuant to paragraph (a) of this section (except as provided in § 1000.90), each pool plant operator shall pay a cooperative association for milk received as follows:

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

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

milk using the most recent class prices available at the receiving plant's location.

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

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

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

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

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

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

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

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

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payments 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 § 1126.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to cooperative associations 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 handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

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

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

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

(4) The somatic cell count of the producer's milk;

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

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

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

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

§ 1126.74 [Reserved]

§ 1126.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1126.51 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 §§ 1126.73 and 1000.76.

§ 1126.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1126.77 Adjustment of accounts.

See § 1000.77.

§ 1126.78 Charges on overdue accounts.

See § 1000.78.

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§ 1126.85 Assessment for order administration.

See § 1000.85.

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See § 1000.86.

PART 1131—MILK IN ARIZONA-LAS VEGAS MARKETING AREA

Subpart—Order Regulating Handling

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1131.86 Deduction for marketing services.

Authority: 7 U.S.C. 601—674.

Subpart—Order Regulating Handling

General Provisions

§ 1131.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part, 1131, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1131.2 Arizona-Las Vegas 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:

Arizona

All of the State of Arizona.

Nevada Counties

Clark.

§ 1131.3 Route disposition.

See § 1000.3.

§ 1131.4 Plant.

See § 1000.4.

§ 1131.5 Distributing plant.

See § 1000.5.

§ 1131.6 Supply plant.

See § 1000.6.

§ 1131.7 Pool plant.

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

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

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received at such plant from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted as producer milk to other plants, 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 and operated by a cooperative association if, during the month, or the immediately preceding 12-month period ending with the current month, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b)

of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to all of 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 Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or 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 must be filed by the handler with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(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 month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an

adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

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

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

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

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

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

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

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

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1131.8 Nonpool plant.

See § 1000.8.

§ 1131.9 Handler.

See § 1000.9.

§ 1131.10 Producer-handler.

Producer-handler means a person who:

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

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

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

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

(e) Does not distribute fluid milk products to a wholesale customer who also is serviced by a plant described in § 1131.7(a), (b), or (e), or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month; and

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the operation of the distributing plant are the personal enterprise of, and at the personal risk of, such person in his/her capacity as a producer-handler.

§ 1131.11 [Reserved]

§ 1131.12 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 § 1131.13; 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 § 1131.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a

producer under that order and that milk is allocated by request to a utilization other than Class I;

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

(5) A dairy farmer whose milk is received at a pool plant if during the month milk from the same farm is received at a nonpool plant (except a nonpool plant that has no utilization of milk products in any class other than Class III or Class IV) other than as producer milk under this or some other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets*.

§ 1131.13 Producer milk.

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

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

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

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a handler in any month shall not exceed 50 percent of the total producer milk caused by the handler to be received at pool plants and diverted;

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

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event

some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1131.12(b)(5); and

(5) The delivery day requirement in paragraph (d)(1) of this section and diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

§ 1131.14 Other source milk.

See § 1000.14.

§ 1131.15 Fluid milk product.

See § 1000.15.

§ 1131.16 Fluid cream product.

See § 1000.16.

§ 1131.17 [Reserved]

§ 1131.18 Cooperative association.

See § 1000.18.

§ 1131.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1131.30 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 the forms prescribed by the market administrator, 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) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and (6) 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) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

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

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

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

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1000.9(c);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and fluid cream products; and (5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(e) Each handler not specified in paragraphs (a) through (d) 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.

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1131.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) The month;

(2) The producer's name and address;

(3) The daily and total pounds of milk received from the producer;

(4) The total butterfat content of such milk; and

(5) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

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

§ 1131.32 Other reports.

In addition to the reports required pursuant to § 1131.30 and § 1131.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1131.40 Classes of utilization.

See § 1000.40.

§ 1131.41 [Reserved]

§ 1131.42 Classification of transfers and diversions.

See § 1000.42.

§ 1131.43 General classification rules.

See § 1000.43.

§ 1131.44 Classification of producer milk.

See § 1000.44.

§ 1131.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1131.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1131.51 Class I differential and price.

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

§ 1131.52 Adjusted Class I differentials.

See § 1000.52.

§ 1131.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1131.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1131.60 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;

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

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

(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 plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(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 corresponding steps of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; 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).

§ 1131.61 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 § 1131.71 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 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 § 1131.60 for all handlers;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1131.75;

(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 § 1131.60(e); and

(6) Subtract not less than 4 cents and 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 .965.

§ 1131.62 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 computed pursuant to § 1131.61.

Payments for Milk

§ 1131.70 Producer-settlement fund.

See § 1000.70.

§ 1131.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 13th day after the end of the month (except as provided in § 1000.90). Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market administrator's office, or deposited into the market administrator's bank account. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1131.60.

(b) The sum of:

(1) The value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and

(2) The value at the uniform price as adjusted pursuant to § 1131.75

applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(e).

§ 1131.72 Payments from the producer-settlement fund.

No later than the 14th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(b) exceeds the amount computed pursuant to § 1131.71(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.

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b) and (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 25th day of the month, payment shall be made so that it is received by the producer on or before the 27th day of each month (except as provided in § 1000.90) for milk received from such producer during the first 15 days of the month at not less than 1.3 times the lowest class price for the preceding month less 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 § 1131.72:

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

(ii) Multiply the pounds of producer butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1131.75; and

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

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

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

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

subject to approval by the market administrator; and

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

(b) Two days prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator 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 an amount not less than 1.3 times the lowest class price for the preceding month multiplied by the hundredweight of milk.

(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 § 1131.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata his payments pursuant to such paragraphs, but by not more than the amount of such underpayment. Payments to producers 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. In the event 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 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 month, and identity of the producer;
- (2) The daily and total pounds and the total pounds of butterfat content of producer milk;
- (3) The minimum rate at which payment to the producer is required pursuant to this order;
- (4) The rate used in making payments if the rate is other than the applicable minimum rate;
- (5) The amount, rate per hundredweight, and nature of each deduction claimed by the handler; and
- (6) The net amount of payment to the producer or cooperative association.

§ 1131.74 [Reserved]

§ 1131.75 Plant location adjustments for producers and on nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1131.51 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 §§ 1131.73 and 1000.76.

§ 1131.76 Payments by handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1131.77 Adjustment of accounts.

See § 1000.77.

§ 1131.78 Charges on overdue accounts.

See § 1000.78.

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§ 1131.85 Assessment for order administration.

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See § 1000.86.

PART 1135—MILK IN THE WESTERN MARKETING AREA

Subpart—Order Regulating Handling

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1135.86 Deduction for marketing services.

Authority: 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

General Provisions

§ 1135.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1135, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1135.2 Western 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:

Utah

All of the State of Utah.

Idaho Counties

Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley, and Washington.

Nevada Counties

Elko, Lincoln, and White Pine.

Oregon Counties

Baker, Grant, Harney, Malheur, and Union.

Wyoming Counties

Lincoln and Uinta.

§ 1135.3 Route disposition.

See § 1000.3.

§ 1135.4 Plant.

See § 1000.4.

§ 1135.5 Distributing plant.

See § 1000.5.

§ 1135.6 Supply plant.

See § 1000.6.

§ 1135.7 Pool plant.

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

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

(c) A supply plant from which during the month the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1135.12(b)) and handlers described in § 1000.9(c) and § 1135.11, including milk diverted by the plant operator, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the

immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1135.13(c);

(3) 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; and

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (f) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d) A milk manufacturing plant located within the marketing area that is operated by a cooperative association if, during the month or the immediately preceding 12-month period ending with the current month, 35% or more of such cooperative's member producer milk (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants located in the marketing area and operated by the same handler may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a)

of this section and subject to the following additional requirements:

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

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in 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 must be filed by the handler with the market administrator prior to the first day of the month for which such status is to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(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 month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

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

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

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

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

Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

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

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

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1135.8 Nonpool plant.

See § 1000.8.

§ 1135.9 Handler.

In addition to the handlers defined in § 1000.9, handler shall include a person meeting the standards set forth in § 1135.11.

§ 1135.10 Producer-handler.

Producer-handler means a person who:

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

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

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

farm production is less than 150,000 pounds during the month;

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

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

§ 1135.11 Proprietary bulk tank handler.

Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

(a) Such person must operate a plant located in the marketing area at which milk is processed only into Class II, Class III, or Class IV products; and

(b) Prior to operating as a handler pursuant to this paragraph, such person must submit to the market administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk.

§ 1135.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for 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 § 1135.13; or

(2) Received by a handler described in § 1000.9(c) or § 1135.11.

(b) Producer shall not include:

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

(2) A dairy farmer whose milk is delivered to an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1135.13(d);

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

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

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm (except a nonpool plant that has no utilization of milk products in any Class other than Class III or Class IV) as other than producer milk under this or any other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets*.

§ 1135.13 Producer milk.

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

(a) Received by the operator of a pool plant directly from a producer, a handler described in § 1000.9(c), or a handler described in § 1135.11. 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) or in § 1135.11 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, a cooperative association described in § 1000.9(c), or a proprietary bulk tank handler described in § 1135.11, to a nonpool plant, subject to the following conditions:

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

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 90 percent;

(3) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered

to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

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

(5) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler, cooperative association, or proprietary bulk tank handler fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler, cooperative association, or proprietary bulk tank handler during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1135.12(b)(5); and

(6) The delivery day requirement in paragraph (d)(1) of this section and the diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

§ 1135.14 Other source milk.

See § 1000.14.

§ 1135.15 Fluid milk product.

See § 1000.15.

§ 1135.16 Fluid cream product.

See § 1000.16.

§ 1135.17 [Reserved]

§ 1135.18 Cooperative association.

See § 1000.18.

§ 1135.19 Commercial food processing establishment.

See § 1000.19

Handler Reports

§ 1135.30 Reports of receipts and utilization.

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

(a) Each handler that operates a pool plant pursuant to § 1135.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c) and § 1135.11; and

(ii) Receipts of milk from handlers described in § 1000.9(c) and § 1135.11;

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

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

(ii) Receipts of other source milk; and

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

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

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in §§ 1000.9(c) or 1135.11 shall report:

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

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in 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.

§ 1135.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler that operates a pool plant pursuant to § 1135.7 and each handler described in § 1000.9(c) and in § 1135.11 shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1135.73(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.

§ 1135.32 Other reports.

In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1135.40 Classes of utilization.

See § 1000.40.

§ 1135.41 [Reserved]

§ 1135.42 Classification of transfers and diversions.

See § 1000.42.

§ 1135.43 General classification rules.

See § 1000.43.

§ 1135.44 Classification of producer milk.

See § 1000.44.

§ 1135.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1135.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1135.51 Class I differential and price.

The Class I differential shall be the differential established at Salt Lake County, Utah, which is reported in § 1000.52. The Class I price shall be the

price computed pursuant to § 1000.50(a) for Salt Lake County, Utah.

§ 1135.52 Adjusted Class I differentials.

See § 1000.52.

§ 1135.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1135.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1135.60 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) and each handler described in § 1135.11, with respect to milk that was not received at a pool plant, by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such nonfat components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

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

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

(b) Class II value.

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

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

(c) Class III value.

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

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

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

(d) Class IV value.

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

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

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

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

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

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

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

butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1135.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1135.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1135.75;

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

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

§ 1135.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) [Reserved]

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1135.70 Producer-settlement fund.

See § 1000.70.

§ 1135.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1135.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1135.75;

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

(3) [Reserved]

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1135.60(h) by the producer price differential as adjusted pursuant to § 1135.75 for the location of the plant from which received.

§ 1135.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all 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.

§ 1135.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial Payment.* On or before the 25th day of each month (except as provided in § 1000.90) to each producer an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by such producer to be made from payments due pursuant to this paragraph.

(2) *Final Payment.* On or before the 17th day of the following month (except as provided in § 1000.90), not less than an amount computed by the sum of the following:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1135.75;

(ii) The pounds of butterfat in producer milk received times the butterfat price for the month;

(iii) The pounds of protein in producer milk received times the protein price for the month;

(iv) The pounds of other solids in producer milk received times the other solids price for the month;

(v) [Reserved]

(vi) Less any payments made pursuant to paragraph (a)(1) of this section;

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

(viii) Less deductions made for marketing service pursuant to § 1000.86.

(b) One day prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator 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 an amount not less than 1.2 times the lowest class price for the preceding

month multiplied by the hundredweight of milk.

(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 at the receiving plant's location.

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

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

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

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

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

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

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

(vii) The pounds of other solids in Class III milk times the other solids price; and (viii) Add together the amounts computed in paragraphs (b)(3)

(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(1) 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 § 1135.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association by not more than the amount of such 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 the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

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

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

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

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

(4) [Reserved]

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

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

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

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

§ 1135.74 [Reserved]

§ 1135.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be

determined by subtracting the Class I price specified in § 1135.51 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 §§ 1135.73 and 1000.76.

§ 1135.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1135.77 Adjustment of accounts.

See § 1000.77.

§ 1135.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1135.85 Assessment for order administration.

See § 1000.85.

§ 1135.86 Deduction for marketing services.

See § 1000.86.

Note: Appendices A through F are to the Preamble and will not be codified in Title 7 of the Code of Federal Regulations.

Appendix A: Summary of Preliminary Suggested Order Consolidation Report

Ten marketing areas are suggested in the preliminary consolidation report. As a means of determining where interrelationships among the current marketing areas are strongest, data relating to the receipts and distribution of fluid milk products by distributing plants were gathered for all known distributing plants located in the 47 contiguous States, not including the State of California, for the month of October 1995. At this time, California is not included as a suggested order area. The 1996 Farm Bill allows for the inclusion of a California Federal milk order if California producers petition for and approve an order. If a California order were included in the suggested Federal order structure at a later time, it would encompass the entire State and would include no area outside the State of California. Although interest in a Federal order has been expressed by some California producer groups, no definite action has been taken.

An analysis of the distribution and procurement patterns of the fluid processing plants, along with other factors, was used to determine which order areas were most closely related. Proposals submitted by the public were also taken into account. The primary criteria used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation were:

1. Overlapping route disposition.
2. Overlapping areas of milk supply.
3. Number of handlers within a market.
4. Natural boundaries.
5. Cooperative association service areas.

6. Features common to existing orders, such as similar multiple component pricing payment plans.

7. Milk utilization in common dairy products.

The requirement to consolidate existing marketing areas does not specify expansion of regulation to previously nonfederally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. However, a number of the current marketing areas enclose unregulated areas. These "pockets" are included in the suggested merged marketing areas only if their inclusion does not change the current regulatory status of a plant. In the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in a combined marketing area will likely meet the pooling standards of a suggested consolidated order. Further expansion of the marketing areas, which would result in regulating additional handlers, is an issue that should be addressed by the industry. Proposals to take such action should be accompanied by supporting data, views, and arguments concerning the need and basis for any such expansion.

The 10 suggested consolidated marketing areas and the major reasons for consolidation are:

1. **NORTHEAST**—*current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders.* Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. The orders are also surrounded by nonfederally regulated territory. A further measure of association is evident by industry efforts to study and pursue consolidation of the three Federal orders, as well as some of the nonfederally regulated territory, prior to the 1996 Farm Bill.

2. **APPALACHIAN**—*current marketing areas of the Carolina and Tennessee Valley Federal milk orders, and a portion of the Louisville-Lexington-Evansville Federal milk order.* Overlapping sales and procurement areas between these marketing areas are major factors for supporting such a consolidation.

3. **FLORIDA**—*current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.* Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of

association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

4. **SOUTHEAST**—*current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, 15 currently unregulated Kentucky counties, and 2 currently unregulated northeast Texas counties.* Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and the Kentucky and Texas counties suggested for inclusion. There is minimal sales area overlap with handlers regulated under other Federal orders.

5. **MIDEAST**—*current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus most of the current marketing area of the Louisville-Lexington-Evansville Federal milk order, Zone 2 of the Michigan Upper Peninsula Federal milk order, and 12 counties of the Southern Illinois-Eastern Missouri Federal milk order.* Major criteria suggesting this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas suggested to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area suggested to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

6. **UPPER MIDWEST**—*current marketing areas of the Chicago Regional and Upper Midwest Federal milk orders, plus Zones I and I(a) of the Michigan Upper Peninsula Federal milk order and seven unregulated or partly unregulated Wisconsin counties.* Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders, overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order, natural boundary limitations, and the prevalence of cheese as a major manufactured product for the substantial reserve milk supplies that exceed fluid milk needs.

7. **CENTRAL**—*current marketing areas of the Southern Illinois-Eastern Missouri (less 12 counties included in the suggested Mideast marketing area), Central Illinois, Greater Kansas City, Nebraska-Western Iowa (less 11 currently-regulated counties suggested to be unregulated), Eastern South Dakota, Iowa, Southwest Plains, and Eastern Colorado Federal milk orders, plus 63 currently-unregulated counties in seven of the states.* Major criteria suggesting this consolidation include the overlapping procurement and route disposition between the current orders. The suggested consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The suggested consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, most of the producers in these areas share membership in several common cooperatives.

8. **SOUTHWEST**—*current marketing areas of the Texas, New Mexico-West Texas, and Central Arizona Federal milk orders.* Major criteria suggesting consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for all three orders. In addition, there is some route disposition by Central Arizona handlers into the New Mexico-West Texas marketing area, and the Central Arizona market contains a small number of handlers.

9. **WESTERN**—*current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders.* Major criteria suggesting consolidation include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also share a similar multiple component pricing plan. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

10. **PACIFIC NORTHWEST**—*current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon.* The degree of association with other marketing areas is insufficient to warrant consolidation.

Following is a table summarizing relevant data for the consolidated markets:

CONSOLIDATED MARKET SUMMARY

[Based on October 1995 data]

Consolidated order	Total producer milk (1,000 lbs.)	Number of fully regulated distributing plants	Combined class I utilization (percent)
Northeast	1,934,833	85	46.7
Appalachian	320,198	25	82.5
Florida	200,397	18	88.3
Southeast	443,921	38	84.3

CONSOLIDATED MARKET SUMMARY—Continued

[Based on October 1995 data]

Consolidated order	Total producer milk (1,000 lbs.)	Number of fully regulated distributing plants	Combined class I utilization (percent)
Mideast	¹ 1,140,952	68	57.8
Upper Midwest	² 1,046,539	27	⁴ 34.2
Central	932,929	42	50.6
Southwest	861,307	31	48.3
Western	304,793	14	⁵ 31.7
Pacific Northwest	501,257	23	36.3
Total	7,687,126	371	n/a

¹ Producer milk for F.O. 44 is included. Producer milk for a F.O. 32 handler who would be pooled under the suggested Mideast market is included in the Central consolidated market.

² Producer milk for F.O. 30 and F.O. 68 only.

³ Producer milk for a F.O. 32 handler that would be in the Mideast consolidated market is included.

⁴ A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 15.3% combined Class I utilization.

⁵ A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.8% combined Class I utilization.

Appendix B: Summary of Pricing Options

Several options for modifying Class I pricing under the Federal milk market order program, representing a spectrum of views, are discussed in this summary report. The accompanying technical report summarizes all of the comments and proposals received by the Department related to Class I pricing under Federal orders.

Most Class I pricing concepts that were suggested would continue to employ a market-driven basic formula price (BFP) with an added differential. Differentials are a composite of one or more of the following elements: (1) A fixed component, (2) a location adjustment, (3) an adjustor relating to utilization, or (4) the cost of balancing the market. Based on the pricing concepts received, the following options were developed:

Option 1A: Location-Specific Differential—\$1.60 per hundredweight fixed differential for three surplus regions (Upper Midwest, West, and Southwest) within a nine-zone national price surface, plus for the other six zones an added component that reflects regional differences in the value of fluid and manufacturing milk.

Option 1B: Modified Location-Specific Differential Option—\$1.00 per hundredweight fixed differential plus an added component that reflects the cost of moving bulk milk to deficit markets.

Option 2: Relative Use Differential—\$1.60 per hundredweight fixed differential plus a formula-based differential driven by the ratio of Class I milk to all other uses of milk.

Option 3A: Flat Differential Option—\$1.60 per hundredweight flat differential, uniformly applied across all orders to generate an identical minimum Class I price.

Option 3B: Flat Differential Modified by Class I Use—\$2.00 per hundredweight differential in markets where Class I utilization is less than 70 percent on an

annual basis and a differential equal to \$2.00 + \$0.075(Class I use %—70%) in markets where the Class I utilization is equal to or exceeds 70 percent.

Option 4: Demand-Based Differential—\$1.00 per hundredweight fixed differential plus a transportation credit based on location of reserve milk supplies.

Estimated Class I differentials are presented for each option to provide a preliminary basis for determining impacts that may occur. The report provides estimated differentials for the suggested 10 consolidated orders and for the current 32 Federal milk marketing orders.

The report concludes by soliciting comments on the options presented and poses a series of questions for the public to address when submitting comments back to the Department on the issue of Class I pricing.

Appendix C: Summary of Classification Report

The Agricultural Marketing Agreement Act of 1937 provides that all milk should be classified "in accordance with the form in which or the purpose for which it is used." This has resulted in a system of uniform classification provisions that places milk used for fluid purposes in the highest use class, Class I, and other manufactured products in lower classes, Classes II, III, and III-A.

Currently products packaged for fluid consumption such as whole milk, skim milk, buttermilk, and flavored milk drinks are classified as Class I products. Class II products include ice cream, yogurt, cottage cheese, and cream. Class III and Class III-A products include cheese, butter, and nonfat dry milk.

Among the changes in classification recommended in the technical report are the following:

- Egnog would be reclassified from Class II to Class I.
- Any fluid beverage having less than 6.5 percent nonfat milk solids would be reclassified from Class II to Class I.
- Cream cheese would be reclassified from Class III to Class II.

The technical report recommends changing the classification of milk used in nonfat dry milk from Class III-A to Class III. The report recommends that if Class III-A pricing is not eliminated, the following four alternatives be considered:

- Place a floor beneath the Class III-A price;
- Restrict III-A pricing to certain months or to certain markets;
- Provide an up-charge for nonfat dry milk used in higher-valued products; or
- Provide for a combination of these options.

Maintaining the classification of milk used to make nonfat dry milk in Class III-A is also an option, although not discussed in the technical report.

The technical report addresses Class III-A pricing because of industry concerns about the substitution of nonfat dry milk for fluid milk in Class II and III uses when the Class III-A price is substantially below the Class III price.

Appendix D: Summary of Identical Provisions Report

Federal milk marketing orders contain numerous provisions that establish the regulations for the operation of the orders. Over the years, the orders have been individualized to account for specific situations associated with a given marketing area. However, there are several provisions within the orders that are similar or that could be similar and still provide for efficient and orderly marketing of milk.

The technical report does the following:

- Suggests a model for establishing the consolidated orders and provides suggestions on the order language that can be adopted uniformly throughout all orders.

- Reviewed, simplified, modified, and eliminated differences in order provisions that:
 - Define various terms used in the orders.
 - Establish regulatory standards for plants and handlers.
 - Provide for uniform reporting dates of milk receipts and utilization.
 - Provide for uniform dates for payment of milk.
 - Provide for computation of a uniform price.
 - Reduces performance standards to make it easier for producers to associate with a market.

At this time, it is impossible to determine if there would be any financial impact on producers, handlers, or consumers as a result of any of these suggested provision revisions. It is projected that there will be little impact on the overall program because the changes primarily provide for uniformity. There may be minimal impact on selected individual producers, handlers, or consumers, but this cannot be determined until more specific information is developed regarding the orders (i.e., marketing area and pricing). The suggested identical provisions will be applied to each of the suggested consolidated orders and determinations will be based on the marketing conditions of the given region.

One suggested change in the report that may stimulate some debate is the definition of a producer-handler. The technical report suggests applying the most liberal standard to the producer-handler definition to prevent any producer-handler from becoming regulated as a result of milk order reform. Producer-handlers have been exempt from full regulation because they assume the full risks associated with being a producer and a distributor of milk produced with only occasional and small volumes of milk being purchased from other dairy farmers.

Appendix E: Summary of Basic Formula Price Report

The basic formula price (BFP) is used to determine Federal order prices for milk used in manufactured products and, with the addition of differentials, to determine minimum Class I and II prices for milk pooled under the Federal orders. The current BFP is based on a survey of prices paid for manufacturing grade (Grade B) milk by plants in Minnesota and Wisconsin, updated by month-to-month changes in commodity prices (especially cheese). The continuing decline in the volume of Grade B milk produced in the upper Midwest and nationally is an indication that, in the near future, the M-W price series may not be statistically reliable as an indicator of the value of milk used in manufactured products.

The BFP Committee has received input provided during a public BFP Forum held in Madison, Wisconsin, and from over 200 written public comments, and conducted a survey of transaction prices for manufactured dairy products. The Committee also has sponsored analysis by a group of university researchers, and conducted extensive study

and analysis of its own. The BFP Committee evaluated alternatives to the BFP against the criteria of stability, predictability, simplicity, uniformity, transparency, sound economics and reduced regulation. Options identified by the Committee were grouped into the following categories:

Options Considered: Economic formulas
Product price and component formulas
Futures markets
California pricing
Cost of production
Informal rulemaking
Competitive pay price
Pooling differentials only

At this time, the Committee has identified four options for further discussion and debate:

- A four-class, multiple component pricing plan to price butterfat, protein and lactose used in cheese (Class III), and butterfat and nonfat solids used in butter/powder (Class IV).
 - A three-class, multiple component pricing plan to price protein used in cheese, butterfat used in butter, and other nonfat solids used in powder (Class III—one manufacturing class).
 - A product price formula computed from the butter, powder and cheese shares of U.S. production, using seasonal product yields and a California cost-based make allowance; and
 - A competitive pay price series using a national weighted average price paid for Grade A milk used in manufactured products, updated by a product price formula. The price series would contain an adjuster to attempt to remove the effect of current regulation and to reduce it to a level more comparable to the current BFP.
- As a basis for Class I prices, the BFP could be made more stable by using an economic formula or using a moving average of a manufacturing price. Class II prices could be based on components or continue to include a differential from the manufacturing price level.

The BFP Committee is continuing to study and analyze alternatives in response to public comments.

Appendix F: Summary of Revised Preliminary Suggested Order Consolidation Report

The ten marketing areas suggested in the initial preliminary consolidation report have increased to eleven and been modified to some extent in this revised preliminary report. Several of the initially suggested marketing areas were the subjects of numerous comments containing information that indicated that the boundaries of those areas should be re-evaluated. In addition, shifts in regulation and distributing plant distribution areas were known to have occurred. As a result, more detailed and updated (January 1997) data was obtained relating to the receipts of producer milk and distribution of fluid milk products by distributing plants in a number of the initially-suggested order marketing areas. As a result, changes were made in the suggested marketing areas of the Northeast, Appalachian, Southeast, Mideast, Upper Midwest, Central, Southwest, and Western

regions, and a new Arizona-Las Vegas area was added.

An analysis of the distribution and procurement patterns of the fluid processing plants, along with other factors, was used to determine which order areas were most closely related. Proposals submitted by the public were also taken into account. The primary criteria used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation continued to be:

1. Overlapping route disposition.
2. Overlapping areas of milk supply.
3. Number of handlers within a market.
4. Natural boundaries.
5. Cooperative association service areas.
6. Features common to existing orders, such as similar multiple component pricing plans.
7. Milk utilization in common dairy products.

In the initial preliminary report, it was observed that the Farm Bill requirement to consolidate existing marketing areas does not specify expansion of regulation to previously non-Federally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. This revised preliminary report suggests that some currently non-Federally regulated area be added on the basis of comments supported by data, views and arguments filed by interested persons. Specifically, unregulated areas contiguous to the initial suggested consolidated Northeast and Mideast marketing areas are suggested for inclusion in those suggested order areas. Some handlers currently not subject to full Federal order regulation would become pool plants if the suggested areas are added. Handlers who would be affected will be notified of the possible change in their status, and encouraged to comment.

As in the initial preliminary report, "pockets" of unregulated areas enclosed in the current marketing areas are included in the suggested consolidated marketing areas if their inclusion does not change the current regulatory status of a plant. However, in the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in a combined marketing area will meet the pooling standards of a suggested consolidated order area. As a result, this report suggests that some unregulated areas contiguous to currently-regulated areas be added to Federal order areas where additional handlers would be affected.

The 11 modified suggested marketing areas (with those modified from the initial preliminary report, and the modifications, marked by *) and the major reasons for consolidation are:

- *1. NORTHEAST—current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders, *with the addition of: contiguous unregulated areas of New Hampshire, Vermont and New York; the western non-Federally regulated portion of Massachusetts, the Western New York State order area, and Pennsylvania Milk Marketing Board Areas 2 and 3 in northeastern Pennsylvania.

Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. In several cases, handlers who would become regulated because their total sales in the combined areas would meet pooling standards are located in areas where they compete with handlers who would not be similarly regulated. Handler equity suggests that these handlers, too, should become regulated. Another important measure of association is evidenced by industry efforts to study and pursue consolidation of the three Federal orders, as well as some of the nonfederally regulated territory, prior to the 1996 Farm Bill.

Sixteen additional distributing plants would be pooled as a result of the expansion of the consolidated area. Nine of these plants currently are partially regulated.

*2. APPALACHIAN—current marketing areas of the Carolina and Tennessee Valley Federal milk orders, *with the addition of*: all of the Louisville-Lexington-Evansville Federal order area (except one county—in the suggested Southeast area) and 26 currently-unregulated counties in Indiana and Kentucky.

More detailed and updated data showing overlapping sales and procurement areas between these marketing areas are major factors for supporting such a consolidation.

3. FLORIDA—current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.

Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

*4. SOUTHEAST—current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, plus 15 currently-unregulated Kentucky counties, *minus* 2 currently-unregulated counties in northeast Texas (in the suggested Southwest area).

Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and this county. There is minimal sales area overlap with handlers regulated under other Federal orders. Collection of additional data showed greater disposition in the two Texas counties from Texas handlers than from Southeast handlers. There are no handlers in these two counties that would be affected.

*5. MIDEAST—current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and currently-unregulated counties in Michigan, Indiana, and Ohio *with the addition of*: Pennsylvania Milk Marketing Board Area 6 (in western/central Pennsylvania) and 2 currently-unregulated

counties in New York, and *minus* the Louisville-Lexington-Evansville order area, 12 counties in Illinois, and unregulated counties in Indiana and Kentucky that are being suggested for inclusion in the Appalachian area.

Major criteria suggesting this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas suggested to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area suggested to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

Collection of additional data and recent changes in marketing patterns indicate that the relationship between the Louisville-Lexington-Evansville (L-L-E) area and the order areas initially included in the suggested Appalachian area is closer than relationship between L-L-E and the Mideast area.

Seven distributing plants that would not have been pool plants as a result of the initially-suggested consolidation would become pool plants due to the suggested expansion of the consolidated area into Pennsylvania and New York. The number of pool plants also is affected by a shift of pool plants from one consolidated area to another because of the shift of territory from the initially-suggested Mideast area to the revised suggested Appalachian area.

*6. UPPER MIDWEST—current marketing areas of the Chicago Regional, Upper Midwest, Zones I and I(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin, *with the addition of*: the Iowa, Eastern South Dakota, and most of the Nebraska-Western Iowa Federal order areas, plus currently-unregulated counties in Iowa and Nebraska.

Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders and overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order. More-detailed and updated information revealed more significant overlapping procurement and route disposition areas between the Iowa, Eastern South Dakota and Nebraska-Western orders and Chicago Regional and Upper Midwest orders than had been observed in the initial study. In addition, a common pricing plan for producers, natural boundary limitations, and the prevalence of cheese as a major manufactured product for the substantial reserve milk supplies that exceed fluid milk needs exist in these orders. Some of the western Nebraska area is more closely associated with the Eastern Colorado area, however, and is suggested to remain with the Central consolidated area.

Eleven additional handlers that would have been pooled under the consolidated

Central order in the initial Preliminary Report would be pooled under a consolidated Upper Midwest order under this revised report.

*7. CENTRAL—current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, and Eastern Colorado Federal milk orders, 10 counties currently in the Nebraska-Western Iowa Federal order area, plus 55 currently-unregulated counties in Kansas, Missouri, Illinois, Nebraska and Colorado, *plus* the 12 counties in the current Southern Illinois-Eastern Missouri area that initially were suggested as part of the consolidated Mideast area, *minus* the Eastern South Dakota, Iowa and most of the Nebraska-Western Iowa Federal order marketing areas.

Major criteria suggesting this consolidation include the overlapping procurement and route disposition between the current orders. The suggested consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The suggested consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, most of the producers in these areas share membership in several common cooperatives.

*8. SOUTHWEST—current marketing areas of Texas and New Mexico-West Texas Federal milk orders, *with the addition of*: two northeast Texas counties previously suggested to be added to the Southeast marketing area, and 47 currently-unregulated counties in southwest Texas, and *minus* the Central Arizona marketing area.

Major criteria suggesting consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for both orders. Addition of the currently-unregulated Texas counties will result in the regulation of no additional handlers, and will reduce handlers' recordkeeping and reporting burden and the market administrator's administrative costs. In the initial consolidation report, the Central Arizona area was found to have a minimal association with the New Mexico-West Texas and Texas order areas. Further analysis showed that it has a much more significant degree of association with the Clark County, Nevada, portion of the current Great Basin order area.

The revised suggested consolidated Southwest area would include 4 fewer fully regulated pool plants as a result of the removal of the Central Arizona area.

*9. ARIZONA-LAS VEGAS—*an eleventh marketing area composed of the current marketing area of the Central Arizona order and the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.*

The major criterion suggesting consolidation is sales overlap between the sole Las Vegas, Nevada, handler and handlers regulated under the Central Arizona order in both Clark County, Nevada, and unregulated portions of northern Arizona. In addition,

both areas exchange significant volumes of bulk and packaged milk with Southern California.

The suggested Arizona-Las Vegas marketing area would include five fully regulated handlers, with no additional handlers regulated because of the addition of the currently-unregulated northern Arizona area.

*10. WESTERN—current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders, *minus Clark County, Nevada. Major criteria suggesting

consolidation include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also share a similar multiple component pricing plan. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

Collection of more-detailed data indicates that the strength of earlier relationships between the former Great Basin and Lake

Mead orders that justified their 1988 merger have dwindled significantly, with the Las Vegas area now more closely related to southern California and competing most heavily with Central Arizona handlers.

11. PACIFIC NORTHWEST—current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon. The degree of association with other marketing areas is insufficient to warrant consolidation.

Following is a table summarizing relevant data for the consolidated markets.

CONSOLIDATED MARKET SUMMARY

[Based on October 1995 Data]

Consolidated order	Number of fully regulated distributing plants		Total producer milk (1000 lbs.)		Combined class I use (percent)		Weighted average utilization value	
	Initial report	Revised report	Initial report	Revised report ¹	Initial report	Revised report	Initial report	Revised report
Northeast	85	92	1,934,833	2,102,620	46.7	49.0	\$13.44	\$13.49
Appalachian	25	29	320,198	² 412,813	82.5	81.5	14.11	13.94
Florida	18	16	³ 200,397	204,541	88.3	88.3	15.05	15.05
Southeast	38	40	⁴ 443,921	442,705	84.3	84.3	14.26	14.25
Mideast	68	68	⁵ 1,140,952	1,103,366	57.8	57.2	12.96	12.94
Upper Midwest	27	39	⁶ 1,046,539	1,354,209	⁷ 34.2	⁸ 37.6	12.59	12.62
Central	42	30	⁹ 932,929	599,334	50.6	53.5	13.15	13.21
Southwest	31	26	861,307	680,232	48.3	48.1	13.36	13.39
Arizona-Las Vegas	N/A	7	N/A	¹⁰ 181,075	N/A	48.9	N/A	13.26
Western	14	11	304,793	293,714	¹¹ 31.7	¹² 29.6	12.79	12.78
Pacific Northwest	23	21	501,257	493,207	36.3	35.6	12.45	12.44
Total	371	379	7,687,126	7,867,816	N/A	N/A	N/A	N/A

Consolidated Market Summary Table Footnotes

¹ Initial report producer deliveries, adjusted to include only those handlers who would be fully regulated (i.e. Status = 1) in the revised suggested marketing area, unless otherwise noted. When applicable, producer deliveries for currently non-Federally regulated plants which would be fully regulated in a revised suggested consolidated order are included in the appropriate suggested consolidated order.

² Includes producer milk for one currently fully regulated plant which would be exempt (i.e. Status = 3B) in the Appalachian market in the revised preliminary report.

³ Excludes producer milk for one currently fully regulated F.O. 7 plant which would be regulated in the Florida market in the initial preliminary report.

⁴ Includes producer milk for one currently fully regulated F.O. 7 plant which would be regulated in the Florida market in the initial preliminary report.

⁵ Producer milk for F.O. 44 is included. Producer milk for a F.O. 32 handler who would be pooled under the initially-suggested Mideast market is included in the initially-suggested Central market.

⁶ Producer milk for F.O. 30 and F.O. 68 only.

⁷ A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 15.3% combined Class I utilization.

⁸ A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 19.7% combined Class I utilization.

⁹ Includes producer milk for a F.O. 32 handler that would be in the initially-suggested Mideast market.

¹⁰ Excludes producer milk for one currently fully regulated F.O. 139 plant and one currently unregulated plant which would be regulated in the Arizona-Las Vegas market in the revised preliminary report.

¹¹ A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.8% combined Class I utilization.

¹² A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.6% combined Class I utilization.

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