

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1051**

[Doc. No. AO-15-0071; AMS-DA-14-0095]

**Milk in California; Notice of Hearing on a Proposal To Establish a Federal Milk Marketing Order****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held to consider and take evidence on a proposal that would establish a Federal milk marketing order to regulate the handling of milk in California. The proposed marketing area would incorporate the entire state of California. USDA received four proposals from interested parties, some that include certain milk pricing and pooling provisions not found in current Federal milk orders. The proposals incorporate the same dairy product classification system used throughout the Federal milk marketing order system. Additional features would recognize California quota premium and fluid milk fortification values. The proposals noticed herein would not modify any existing Federal milk marketing orders.

**DATES:** The hearing will convene at 9:00 a.m. on Tuesday, September 22, 2015.**ADDRESSES:** The hearing will be held at the Clovis Veterans Memorial District Building, 808 Fourth Street, Clovis, California 93612; telephone (559) 299-0471. If still ongoing, the hearing will be held on October 22 and 23, 2015, at the Piccadilly Inn Airport Hotel, 5115 E. McKinley Avenue, Fresno, California 93727; telephone (559) 375-7760.**FOR FURTHER INFORMATION CONTACT:**

William Francis, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Program, Stop 0231—Room 2969—S, 1400 Independence Avenue SW., Washington, DC 20250-0231; (202) 720-6274; email address: [william.francis@ams.usda.gov](mailto:william.francis@ams.usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact Diane Hirsch, AMS Dairy Program, at (425) 487-5601, email: [dhirsch@fmmaseattle.com](mailto:dhirsch@fmmaseattle.com), before the hearing begins.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and,

therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Clovis Veterans Memorial District, Clovis, California, beginning at 9:00 a.m. on Tuesday, September 22, 2015, with respect to the proposed establishment of a marketing agreement and order (order) regulating the handling of milk in the State of California.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (Act), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to:

(a) Receive evidence with respect to the economic and marketing conditions which relate to the proposed marketing agreement and order, hereinafter set forth, and any appropriate modifications thereof;

(b) Determine whether the handling of milk in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determine whether there is need for a marketing agreement or order regulating the handling of milk in the area;

(d) Determine the economic impact of the proposed order on the industry in the proposed marketing area and on the public affected by such program; and

(e) Determine whether the proposed marketing agreement and order or appropriate modifications thereof would tend to effectuate the declared policy of the Act.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA). The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered small businesses. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may offer modifications of these proposals for the purpose of tailoring their applicability to small businesses.

**Executive Order 12988, Civil Justice Reform**

The marketing order proposed herein has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. If adopted, operation of state law is such that the state law may be suspended, in part or in whole, if a Federal order is implemented.

**Preliminary Economic Analysis and Detailed Analysis Information**

A preliminary economic analysis as well as additional detailed analysis, data and information used in developing the preliminary economic analysis are presented at the AMS Dairy Programs Web site, [www.ams.usda.gov/dairy](http://www.ams.usda.gov/dairy).

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the United States Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction to review USDA's decision on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Administrative Law Judge at the hearing with four (4) copies of such exhibits for the official record. Additional copies should be made available for the use of other hearing participants. Any party that has submitted a proposal noticed herein, when participating as a witness, is required to make their testimony—if prepared as an exhibit—and any other exhibits, available to USDA officials prior to the start of the hearing on the day of their appearance. Individual dairy farmers are not subject to this requirement.

The hearing will continue until such time as determined to have ended by the presiding Administrative Law Judge. The schedule for the next session will be announced at the time of adjournment. Such reconvening date and time will also be posted on the

AMS-Dairy Programs Web site at <http://www.ams.usda.gov/dairy>.

The provisions of the proposed marketing order designated 7 CFR part 1051, as set forth below, have not received the approval of USDA.

#### List of Subjects in 7 CFR Part 1051

Milk marketing orders.

■ 1. The authority citation for 7 CFR part 1051 reads as follows:

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

■ 2. Testimony is invited on the following proposals or appropriate modifications to such proposals.

#### Proposal Number 1

*Submitted by California Dairies, Inc.; Dairy Farmers of America, Inc.; and Land O' Lakes, Inc.*

■ 3. This proposal seeks to add a new part 1051 to read as follows:

### PART 1051—MILK IN THE CALIFORNIA MARKETING AREA

Sec.

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**Authority:** 7 U.S.C. 601–674

#### Subpart A—Order Regulating Handling

##### General Provisions

###### § 1051.1 General provisions.

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

#### Definitions

###### § 1051.2 California marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions: All of the State of California.

###### § 1051.3 Route disposition.

See § 1000.3.

###### § 1051.4 Plant.

See § 1000.4.

###### § 1051.5 Distributing plant.

See § 1000.5.

###### § 1051.6 Supply plant.

See § 1000.6.

###### § 1051.7 Pool plant.

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

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

(b) Any distributing plant located in the marketing area which during the month processed at least 15 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A plant that is located in the marketing area which during the month receives milk from a producer located in the marketing area or from a cooperative marketing the milk of a producer

located in the marketing area pursuant to § 1051.9(c).

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

(d) A supply plant located outside the marketing area (except a plant described in § 1051.7(c)(1)) from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (a) and (b) of this section is not less than 50 percent of the Grade A milk received from dairy farmers and handlers described in § 1000.9(c), including milk diverted pursuant to § 1051.13, subject to the following conditions:

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

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

(e) The applicable shipping percentages of paragraphs (d) of this section and § 1051.13(d)(2), and (d)(3) may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping or diversion percentage must be issued in writing at least one day before the effective date.

(f) 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 the order in this part, or the plant has automatic pooling status under the other Federal order; and

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

**§ 1051.8 Nonpool plant.**

See § 1000.8.

**§ 1051.9 Handler.**

See § 1000.9.

**§ 1051.10 Producer-handler.**

*Producer-handler* means a person who:

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

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

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

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

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

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

**§ 1051.11 [Reserved]**

**§ 1051.12 Producer.**

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

fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1051.13; or

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

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

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

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1051.13(d);

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

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

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

#### § 1051.13 Producer milk.

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

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

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

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

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

(1) Milk of a dairy farmer shall not be eligible for diversion until at least five days' production of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion until at least five days' production of the dairy farmer has been physically received as producer milk at a pool plant during the first month the dairy farmer is re-associated with the market;

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

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

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

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

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

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

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

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

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

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

#### § 1051.14 Other source milk.

See § 1000.14.

#### § 1051.15 Fluid milk product.

See § 1000.15.

#### § 1051.16 Fluid cream product.

See § 1000.16.

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

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

(b) *Quota premium* means the value established pursuant to the California Food and Agriculture Code. *Quota premium* and *quota premium value* mean the value per pound of nonfat solids, as adjusted by the regional quota adjusters, where and as applicable.

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

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

#### § 1051.18 Cooperative association.

See § 1000.18.

#### § 1051.19 Commercial food processing establishment.

See § 1000.19.

#### Market Administrator

#### § 1051.25 Market administrator.

See § 1000.25.

#### Administrative Provisions

#### § 1051.26 Continuity and separability of provisions.

See § 1000.26.

**Handlers****§ 1051.27 Handler responsibility for records and facilities.**

See § 1000.27.

**§ 1051.28 Termination of obligations.**

See § 1000.28.

**Reports****§ 1051.30 Reports of receipts and utilization.**

Each handler shall report monthly so that the market administrator's office receives the report on or before the 6th day after the end of the month, in the detail and on the prescribed forms, as follows:

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

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

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

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

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

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

(ii) Receipts of other source milk;

(iii) Receipts of all condensed skim and dry powder; and

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

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

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

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

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

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

(2) The utilization or disposition of such receipts.

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

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

**§ 1051.31 Producer delivery and payroll reports.**

(a) On or before the 6th day after the end of each month, each handler that operates a pool plant pursuant to § 1051.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer deliveries for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1051.73(f); and any other information deemed necessary by the Market Administrator.

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

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

**§ 1051.32 Other reports.**

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

**Subpart B—Milk Pricing****Classification of Milk****§ 1051.40 Classes of utilization.**

See § 1000.40.

**§ 1051.41 [Reserved]****§ 1051.42 Classification of transfers and diversions.**

See § 1000.42.

**§ 1051.43 General classification rules.**

See § 1000.43.

**§ 1051.44 Classification of producer milk.**

See § 1000.44.

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

See § 1000.45.

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

See § 1000.50.

**§ 1051.51 Class I differential and price.**

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

**§ 1051.52 Adjusted Class I differentials.**

See § 1000.52.

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

See § 1000.53.

**§ 1051.54 Equivalent price.**

See § 1000.54.

**Marketwide Service Payments****§ 1051.55 Transportation credits.**

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

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

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

(b) Transportation credits shall apply to the following:

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

(i) Transportation Zone 1—deliveries to plants located in the counties of Los

Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura originating from dairy farms located in the counties of Riverside, San Diego, or San Bernardino;

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

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

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

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

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

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

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

#### **§ 1051.56 Mileage rate for transportation credits.**

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

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

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

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

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

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

(6) Compute the per hundredweight rate as follows:

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

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

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

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

#### **Producer Prices**

##### **§ 1051.60 Handler's value of milk.**

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

(a) Class I value.

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

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

(3) Deduct for each pound of milk solids-not-fat in nonfat dry milk used

for fortifying Class I products during the current month a maximum charge equal to the current Class I solids not fat price [the Class I skim milk price in the \$2.10 zone divided by 9], less the current Class IV solids not fat price established in § 1051.53. In no case shall the deduction be less than zero cents (\$0.00) nor more than nineteen and eighty-five hundredths cents (\$0.1985); and

(4) Deduct for each pound of milk solids-not-fat in condensed skim milk used for fortifying Class I products during the current month a maximum charge equal to the current Class I solids not fat price [the Class I skim milk price in the \$2.10 zone divided by 9], less the current Class II solids not fat price established in § 1051.53. In no case shall the deduction be less than zero cents (\$0.00) nor more than nine and eighty-seven hundredths cents (\$0.0987).

(b) Class II value.

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

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

(c) Class III value.

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

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

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

(d) Class IV value.

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

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

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

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

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I

pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

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

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

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

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

For each month the market administrator shall compute producer component prices per pound for butterfat, protein, and other solids. The report of any handler who has not made payments required pursuant to § 1051.71 for the preceding month shall not be included in the computation of the producer component prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer component prices in the following manner:

(a) Combine into one total the values computed pursuant to § 1051.60 for all handlers required to file reports prescribed § 1051.50;

(1) Subtract the value of quota premium for the month as reported to the Market Administrator by CDFa;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1051.60 by the protein price, other solids price, and the butterfat price, respectively;

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

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

(1) The total hundredweight of producer milk; and

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

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

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

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

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

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

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

**§ 1051.62 Announcement of producer prices.**

On or before the 11th day after the end of each month, the market administrator shall announce publicly the following prices and information:

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

**Subpart C—Payments for Milk**

**Producer Payments**

**§ 1051.70 Producer-settlement fund.**

See § 1000.70.

**§ 1051.71 Payments to the producer-settlement fund.**

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 13th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1051.60.

(b) The sum of:

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

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

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1051.60(i) by the producer price differential as

adjusted pursuant to § 1051.75 for the location of the plant from which received.

**§ 1051.72 Payments from the producer-settlement fund.**

No later than the 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 § 1051.71(b) exceeds the amount computed pursuant to § 1051.71(a); and to each cooperative 9(c) handler the quota premium value of its producer milk as reported by CDFA. If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

**§ 1051.73 Payments to producers and to cooperative associations.**

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

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 30th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 15th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

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

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

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

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

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

(vi) 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

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

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

(c) Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c). On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

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

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

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat

price for the month. The Class I price to be used shall be that price effective at the location of the receiving plant;

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

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

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

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

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

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

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

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

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

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

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

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

(d) If a handler has not received full payment from the market administrator pursuant to § 1051.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to

the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

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

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

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

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

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

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

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

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

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

#### § 1051.74 [Reserved]

#### § 1051.75 Plant location adjustments for nonpool milk.

For purposes of making payments for nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1051.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to § 1000.76.

#### § 1051.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

#### § 1051.77 Adjustment of accounts.

See § 1000.77.

#### § 1051.78 Charges on overdue accounts.

See § 1000.78.

### Administrative Assessment and Marketing Service Deduction

#### § 1051.85 Assessment for order administration.

On or before the payment receipt date specified under § 1051.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

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

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

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1051.60(h) and (i); and

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

#### § 1051.86 Deduction for marketing services.

See § 1000.86.

### Subpart D—Miscellaneous Provisions

#### § 1051.90 Dates

See § 1000.90.

#### Proposal Number 2

*Submitted by the Dairy Institute of California.*

■ 4. This proposal seeks to add a new part 1051 to read as follows:

### PART 1051—MILK IN THE CALIFORNIA MARKETING AREA

#### Subpart A—Order Regulating Handling

Sec.

##### General Provisions

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1051.3 Route disposition.

1051.4 Plant.

1051.5 Distributing plant.

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1051.9 Handler.

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1051.12 Producer.

1051.13 Producer milk.

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#### Market Administrator, Continuing Obligations, and Handler Responsibilities

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1051.76 Payments by a handler operating a partially regulated distributing plant.

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**Administrative Assessment and Marketing Service Deduction**

1051.85 Assessment for order administration.

1051.86 Deduction for marketing services.

**Subpart D—Miscellaneous Provisions**

1051.90 Dates.

Authority: 7 U.S.C. 601—608

**Subpart A—Order Regulating Handling****General Provisions****§ 1051.1 General provisions.**

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

**Definitions****§ 1051.2 California marketing area.**

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions: All of the State of California.

**§ 1051.3 Route Distribution**

See § 1000.3.

**§ 1051.4 Plant**

See § 1000.4.

**§ 1051.5 Distributing plant.**

See § 1000.5.

**§ 1051.6 Supply plant.**

See § 1000.6.

**§ 1051.7 Pool plant.**

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

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § \_\_\_.7(b) of any other Federal milk order, from which during the month 15 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are

disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 15 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

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

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

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

(ii) Plants of producer-handlers;

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

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

(2) The percentage of Grade A milk received from dairy farmers by a supply plant described in paragraph (c) of this section that must be shipped to (and physically unloaded into) plants described in paragraph (c)(1)(i) through (iv) of this section shall be adjusted upward or downward based on the average Class I utilization percentage of all producer milk under the order for the three prior months for which such information is available, as described in

paragraphs (c)(2)(i) through (viii) of this section. The market administrator shall announce any adjustment to the supply plant shipping percentages pursuant to this paragraph at least 15 days prior to the month that such adjustments shall be effective as follows:

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

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

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

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

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

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

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

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

(3) A supply plant under this paragraph and handlers described in §§ 1051.9 (c) or 1051.9 (d) that receives quota milk from producers must make qualifying shipments of no less than 60 percent of such milk, or an equivalent

volume (including milk diverted pursuant to § 1051.13), to plants described in § 1051.7(a), (b), or (d).

(4) During the months of July through February, the operator of a supply plant under this paragraph shall make qualifying shipments of up to 85 percent of the quota milk, or an equivalent volume of non-quota milk it physically receives from producers in its own plants (including milk diverted pursuant to § 1051.13) to pool distributing plants for Class I uses if requested by the operator of such pool distributing plant or as directed by the market administrator, subject to the following conditions:

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

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

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

(d) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of the is section and subject to 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 from at such plant or diverted therefrom by the plant operator in Class I or Class II products; and

(3) The operator of the unit has filed a written request 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.

(e) A system of 2 or more supply plants operated by one or more handlers may qualify for pooling by meeting the shipping requirements of paragraph (c)

of this section in the same manner as a single plant subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area. Cooperative associations or other handlers may not use shipments pursuant to § 1051.9(c) or § 1051.9(d) to qualify supply plants located outside the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a system for the period of August through July of the following year. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the stem fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through July. The handler(s) that established a system may add a plant operated by such handler(s) to a system if such plant has been a pool plant each of the 6 prior months and would otherwise be eligible to be in a system, upon written request to the market administrator no later than the 15th day of the prior month. In the event of an ownership change or the business failure of a handler that is a participant in a system, the system may be reorganized to reflect such changes if a written request to file a new marketing agreement is submitted to the market administrator; and

(3) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(f) The applicable shipping percentages of paragraphs (c) and (e) of this section and § 1051.13.(d)(2) and (d)(3) may be increased or decreased, for all of part of the marketing area, by the market administrator if the market administrator finds that such

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

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

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

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

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

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

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

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

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated

separately from the pool 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.

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

#### § 1051.8 Nonpool plant.

See § 1000.8.

#### § 1051.9 Handler.

*Handler* means:

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

(b) Any person who receives packaged fluid milk products from a plant for resale and distribution to retail or wholesale outlets, any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any pool or nonpool plant, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. Persons who qualify as handlers only under this paragraph are not subject to the payment provisions of §§ 1051.70, 1051.71, 1051.72, 1051.73, 1051.76, and 1051.85.

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer and delivers to pool plants or diverts to nonpool plants pursuant to § 1051.13. The operator of a pool plant receiving milk from a cooperative association may be the handler for such milk if both parties notify the market administrator of this agreement prior to the time that the milk is delivered to the pool plant and the plant operator purchases the milk on the basis of farm bulk tank weights and samples.

(d) Any person, except a cooperative association, who operates a pool plant or nonpool plant 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 § 1051.13, subject to the following conditions:

(1) Such person (who, if qualified pursuant to this paragraph, shall be known as a “proprietary bulk tank handler”) must operate a plant located in the marketing area at which milk is processed only into Class II, Class III, or Class IV products;

(2) 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.

#### § 1051.10 Producer-handler.

*Producer handler* means a person who operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds, and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) Requirements for designation. Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (5) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month:

(1) The care and management of the dairy animals and the other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control, ownership, and management of the producer-handler and are operated as the producer-handler’s own enterprise and at its sole risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control, ownership, and management of the producer-handler and is operated as the producer-handler’s own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler’s operation; nor is any other handler so associated with the producer-handler’s operation.

(5) No milk produced by the herd(s) or on the farm(s) that supply milk to the producer-handler’s plant operation is:

(i) Subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns, or

(ii) Marketed in any part as Class I milk to the non-pool distributing plant of any other handler.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation, under the sole and exclusive ownership of the producer-handler.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are solely owned, operated, and which the producer-handler has designated as a source of milk supply for the producer-handler’s plant operation. However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler’s operation shall not be considered a part of the producer-handler’s milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely owned by, and directly operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (5) of this section are not continuing to be met, or under any of the conditions described in paragraphs (c)(1), (2), or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-

handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1051.76(a) and payments into the Order 1131 administrative fund, provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or § 1051.76(a).

(g) No handler operating a pool distributing plant shall be considered a producer-handler, unless it meets all of the conditions specified in § 1051.10(a) through (e), regardless of whether or not the handler owns producer quota pursuant to § 1051.11.

#### **§ 1051.11 California quota program and producer quota.**

(a) *California Quota Program* means the applicable provisions of the California Food and Agriculture Code, and related provisions of the pooling plan administered by the California Department of Food and Agriculture (CDFA).

(b) *Producer Quota* is an individual producer's quota holdings of butterfat and nonfat milk solids components as defined by CDFA.

(1) *Quota milk* means the producer's quota holdings of butterfat and the skim equivalent of the producer's holdings of nonfat milk solids components that qualify as producer milk under

§ 1051.13. The skim equivalent of a producer's nonfat solids components and butterfat that qualify as producer milk under the order, and which are in excess of the producer's quota holdings of these components are designated as overquota butterfat and overquota nonfat milk solids, respectively.

(2) The market administrator shall keep a record of each producer's quota holdings and shall obtain monthly updates from CDFA concerning any changes to each producer's quota holdings.

(3) The market administrator shall report monthly the amount of each California producer's milk fat and nonfat solids components that were qualified as producer milk under the order to CDFA.

(4) Each handler shall report monthly by 9 days after the end of the month the disposition of quota and overquota butterfat and nonfat milk solids components for that month.

#### **§ 1051.12 Producer.**

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

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1051.13; or

(2) Received by a handler described in § 1051.9(c) or (d).

(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 § 1051.13(d);

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

#### **§ 1051.13 Producer milk.**

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

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1051.9(c) or (d). 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 § 1051.9(c) or (d) 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 § 1051.9(c) or (d) to a nonpool plant located in the marketing area, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least the lessor of one day's production or 48,000 pounds of milk of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion unless at least the lessor of one day's production, or 48,000 pounds of milk of the dairy farmer has been physically received as producer milk at a pool plant during the first month the dairy farmer is re-associated with the market;

(2) The quantity of milk diverted by a handler described in § 1051.9(c) and (d) may not exceed a percentage equal to 100 percent minus the supply plant shipping percentage specified in § 1051.7(c) (or as adjusted pursuant to § 1051.7(c)(2)) of the producer milk receipts reported by the handler pursuant to § 1051.30(c), provided that not less than 10 percent of such receipts are delivered to plants described in § 1051.7(c)(1)(i) through (iii). These percentages are subject to any adjustments that may be made pursuant to § 1051.7(c)(2)(i) through (viii) or any additional adjustments made pursuant to § 1051.7 (f); and

(3) The quantity of milk diverted to nonpool plants by the operator of a pool plant described in § 1051.7(a) or (b) may not exceed a percentage equal to 100 percent minus the supply plant shipping percentage specified in § 1051.7(c) (or as adjusted pursuant to § 1051.7 (c)(2)) of the Grade A milk received from dairy farmers (except dairy farmers described in § 1051.12(b)) including milk diverted pursuant to § 1051.13; and

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

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

(f) The quantity of milk reported by a handler pursuant to either § 1051.30(a)(1) or § 1051.30(c)(1) for April through February may not exceed 125 percent, and for March may not exceed 135 percent, of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool. Milk in excess of this limit received at pool plants, other than pool distributing plants, shall be classified pursuant to § 1051.44(a)(3)(v) and § 1051.44(b). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants in excess of the previous month's pooled volume shall not be subject to the 125 or 135 percent limitation;

(2) Producer milk qualified pursuant to § 13 of any other Federal Order and continuously pooled in any Federal Order for the previous six months shall not be included in the computation of the 125 or 135 percent limitation;

(3) The market administrator may waive the 125 or 135 percent limitation:

(i) For a new handler on the order, subject to the provisions of § 1051.13(f)(4), or

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

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

#### § 1051.14 Other source milk.

*Other source milk* means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1051.9(c) and (d), or pool plants;

(b) Products (other than fluid milk products, fluid cream products, and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

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

#### § 1051.15 Fluid milk products.

See § 1000.15.

#### § 1051.16 Fluid cream product.

See § 1000.16.

#### § 1051.17 [Reserved]

#### § 1051.18 Cooperative association.

See § 1000.18.

#### § 1051.19 Commercial food processing establishment.

See § 1000.19.

### Market Administrator, Continuing Obligations, and Handler Responsibilities

#### § 1051.25 Market administrator.

See § 1000.25.

#### § 1051.26 Continuity and separability of provisions.

See § 1000.26.

#### § 1051.27 Handler responsibility for records and facilities.

See § 1000.27.

#### § 1051.28 Termination of obligations.

See § 1000.28.

### Handler Reports

#### § 1051.30 Reports of receipts and utilization.

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

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

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1051.50(r), 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 § 1051.9(c) or (d); and

(ii) Receipts of milk from handlers described in § 1051.9(c) or (d);

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

(j) 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) or (d) 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 § 1051.50(r), 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.

#### § 1051.31 Producer and payroll reports.

(a) On or before the 6th day after the end of each month, each handler that operates a pool plant pursuant to § 1051.7 and each handler described in § 1051.9 (c) or (d) shall report to the market administrator its producer deliveries for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1051.73(e)(1) through (4).

(b) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1051.7 and each handler described in § 1051.9 (c) and (d) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1051.73(e).

(c) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1051.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

#### § 1051.32 Other reports.

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

### Subpart B—Milk Pricing

#### Classification of Milk

##### § 1051.40 Classes of utilization.

Except as provided in § 1051.42, all skim milk and butterfat required to be reported pursuant to § 1051.30 shall be classified as follows:

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

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

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

(3) In shrinkage assigned pursuant to § 1051.43(b).

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

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

(2) Used to produce:

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

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

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing non-milk items; yogurt, including yogurt containing beverages with 20 percent or more yogurt by weight and kefir, and any other semi-solid product resembling a Class II product;

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

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

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

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products;

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

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

(3) In shrinkage assigned pursuant to § 1051.43(b).

(c) *Class III milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled;

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

(2) In shrinkage assigned pursuant to § 1051.43(b).

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

(1) Used to produce:

(i) Butter; and

(ii) Evaporated or sweetened condensed milk in a consumer-type package; and

(iii) Any milk product in dried form;

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

(3) In the skim milk equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I and in the skim milk equivalent of nonfat milk solids used to modify a fluid milk product to meet the State of California's fluid milk standards as described in the California Food and Agricultural Code; and

(4) In shrinkage assigned pursuant to § 1051.43(b).

(e) *Other uses.* Other uses include skim milk and butterfat used in any product described in this section that is dumped, used for animal feed,

destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the handler's control. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator.

**§ 1051.41 [Reserved]**

**§ 1051.42 Classification of transfers and diversions.**

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the handlers both request the same classification in another class. In either case, the classification shall be subject to the following conditions:

(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving plant after the computations pursuant to § 1051.44(a)(9) and the corresponding step of § 1051.44(b);

(2) If the transferring plant received during the month other source milk to be allocated pursuant to § 1051.44(a)(3) or the corresponding step of § 1051.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferring handler received during the month other source milk to be allocated pursuant to § 1051.44(a)(8) or (9) or the corresponding steps of § 1051.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the receiving plant.

(b) *Transfers and diversions to a plant regulated under another Federal order.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to a plant regulated under another Federal order shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from a plant regulated under another Federal order of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream

products, respectively, that are in the same category as described in paragraph (b)(1) or (2) of this section:

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

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

(i) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as other than Class I to the extent that such utilization is available for such classification pursuant to the allocation provisions of the other order;

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

(iii) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I, subject to adjustment when such information is available.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under any Federal order or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product; and

(3) In accordance with the utilization assigned to it by the market administrator if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product to an exempt plant. For this purpose, the receiving handler's utilization of skim milk and butterfat in each class, in series beginning with Class IV, shall be assigned to the extent possible to its receipts of skim milk and butterfat, in bulk fluid cream products, and bulk fluid milk products, respectively, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not a plant regulated under another order, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization, excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month, to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The transferring handler or diverting handler claims such classification in such handler's report of receipts and utilization filed pursuant to § 1051.30 for the month within which such transaction occurred; and

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

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant

from plants regulated under other Federal orders;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and plants regulated under other Federal orders;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the receiving plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization and then to all other utilization, in sequence beginning with Class IV at such nonpool plant;

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

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

#### **§ 1051.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1051.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1051.30 and shall compute separately for each pool plant, for each handler described in § 1051.9(c) or (d), the pounds of skim milk and butter fat, respectively, in each class in accordance with §§ 1051.40 and 1051.42 and paragraph (b) of this section.

(b) *Shrinkage and Overage.* For purposes of classifying all milk reported by a handler pursuant to § 1051.30, the market administrator shall determine the shrinkage or overage of skim milk and butterfat for each pool plant and each handler described in § 1051.9(c) or (d) by subtracting total utilization from total receipts. Any positive difference shall be shrinkage, and any negative difference shall be overage.

(1) Shrinkage incurred by pool plants qualified pursuant to § 1051.7 shall be assigned to the lowest-priced class to the extent that such shrinkage does not exceed:

(i) Two percent, except for a pool plant qualified pursuant to § 1051.7(b)—two percent plus any additional percentage calculated pursuant to § 1051.43(b)(1)(v), of the total quantity of milk physically received at the plant directly from producers' farms on the basis of farm weights and tests;

(ii) Plus 1.5 percent, except for a pool plant qualified pursuant to § 1051.7(b)—1.5 percent plus any additional percentage calculated pursuant to § 1051.43(b)(1)(v), of the quantity of bulk milk physically received on a basis other than farm weights and tests, excluding concentrated milk received by agreement for other than Class I use;

(iii) Plus 0.5 percent, except for a pool plant qualified pursuant to § 1051.7(b)—0.5 percent plus any additional percentage calculated pursuant to § 1051.43(b)(1)(v), of the quantity of milk diverted by the plant operator to another plant on a basis other than farm weights and tests; and

(iv) Minus 1.5 percent of the quantity of bulk milk transferred to other plants,

excluding concentrated milk transferred by agreement for other than Class I use.

(v) The additional percentage to be added pursuant to subparagraphs (i), (ii), and (iii) for a pool plant qualified pursuant to § 1051.7(b) is the percentage of ultra-pasteurized or aseptically processed fluid milk and cream products of the total fluid milk and cream products produced by the plant during the month times 0.03, rounded to the nearest tenth of a percent.

(2) A handler described in § 1051.9(c) or (d) that delivers milk to plants on a basis other than farm weights and tests shall receive a lowest-priced-class shrinkage allowance of 0.5 percent of the total quantity of such milk picked up at producers' farms.

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

(c) If any of the water but none of the nonfat solids contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids. If any of the nonfat solids contained in the milk from which a product is made are removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water and nonfat solids originally associated with such solids, determined on a protein equivalent basis.

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under § 1051.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1051.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

**§ 1051.44 Classification of producer milk.**

For each month the market administrator shall determine for each handler described in § 1051.9(a) for each pool plant of the handler separately and for each handler described in § 1051.9(c) and (d) of this section the classification of producer milk by allocating the handler's receipts of skim milk and butterfat to the handler's gross utilization of such receipts pursuant to § 1051.43(b)(3) as follows:

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

(1) Subtract from the pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal order in the immediately preceding month;

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

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

(2) Subtract from the pounds of skim milk in Class II the pounds of skim milk in the receipts of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product in Class II (excluding the quantity of such skim milk that was classified as Class IV milk pursuant to § 1051.40(d)(3)). To the extent that the receipts described in this paragraph exceed the gross Class II utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

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

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

(ii) Receipts of fluid milk products and bulk fluid cream products for which appropriate health approval is not established and from unidentified sources;

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

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

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

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

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

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

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

(ii) Subtract from the result in paragraph (a)(5)(i) the pounds of skim milk in receipts of producer milk and fluid milk products from other pool plants.

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

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

(8) Subtract from the pounds of skim milk remaining in each class at the plant receipts of skim milk in fluid milk products from an unregulated supply plant that were not previously subtracted in this section and that were not offset by transfers or diversions of fluid milk products to the unregulated supply plant from which fluid milk products to be allocated at this step were received. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV.

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

(i) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1051.45(a); or

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

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1051.42(a).

(11) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class IV.

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraphs (a) and (b) of this section.

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

(a) Whenever required for the purpose of allocating receipts from plants regulated under other Federal orders pursuant to § 1051.44(a)(9) and the corresponding step of § 1051.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in Class I during the month of skim milk and butterfat, respectively, in producer milk of all handlers. The estimate shall be based upon the most current available data and shall be final for such purpose.

(b) The market administrator shall report to the market administrators of other Federal orders as soon as possible after the handlers' reports of receipts and utilization are received, the class to which receipts from plants regulated under other Federal orders are allocated pursuant to §§ 1051.43(d) and 1051.44 (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter any change in allocation required to correct errors disclosed on the verification of such report.

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

(d) The market administrator shall report to each cooperative association which so requests, the percentage of producer milk delivered by members of the association that was used in each class by each handler receiving the milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by the handler.

**Class Prices**

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

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in paragraphs (a), (b), (e), (g), (h), and (s) of this section shall be based on a weighted average of the most recent 2 weekly prices announced by the United States Department of Agriculture's Agricultural Marketing Service (AMS) in the National Dairy Product Sales

Report (NDPSR) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (i) through (r) of this section shall be based on a weighted average for the preceding month of Western Dairy Product weekly prices described in paragraphs (n) through (q) of this section as determined and announced by AMS in the NDPSR on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (f) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1051.52, plus the adjustments to Class I prices specified in §§ 1005.51(b), 1006.51(b) and 1007.51(b) plus the higher of the advanced pricing factors computed in paragraph (s)(1) or (2) of this section.

(c) *Class I nonfat solids price.* The Class I nonfat solids price per pound shall be the Class I skim milk price per hundredweight multiplied by 0.76, with the resulting number divided by 9.

(d) *Class I fluid carrier price.* The Class I fluid carrier is that portion of Class I skim milk that is not nonfat milk solids. The Class I fluid carrier price per pound shall be the Class I skim milk price per hundredweight multiplied by 0.24, with the resulting number divided by 91.

(e) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1051.52 divided by 100, plus the adjustments to Class I prices specified in §§ 1005.51(b), 1006.51(b) and 1007.51(b) divided by 100 plus the advanced butterfat price computed in paragraph (s)(3) of this section.

(f) *The Class II price* per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class II skim milk price plus 3.5 times the Class II butterfat price.

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

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

(i) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus \$0.007.

(j) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class III skim milk price plus 3.5 times the butterfat price.

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

(l) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class IV skim milk price plus 3.5 times the butterfat price.

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

(n) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Western Dairy Product Price for butter survey price reported by the Department for the month, less the Western Butter Manufacturing Cost, with the result multiplied by 1.211.

(1) The Western Dairy Product Price for butter shall be computed at the weighted average of the Grade AA butter prices reported to AMS under the mandatory price reporting program by plants manufacturing butter that are located in the states of Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington. The weekly price described in this paragraph shall be reported in the National Dairy Product Sales Report (NDPSR). In the event that a Western Dairy Product Price for butter cannot be reported, then the price used in the calculations set forth in § 1051.50(n) shall be the national weighted average of the preceding month's weekly prices for Grade AA butter as determined and announced by AMS in the NDPSR on or before the 5th day of the month and shall apply to all milk received during the preceding month, less 2.08 cents per pound.

(2) The Western Butter Manufacturing Cost shall be the cost obtained from a survey of butter manufacturing plants in the western region described in § 1051.50(n)(1), which shall be conducted by AMS consistent with the methodology used by the California Department of Food and Agriculture in developing its manufacturing cost for

California butter plants, with the cost for California butter plants, with the further addition of butter marketing costs. In the event that a Western Butter Manufacturing Cost is not available, the butter manufacturing cost used in the calculation set forth in § 1051.50(n) shall be 17.24 cents.

(o) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the Western Dairy Product Price nonfat dry milk survey price reported by AMS under the mandatory reporting program, less the Western Nonfat Dry Milk Manufacturing Cost and multiplying the result by 0.99.

(1) The Western Dairy Product Price for nonfat dry milk shall be computed at the weighted average of the Grade A and Extra Grade nonfat dry milk prices reported to AMS under the mandatory price reporting program by plants manufacturing nonfat dry milk that are located in the states of Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington. The weekly price described in this paragraph shall be reported in the National Dairy Product Sales Report (NDPSR). In the event that a Western Dairy Product Price for nonfat dry milk cannot be reported, then the price used in the calculations set forth in § 1051.50(o) shall be the national weighted average of the preceding month's weekly prices for Grade A and Extra Grade nonfat dry milk as determined and announced by AMS in the NDPSR on or before the 5th day of the month and shall apply to all milk received during the preceding month, less 2.57 cents per pound.

(2) The Western Nonfat Dry Milk Manufacturing Cost shall be the cost obtained from a survey of nonfat dry milk manufacturing plants in the western region described in § 1051.50(o)(1), which shall be conducted by the Department consistent with the methodology used by the California Department of Food and Agriculture in developing its manufacturing cost for California nonfat dry milk plants, with the further addition of nonfat dry milk marketing costs. In the event that a Western Nonfat Dry Milk Manufacturing Cost is not available, the nonfat dry milk manufacturing cost used in the calculation set forth in § 1051.50(o) shall be 19.97 cents.

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

(1) Compute the Western Dairy Product Price for Cheddar Cheese as the weighted average of the weekly 40-pound block cheddar cheese prices

reported to AMS under the mandatory price reporting program by plants manufacturing cheddar cheese that are located in the states of Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington. The weekly price described in this paragraph shall be reported in the National Dairy Product Sales Report (NDPSR). In the event that a Western Dairy Product Price for 40-pound cheddar cheese blocks cannot be reported, then the price used in the calculations set forth in § 1051.50(p)(2) shall be the national weighted average of the preceding month's weekly prices for 40-pound cheddar cheese blocks as determined and announced by AMS in the NDPSR on or before the 5th day of the month and shall apply to all milk received during the preceding month, less 3.40 cents per pound.

(2) Subtract the Western States Cheese Manufacturing Cost from the price computed pursuant to paragraph (p)(1) of this section and multiply the result by 1.383;

(3) The Western Cheddar Cheese Manufacturing Cost shall be the per pound cost obtained from a survey of cheddar cheese manufacturing plants in the western region described in § 1051.50(p)(1), which shall be conducted by the Department consistent with the methodology used by the California Department of Food and Agriculture in developing its manufacturing cost for California cheddar cheese plants, with the further addition of 40-pound block cheddar cheese marketing costs. In the event that a Western Cheddar Cheese Manufacturing Cost is not available, the cheddar cheese manufacturing cost used in the calculations set forth in § 1051.50(p)(2) and § 1051.50(p)(4)(i) shall be 22.91 cents.

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

(i) Subtract the Western States Cheese Manufacturing Cost from the price computed pursuant to paragraph (p)(1) of this section and multiply the result by 1.572; and

(ii) Subtract 0.9 times the butterfat price computed pursuant to paragraph (n) of this section from the amount computed pursuant to paragraph (p)(4)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (p)(4)(ii) of this section by 1.17.

(q) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Subtract the Western Dry Whey Manufacturing Cost per pound from the per pound Western Dairy Product Price

for dry whey and multiply the result by 1.03

(2) The Western Dairy Product Price for dry whey shall be computed at the weighted average of the weekly dry whey prices reported to AMS under the mandatory price reporting program by plants manufacturing dry whey that are located in the states of Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington. The weekly price described in this paragraph shall be reported in the National Dairy Product Sales Report (NDPSR). In the event that a Western Dairy Product Price for dry whey cannot be reported, then the price used in the calculations set forth in § 1051.50(q)(1) shall be the national weighted average of the preceding month's weekly prices for dry whey as determined and announced by AMS in the NDPSR on or before the 5th day of the month and shall apply to all milk received during the preceding month, less 0.84 cents per pound.

(3) The Western Dry Whey Manufacturing Cost shall be the per pound cost obtained from a survey of dry whey manufacturing plants in the western region described in § 1051.50(q)(2), which shall be conducted by the Department consistent with the methodology used by the California Department of Food and Agriculture in developing its manufacturing cost for California dairy products, with the further addition of dry whey marketing costs. In the event that a Western Dry Whey Manufacturing Cost is not available, the dry whey manufacturing cost used in the calculation set forth in § 1051.50(q)(1) shall be 23.10 cents.

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

(1) Multiply 0.0005 by the weighted average price computed pursuant to paragraph (p)(1) of this section and round to the 5th decimal place;

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

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

(s) Advanced pricing factors. For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the weighted average of the 2 most recent NDPSR U.S. average weekly survey prices

announced before the 24th day of the month:

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

(i) Following the procedure set forth in paragraphs (p) and (q) of this section, but using the weighted average of the 2 most recent NDPSR U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price and another solids price;

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

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

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

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

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

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

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

#### **§ 1051.51 Class I differential and price.**

The Class I differential shall be the differential established for Los Angeles County, California, which is reported in § 1051.52. The Class I price shall be the price computed pursuant to § 1051.51(a) for Los Angeles County, California.

#### **§ 1051.52 Adjusted Class I differentials.**

See § 1000.52.

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

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

- (1) The Class II price;
- (2) The Class II butterfat price;
- (3) The Class III price;

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

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

- (1) The Class I price;
- (2) The Class I skim milk price;
- (3) The Class I nonfat solids price;
- (4) The Class I fluid carrier price;
- (5) The Class I butterfat price;
- (6) The Class II skim milk price;
- (7) The Class II nonfat solids price;

and

(8) The advanced pricing factors described in § 1051.50(s).

#### **§ 1051.54 Equivalent price.**

If for any reason a price or pricing constituent required for computing the prices described in § 1051.50 is not available, the market administrator shall use a price or pricing constituent determined by the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to be equivalent to the price or pricing constituent that is required.

#### **§ 1051.55 Transportation credits and transportation allowances.**

(a) Each handler operating a pool distributing plant described in § 1051.7(a) or (b) or a pool distributing plant that is part of a unit described in § 1051.7(d) that physically receives bulk milk, skim milk, or condensed skim milk from another pool plant shall receive a transportation credit for such milk computed as follows:

(1) Determine the hundredweight of milk eligible for the credit as follows:

(i) The number of hundredweights of milk received from sources described in § 1051.55 (a)(2) or the number of hundredweights of milk utilized in the plant for the processing and packaging of fluid milk products, whichever is less.

(2) Determine the transportation credit rate for milk received at the pool distributing plants specified in § 1051.55 (a) as follows:

(i) For plants located in the counties of Orange, Riverside, San Bernardino, San Diego, or Ventura Counties receiving milk from plants located in Los Angeles County, \$0.54 hundredweight,

(ii) For plants located in the counties of Los Angeles, Orange or Ventura receiving milk from plants located in

Fresno, Kings, or Tulare Counties, \$0.89 per hundredweight,

(iii) For plants located in the counties of Riverside, San Bernardino or San Diego receiving milk from plants located in Fresno, Kings or Tulare Counties, \$0.97 per hundredweight,

(iv) For plants located in the counties of Alameda, San Francisco, Santa Clara, Solano, or Sonoma Counties from plants located in Merced or Stanislaus Counties, \$0.75 per hundredweight,

(v) For plants located in the county of Sacramento from plants located in Merced or Stanislaus Counties, \$0.68 per hundredweight.

(3) Multiply the applicable rate as specified in § 1051.55 (a)(2) by the number of hundredweights of eligible milk as specified in § 1051.55 (a)(1). The resulting transportation credit calculated under this section shall be deducted from the reporting handler's value of milk as specified in § 1051.60 (a)(4).

(b) Each handler operating an eligible pool plant, and handler that transfers or diverts bulk milk from a pool plant to an eligible pool plant, and each handler described in § 1051.9(c) or § 1051.9(d) that delivers producer milk to an eligible pool plant as described in § 1051.55 (b)(1) shall receive a transportation allowance on milk eligible for the allowance pursuant to paragraph (b)(2) of this section. The allowance shall be computed by multiplying the hundredweight of milk eligible for the allowance by the rates described below:

(1) Pool plants that are eligible to receive transportation allowances are those that are located in the deficit receiving areas specified in § 1051.55 (b)(2) and that have a combined Class I and Class II utilization percentage for the month that is 50 percent or greater.

(i) For a handler that transfers or diverts bulk milk from a pool plant to an eligible pool plant, only that milk which is shipped to (and physically unloaded into) an eligible pool plant shall qualify as eligible for transportation allowances.

(ii) For a handler described in § 1051.9(c) or § 1051.9(d) that delivers producer milk to an eligible pool plant, only that milk which is shipped to (and physically unloaded into) an eligible pool plant shall qualify as eligible for transportation allowances.

(2) The transportation allowance rates for milk shipped to (and physically unloaded into) eligible plants shall be as follows:

(i) For plants located in the Southern California Receiving Area, consisting of the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego,

and Ventura, receiving milk delivered from San Bernardino County; for shipments of more than 93 miles, \$0.16 hundredweight.

(ii) For plants located in the Southern California Receiving Area, consisting of the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, receiving milk delivered from Riverside County; for shipments of more than 93 miles, \$0.36 hundredweight.

(iii) For plants located in the located in the Southern California Receiving Area, consisting of the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties receiving milk delivered from counties other than Riverside or San Bernardino: For shipments of more than 79 miles but not greater than 99 miles, \$0.16 hundredweight; for shipments of more than 99 but not greater than 119 miles, \$0.37 per hundredweight; for shipments of more than 119 miles, \$0.54 per hundredweight.

(iv) For plants located in the located in the Bay Area Receiving Area, consisting of the counties of Alameda, Contra Costa, Santa Clara, Santa Cruz, San Francisco and San Mateo, receiving milk delivered from any county: for shipments of 79 miles or less, \$0.31 per hundredweight; for shipments of more than 79 miles but not greater than 199 miles, \$0.37 hundredweight; for shipments of more than 199 miles, \$0.45 per hundredweight.

(v) For plants located in the located in the North Bay Area Receiving Area, consisting of the counties of Marin, Napa, Solano and Sonoma, receiving milk delivered from any county: for shipments of 45 miles or less, \$0.23 per hundredweight; for shipments of more than 45 miles but not greater than 96 miles, \$0.27 hundredweight; for shipments of more than 96 miles, \$0.36 per hundredweight.

(vi) For plants located in the located in the Sacramento Receiving Area, consisting of Sacramento County, receiving milk delivered from any county: for shipments of 59 miles or less, \$0.17 per hundredweight; for shipments of more than 59, \$0.23 hundredweight.

(c) The transportation allowances and credits rates shall be increased or decreased by the market administrator to reflect per hundredweight changes in the actual transportation costs as published by the California Department of Food and Agriculture in its Hauling Rate Survey.

(d) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or

Federal highway mileage. Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

#### Producer Price Differential

##### § 1051.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1051.9(c) and § 1051.9(d) 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 values computed in paragraphs (j) and (k) 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 § 1051.44(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 § 1051.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of nonfat solids in Class I by the Class I nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of fluid carrier in Class I by the Class I fluid carrier price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price; and

(4) Subtract the value of the handler's transportation credits as calculated in § 1051.55(a)(1) through (a)(3); and

(5) Deduct for each pound of milk nonfat solids in nonfat dry milk used for fortifying Class I products to meet the State of California's fluid milk standards as described in § 1051.40(d)(3) a fortification allowance to be computed as follows:

(i) Subtract the current Class IV nonfat solids price from the current Class I nonfat solids price

(ii) Subtract the value calculated in § 1051.60 (a)(5)(i) from zero cents (\$0.00).

(iii) The fortification allowance for each pound of nonfat milk solids in the nonfat dry milk used in fortification as described in this section shall be zero cents (\$0.00) or the value calculated in in § 1051.60 (a)(5)(ii), whichever is greater.

(6) Deduct for each pound of milk nonfat solids in condensed skim milk used for fortifying Class I products to meet the State of California's fluid milk standards as described in § 1051.40(d)(3) a fortification allowance to be computed as follows:

(i) Subtract the current Class IV nonfat solids price from the current Class I nonfat solids price

(ii) Subtract the value calculated in § 1051.60 (a)(6)(i) from 9.87 cents (\$0.0987).

(iii) The fortification allowance for each pound of nonfat milk solids in condensed skim milk used in fortification as described in this section shall be zero cents (\$0.00) or the value calculated in in § 1051.60 (a)(6)(ii), whichever is greater.

(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 § 1051.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1051.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1051.44(a)(11) and the corresponding step of § 1051.44(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 and by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1051.44(a)(7) and the corresponding step of § 1051.44(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 § 1051.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1051.44(a)(3)(i) through (vi) and the corresponding step of § 1051.44(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 § 1051.43(d) and § 1051.44(a)(3)(i) and the corresponding step of § 1051.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1051.44(a)(8) and the corresponding step of § 1051.44(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 § 1051.43(d).

(k) Subtract the value of the handler's transportation allowances calculated pursuant to § 1051.55(a)(i) and (a)(ii).

**§ 1051.61 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 § 1051.71 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 conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

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

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1051.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1051.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1051.75;

(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 § 1051.60(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.

**§ 1051.62 Announcement of producer prices.**

On or before the 13th 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) The somatic cell adjustment rate;  
(g) The average butterfat, nonfat solids, protein 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.

**§ 1051.68 Payments to producers under the California Quota Program.**

Notification shall be given by the market administrator to producers of intent to make payment of producer returns attributable to producers who participate in the California Quota Program in accordance with § 1051.72. Producers who participate in the California Quota Program shall be identified as follows:

Any producer whose farm is located in California and whose milk is received at a plant located in California unless such producer irrevocably notifies the market administrator in writing before the first day of any month for which he first elects to receive payment at the applicable prices announced under § 1051.62(h).

**Subpart C—Payments for Milk**

**Producer Payments**

**§ 1051.70 Producer-settlement fund.**

See § 1000.70.

**§ 1051.71 Payments to the producer-settlement fund.**

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1051.60.

(b) The aggregate amount paid to producers and cooperative associations pursuant to § 1051.73.

**§ 1051.72 Payments from the producer-settlement fund.**

(a) The market administrator shall compute the amount due each producer for milk received during the month from such producer by a handler(s) who made payments for such month pursuant to § 1051.71 in an amount equal to not less than the sum of:

(1) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1051.75;

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

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

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

(5) The hundredweight of milk received times the somatic cell adjustment for the month;

(6) Less any payment made pursuant to § 1051.73;

(7) 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

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

(b) On or before the 18th day after the end of each month, the market administrator shall pay direct to each producer who has not authorized a cooperative association to receive payment for such producer or for milk not subject to the California Quota Program pursuant to § 1051.68, the amount calculated for such producer pursuant to paragraph (a) of this section subject to the provisions of § 1051.86.

(c) On or before the 16th day after the end of each month, the market administrator, subject to the provisions of § 1051.86, shall pay:

(1) To each cooperative association authorized to receive payments due producers who market their milk through such cooperative association, and which is not subject to the California Quota Program pursuant to § 1051.68, an amount equal to the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association to receive such payments; and

(2) To the California Department of Food & Agriculture's Milk Pooling Branch, for each producer and cooperative association for milk subject to the California Quota Program pursuant to § 1051.68, the aggregate of the payments otherwise due such individual producers and cooperative associations pursuant to paragraph (b) and subparagraph (c)(1) of this section.

(d) 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 under this section and shall complete the payments as soon as the funds are available.

#### **§ 1051.73 Partial 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 and who has not discontinued shipments as of the date of this partial payment, for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90).

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

(c) Payment for milk received from cooperative association pool plants, from cooperatives as handlers pursuant to § 1051.9(c), or from handlers pursuant to § 1051.9(d). On or before the day prior to the date specified in paragraph (a) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1051.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, or from a handler pursuant to § 1051.9(d) shall pay the cooperative or such handler for bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a handler pursuant to § 1051.9(c) or (d) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month.;

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a

lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1051.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

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

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

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

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

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

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

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

(8) The net amount of payment to the producer, cooperative association, and producer settlement fund with respect to such producer.

#### **§ 1051.74 [Reserved]**

#### **§ 1051.75 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 § 1051.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1051.73 and 1051.76.

#### **§ 1051.76 Payments by a handler operating a partially regulated distributing plant.**

On or before the 25th day after the end of the month (except as provided in § 1000.90), the operator of a partially regulated distributing plant, other than a plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program, shall pay to the

market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section or, if the handler submits the information specified in §§ 1051.30(b) and 1051.31(b), the handler may elect to pay the amount computed pursuant to paragraph (b) of this section. A partially regulated distributing plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program shall pay the amount computed pursuant to paragraph (c) of this section.

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

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

(i) Subtract receipts of fluid milk products classified as Class I milk from pool plants, plants fully regulated under other Federal orders, and handlers described in § 1051.9(c) or (d) of this chapter, except those receipts subtracted under a similar provision of another Federal milk order;

(ii) Subtract receipts of fluid milk products from another nonpool plant that is not a plant fully regulated under another Federal order to the extent that an equivalent amount of fluid milk products disposed of to the nonpool plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order; and

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

(2) For orders with multiple component pricing, compute a Class I differential price by subtracting Class III price from the current month's Class I price. Multiply the pounds remaining after the computation in paragraph (a)(1)(iii) of this section by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero;

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

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

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

(1) Determine the value that would have been computed pursuant to § 1051.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the plant from a pool plant, a plant fully regulated under another Federal order, and handlers described in § 1051.9(c) or § 1051.9(d) of this chapter shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or a plant fully regulated under another Federal order shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from the pool plant and plants fully regulated under other Federal orders that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed pursuant to § 1051.60 for the partially regulated distributing plant shall be priced at the statistical uniform price or uniform price, whichever is applicable, of the respective order regulating the handling of milk at the receiving plant, with such statistical uniform price or uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest announced class price of the respective order); and

(iii) If the operator of the partially regulated distributing plant so requests, the handler's value of milk determined pursuant to § 1051.60 shall include a value of milk determined for each nonpool plant that is not a plant fully regulated under another Federal order which serves as a supply plant for the

partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1051.7(c) subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1051.30(b) and 1051.31(b) similar reports for each such nonpool supply plant;

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

(C) The value of milk determined pursuant to § 1051.60 for the unregulated supply plant shall be determined in the same manner prescribed for computing the obligation of the partially regulated distributing plant; and

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

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

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

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

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

After completing the computations described in paragraphs (a)(1)(i) and (ii) of this section, determine the value of the remaining pounds of fluid milk products disposed of as route disposition in the marketing area by multiplying the hundredweight of such

pounds by the amount, if greater than zero, that remains after subtracting the State program's class prices applicable to such products at the plant's location from the Federal order Class I price applicable at the location of the plant.

(d) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients that are reconstituted for fluid use. Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the positive difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed and the Class IV price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

**§ 1051.77 Adjustment of accounts.**

See § 1000.77.

**§ 1051.78 Charges on overdue accounts.**

See § 1000.78.

**Administrative Assessment and Marketing Service Deduction**

**§ 1051.85 Assessment for order administration.**

On or before the payment receipt date specified under § 1051.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1051.9(c) or (d) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1051.9(c) or (d);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk

products assigned to Class I use pursuant to § 1051.43(d) and other source milk allocated to Class I pursuant to § 1051.44(a)(3) and (8) and the corresponding steps of § 1051.44(b), except other source milk that is excluded from the computations pursuant to § 1051.60 (h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1051.76(a)(1)(i) and (ii).

**§ 1051.86 Deduction for marketing services.**

See § 1000.86.

**Subpart D—Miscellaneous Provisions**

**§ 1051.90 Dates.**

See § 1000.90.

**Proposal Number 3**

*Submitted by the California Producer Handlers Association*

■ 5. This proposal would preserve the entire "Quota" system that is currently in place under the terms of the California Pooling Act, California state marketing order and milk pooling plan administered by the California Department of Food and Agriculture (CDFA). Specifically, should USDA recommend a California Federal milk marketing order, this proposal argues that any provisions incorporated to "recognize quota" as outlined in the 2014 Farm Bill, would include provisions that recognize, in the same manner that is done currently by CDFA, the exempt quota held by current producer-distributors operating in the State. Should USDA recommend administering all aspects of the California quota program, CPHA also proposes to remove the degrees of family consanguinity as it pertains to the ownership of exempt quota to allow for the continuation of exempt quota transfers within a family.

**Proposal Number 4**

*Submitted by Ponderosa Dairy*

■ 6. This proposal would add a new paragraph (e) to § 1051.76 as described under either Proposal 1 or Proposal 2 above, to read as follows:

**§ 1051.76 Payments by a handler operating a partially regulated distributing plant.**

\* \* \* \* \*

(e) Any handler may elect partially regulated distributing plant status for any plant located within the California marketing area with respect to receipts of milk from farms located outside of the California marketing area. Such plant shall with respect to such receipts make an election as provided for in § 1051.76 and shall meet the reporting and payment requirements in paragraph (a) or paragraph (b) of this section with respect to such receipts.

**Proposal No. 5**

*Proposed by Dairy Program, Agricultural Marketing Service*

Make such changes as may be necessary to ensure that all provisions of any potential marketing agreement or order that may result from this hearing conform with each other.

Copies of this notice of hearing may be obtained online at <http://www.ams.usda.gov/dairy>, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue SW., Washington, DC 20250—9200.

Copies of the transcript of testimony and exhibits taken at the hearing will be made available for viewing at <http://www.ams.usda.gov/dairy> after the hearing adjourns. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

When a Notice of Hearing is issued, USDA employees gain knowledge that a hearing will be held. From this time and until the issuance of a Final Decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the AMS Dairy Program (Washington, DC office), and the offices of all Market Administrators. Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: July 27, 2015.

**Rex A. Barnes,**  
*Associate Administrator.*

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