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

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

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

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

[64 FR 47998, Sept. 1, 1999, as amended at 65 FR 82840, Dec. 28, 2000; 68 FR 7069, Feb. 12, 2003]

§ 1124.74 [Reserved]

§ 1124.75 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 de-

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termined by subtracting the Class I price specified in §1124.51 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 §§ 1124.73 and 1000.76.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1124.77 Adjustment of accounts.

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PART 1125 [RESERVED]

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

- 1126.85 Assessment for order administration.
- 1126.86 Deduction for marketing services.

AUTHORITY: 7 U.S.C. 601-674, and 7253.

SOURCE: 64 FR 48004, Sept. 1, 1999, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1126.1 General provisions.

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

DEFINITIONS

§ 1126.2 Southwest marketing area.

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

COLORADO COUNTIES

Archuleta, LaPlata, and Montezuma.

NEW MEXICO AND TEXAS

All of the States of New Mexico and Texas.

§ 1126.3 Route disposition.

See § 1000.3.

§ 1126.4 Plant.

See § 1000.4.

§ 1126.5 Distributing plant.

See § 1000.5.

§ 1126.6 Supply plant.

See § 1000.6.

§ 1126.7 Pool plant.

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

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

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

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in §1000.9(c), including milk that is diverted as producer milk to other plants, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 30 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for

pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

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

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

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

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

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

(1) A producer-handler plant;

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

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order, and

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more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

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

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

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

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

(h) Any distributing plant, located within the marketing area as described on May 1, 2006, in §1126.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is dis-

posed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in §1126.7(a), (b), or (e);

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

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

(iv) A producer-handler described in §1126.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved]

[64 FR 48004, Sept. 1, 1999, as amended at 71 FR 25501, May 1, 2006; 71 FR 28249, May 16, 2006]

§ 1126.8 Nonpool plant.

See §1000.8.

§ 1126.9 Handler.

See §1000.9.

§ 1126.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, 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 products from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or another Federal order;

(c) Receives no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order, including such products received at a location other than the producer-handler's processing plant for distribution on routes. This limitation

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shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

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

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

(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).

[64 FR 48004, Sept. 1, 1999, as amended at 71 FR 25501, May 1, 2006; 75 FR 21161, Apr. 23, 2010]

§ 1126.11 [Reserved]

§ 1126.12 Producer.

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

(1) Received at a pool plant directly from the producer or diverted by the

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plant operator in accordance with § 1126.13; or

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

(b) Producer shall not include:

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

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1126.13(d);

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

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

§ 1126.13 Producer milk.

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

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

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

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

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

(1) Milk of a dairy farmer shall not be eligible for diversion unless a delivery of at least 40,000 pounds or one day's milk production, whichever is less, of such dairy farmer has been physically received as producer milk at a pool

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plant and the dairy farmer has continuously retained producer status since that time;

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

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to this paragraph. The total quantity of milk so diverted during the month shall not exceed 50 percent of the total quantity of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to §1126.7(e)) and diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

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

(6) The delivery requirement in paragraph (d)(1) and the diversion percentages in paragraphs (d)(2) and (3) of this section may be increased or decreased by the market administrator if there is a finding that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or any diver-

sion percentage must be issued in writing at least one day before the effective date.

§ 1126.14 Other source milk.

See § 1000.14.

§ 1126.15 Fluid milk product.

See § 1000.15.

§ 1126.16 Fluid cream product.

See § 1000.16.

§ 1126.17 [Reserved]

§ 1126.18 Cooperative association.

See § 1000.18.

§ 1126.19 Commercial food processing establishment.

See § 1000.19.

HANDLER REPORTS

§ 1126.30 Reports of receipts and utilization.

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

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

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

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

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

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

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

(ii) Receipts of other source milk; and

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

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

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

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

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

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

(2) The utilization or disposition of such receipts.

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

§ 1126.31 Payroll reports.

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

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for re-

ports required by paragraph (a) of this section.

§ 1126.32 Other reports.

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

CLASSIFICATION OF MILK

§ 1126.40 Classes of utilization.

See §1000.40.

§ 1126.41 [Reserved]

§ 1126.42 Classification of transfers and diversions.

See §1000.42.

§ 1126.43 General classification rules.

See §1000.43.

§ 1126.44 Classification of producer milk.

See §1000.44.

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

See §1000.45.

CLASS PRICES

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

See §1000.50.

§ 1126.51 Class I differential and price.

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

§ 1126.52 Adjusted Class I differentials.

See §1000.52.

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

See §1000.53.

§ 1126.54 Equivalent price.

See §1000.54.

PRODUCER PRICE DIFFERENTIAL

§ 1126.60 Handler's value of milk.

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

(a) Class I value.

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

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

(b) Class II value.

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

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

(c) Class III value.

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

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

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

(d) Class IV value.

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

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

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

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

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

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

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to §1000.43(d) and §1000.44(a)(3)(i) and the corresponding step of §1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §1000.44(a)(8) and the corresponding step of

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

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

[64 FR 478004, Sept. 1, 1999, as amended at 65 FR 82840, Dec. 28, 2000; 68 FR 7069, Feb. 12, 2003]

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to §1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the 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 §1126.60 for all handlers required to file reports prescribed in §1126.30;

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

(c) Add an amount equal to the minus location adjustments and sub-

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tract an amount equal to the plus location adjustments computed pursuant to §1126.75;

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

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

(1) The total hundredweight of producer milk; and

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

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

[68 FR 7069, Feb. 12, 2003]

§ 1126.62 Announcement of producer prices.

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

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

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

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

[64 FR 478004, Sept. 1, 1999, as amended at 65 FR 82841, Dec. 28, 2000; 68 FR 7069, Feb. 12, 2003]

PAYMENTS FOR MILK

§ 1126.70 Producer-settlement fund.

See §1000.70.

§ 1126.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in §1000.90).

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

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

(b) The sum of:

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

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

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

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

[64 FR 48004, Sept. 1, 1999, as amended at 65 FR 82841, Dec. 28, 2000; 68 FR 7069, Feb. 12, 2003]

§ 1126.72 Payments from the producer-settlement fund.

No later than the 17th day after the end of each month (except as provided in §1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1126.71(b) exceeds the amount computed pursuant to §1126.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1126.73 Payments to producers and to cooperative associations.

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

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in §1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 18th day after the end of the month (except as provided in §1000.90) in an amount computed as follows:

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

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

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

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

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

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

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

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

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

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

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

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk

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

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

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

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

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

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

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

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

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

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

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

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payments made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1126.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to cooperative associations pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

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

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a

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form that may be retained by the recipient which shall show:

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

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

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

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

(5) The minimum rate or rates at which payment to the producer is required pursuant to 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 hundred-weight, 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.

[64 FR 48004, Sept. 1, 1999, as amended at 65 FR 32010, May 22, 2000; 65 FR 82841, Dec. 28, 2000; 68 FR 7069, Feb. 12, 2003]

§ 1126.74 [Reserved]

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

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in §1126.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1126.73 and 1000.76.

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

See §1000.76.

§ 1126.77 Adjustment of accounts.

See §1000.77.

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§ 1126.85 Assessment for order administration.

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