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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1051

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

#### Milk in California; Federal Milk Marketing Order Promulgation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a Federal Milk Marketing Order (FMMO) regulating the handling of milk in California. This final rule issues a marketing order incorporating the entire state of California and adopts the same dairy product classification and pricing provisions used throughout the current FMMO system. The California FMMO provides for the recognition of producer quota as administered by the California Department of Food and Agriculture. More than the required number of producers for the California marketing area have approved the issuance of the order. This final rule also announces AMS's intention to merge the information collection forms used to conduct the producer referendum with the reporting forms used in the other dairy marketing orders.

**DATES:**

*Effective Date:* This rule is effective October 17, 2018.

*Applicability Date:* All provisions of this rule apply to affected parties as of November 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Erin C. Taylor, Order Formulation and Enforcement Division, USDA/AMS/ Dairy Program, STOP 0231-Room 2963, 1400 Independence Ave. SW, Washington, DC 20250-0231, (202) 720-7183, email address: [erin.taylor@ams.usda.gov](mailto:erin.taylor@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule, in accordance with 7 CFR 900.14(c), is the Secretary's final rule in this

proceeding and issues a marketing order as defined in 7 CFR 900.2(j).

Accordingly, this final rule adopts amendments detailed in the proposed rule (83 FR 14110), with one minor technical correction to paragraph numbering in § 1051.73(c)(2). The proposed rule designated two consecutive paragraphs in that section as paragraph (c)(2)(vii). This final rule corrects the proposed rule by redesignating the second paragraph as paragraph (c)(2)(viii).

This rule is effective with publication of the Announcement of Advanced Prices and Pricing Factors on October 17, 2018 (see § 1051.53). Affected parties must comply with all provisions of this rule beginning November 1, 2018.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

This final rule is not considered an Executive Order 13771 regulatory action because it does not meet the definition of a "regulation" or "rule" under Executive Order 12866.

The amendments adopted in this final rule have been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect and will not preempt any state or local law, regulations, or policies, unless they present an irreconcilable conflict with this rule.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601-674 and 7253), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the AMAA, any handler subject to a marketing order may request modification or exemption from such order by filing with the U.S. 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 law. A handler is afforded the opportunity for a hearing

on the petition. After a hearing, USDA would rule on the petition. The AMAA 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 in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) considered the economic impact of this action on small entities. Accordingly, AMS prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small dairy farm businesses have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those businesses having annual gross receipts of less than \$750,000. The SBA's definition of small agricultural service firms, which includes handlers that will be regulated under this marketing order, varies depending on the product manufactured. Small fluid milk and ice cream manufacturers are defined as having 1,000 or fewer employees. Small butter and dry or condensed dairy product manufacturers are defined as having 750 or fewer employees. Small cheese manufacturers are defined as having 1,250 or fewer employees.

For the purpose of determining which California dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a production guideline that equates to approximately 315,000 pounds of milk per month. Although this guideline does not factor in additional monies that may be received by dairy farmers, it is a standard encompassing most small dairy farms. For the purpose of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the employee limit for that type of manufacturing, the plant is considered a large business even if the local plant has fewer than the defined number of employees.

Interested persons were invited to present evidence at the hearing on the

probable regulatory and informational impact of the California FMMO on small businesses. Specific evidence on the number of large and small dairy farms in California (above and below the threshold of \$750,000 in annual sales) was not presented at the hearing. However, data compiled by CDFA<sup>1</sup> suggests that between 5 and 15 percent of California dairy farms would be considered small business entities. No comparable data for dairy product manufacturers was available.

Record evidence indicates that implementing the California FMMO would not impose a disproportionate burden on small businesses. Currently, the California dairy industry is regulated by a California State Order (CSO) that is administered and enforced by CDFA. While the CSO and FMMOs have differences, they both maintain similar classified pricing and marketwide pooling functions. Therefore, it is not expected that the regulatory change will have a significant impact on California small businesses.

The record evidence indicates that while the program is likely to impose some costs on the regulated parties, those costs would be outweighed by the benefits expected to accrue to the California dairy industry. In conjunction with the publication of the final decision (83 FR 14110), AMS released a Regulatory Economic Impact Analysis (REIA) to study the possible impacts of the California FMMO. The analysis reflects the provisions of this FMMO and may be viewed at [www.ams.usda.gov/caorder](http://www.ams.usda.gov/caorder).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this final rule also announces AMS's intention to merge the OMB Report Forms under a California Federal Milk Marketing Order (from Milk Handlers and Milk Marketing Cooperatives, 0581-0298), and the forms used to conduct the producer referendum (Referendum Ballots, 0581-0300) with the reporting forms used in the rest of the dairy marketing orders (Report Forms Under the Federal Milk Marketing Order Program, 0581-0032). Any additional information collection and recordkeeping requirements that may be imposed under the order would be submitted to OMB for public comment and approval.

<sup>1</sup> Official Notice is taken of: CDFA, *California Dairy Review*, Volume 19, Issue 9, September 2015. [https://www.cdfa.ca.gov/dairy/pdf/CDR/2015/CDR\\_SEPT\\_15.pdf](https://www.cdfa.ca.gov/dairy/pdf/CDR/2015/CDR_SEPT_15.pdf).

### Prior Documents in This Proceeding

*Notice of Hearing*: Issued July 27, 2015; published August 6, 2015 (80 FR 47210);

*Notice to Reconvene Hearing*: Issued September 25, 2015; published September 30, 2015 (80 FR 58636);

*Recommended Decision and Opportunity To File Written Exceptions*: Issued February 6, 2017; published February 14, 2017 (82 FR 10634);

*Documents for Official Notice*: Issued August 8, 2017; published August 14, 2017 (82 FR 37827);

*Information Collection—Producer Ballots*: Issued September 27, 2017; published October 2, 2017 (82 FR 45795);

*Delay of Rulemaking*: Issued February 1, 2018; published February 6, 2018 (83 FR 5215);

*Ratification of Record*: Issued March 14, 2018; published March 19, 2018 (83 FR 11903); and

*Final Decision*: Issued March 23, 2018; published April 2, 2018 (83 FR 14110).

### Findings and Determinations

The findings and determinations hereinafter set forth are hereby ratified and confirmed, except where they may conflict with those set forth herein.

#### (1) Findings upon the basis of the hearing record.

The promulgation of the marketing agreement and order is based on the record of a public hearing held September 22 through November 18, 2015 in Clovis, California. The hearing was held to receive evidence on four proposals submitted by dairy farmers, handlers, and other interested parties. Notice of this hearing was published in the **Federal Register** on August 6, 2015 (80 FR 47210), pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at the public hearing and its record, it is found that:

(a) The order as hereby promulgated, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the AMAA;

(b) The parity prices of milk, as determined pursuant to section 2 of the AMAA, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for milk in California. The minimum prices specified in the tentative marketing agreement and order, as hereby established, are prices that will

reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and order, as hereby established, will regulate the handling of milk in the same manner as, and applies only to, persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

#### (2) Determinations.

It is hereby determined that:

(a) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the AMAA) of more than 50 percent of the milk marketed within the specified marketing areas to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the AMAA;

(b) The issuance of this order establishing the California order is the only practical means pursuant to the declared policy of the AMAA of advancing the interests of producers as defined in the order as hereby promulgated; and

(c) The issuance of this order establishing the California order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

### List of Subjects in 7 CFR Part 1051

Milk marketing orders.

### Order Establishing the Order Regulating the Handling of Milk in the California Marketing Area

*It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the California marketing area shall be in conformity to and in compliance with the terms and conditions of the order.

■ For the reasons stated in the preamble, the Agricultural Marketing Service adds 7 CFR part 1051 to read as follows:

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

#### Subpart A—Order Regulating Handling

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##### Administrative Assessment and Marketing Service Deduction

- 1051.85 Assessment for order administration.
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- 1051.90 Dates.

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

#### 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 unless otherwise specified. In this part, 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:

###### *California*

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, 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 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 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 § 1000.9(c), 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 (g) 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 paragraphs (a), (b), and (d) of this section;

(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) 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 this 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 form 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 two 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 § 1000.9(c) 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 system 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 have 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 who 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 (e), 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) Any distributing plant, located within the marketing area as described in § 1051.2:

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

(i) The plant is described in paragraph (a), (b), or (e) of this section;

(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 § 1051.10 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]

(g) The applicable shipping percentages of paragraphs (c) and (e) of this section and § 1051.13(d)(2) and (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.

(h) 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 disposition 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

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must

be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) 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, earthquake, 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 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 supplies 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 (b)(1), 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 paragraphs (a)(1) through (5) of this section are not continuing to be met, or under any of the conditions described in paragraph (c)(1), (2), or (3) of this section.

Cancellation of a producer-handler's status pursuant to this paragraph (c) 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) *Payments subject to Order 1131.* 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 California quota program.

*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).

#### § 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:

(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 § 1000.9(c). All milk received pursuant to this paragraph (a) 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 located in the States of California, Arizona, Nevada, or Oregon, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received 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 one day's 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 90 percent 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(g); and

(3) The quantity of milk diverted to nonpool plants by the operator of a pool plant described in § 1051.7(a), (b) or (d) may not exceed 90 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1051.12(b)) including milk diverted pursuant to this section. These percentages are subject to any adjustments that may be made pursuant to § 1051.7(g).

(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 (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 § 1000.44(a)(3)(v) and (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 paragraph (f)(4) of this section; or

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

(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 (f).

**§ 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 [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, and pounds of solids-not-fat other than protein

(other solids) contained in or represented by:

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

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

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

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

(ii) Receipts of other source milk; and

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

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

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

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

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

(1) The product pounds, pounds of butterfat, pounds of protein, 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.

**§ 1051.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 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).

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

§ 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

**§ 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.

**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 § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the 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 hundredweight of skim milk in Class I by the Class I skim milk price; and

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

(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) *Classification of overage.* 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) *Reclassification of inventory.* 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) *Class I calculation applicable to unregulated milk.* 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) *Class I calculation applicable to unregulated supply plant milk.* 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) *Calculation of nonfluid milk receipts for reconstitution.* 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).

#### § 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 introductory text, 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;

(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 14th 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 average butterfat, nonfat solids, protein and other solids content of producer milk; and

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

#### 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 16th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

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

(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 § 1051.75;

(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; 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 18th 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). 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) *Handler payment responsibility.* 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 last 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 19th day after the end of the month (except as provided in § 1000.90) in an amount not less than the sum of:

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

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

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

(iv) The pounds of other solids received times the 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;

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

(viii) Less deductions authorized by CDFA for the California Quota Program pursuant to § 1051.11.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (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 (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 (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; and

(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 hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1051.75;

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

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

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

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

(d) *Handler underpayment proration.* 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) *Payments to missing or deceased producers.* 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) *Producer payment record.* 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.

#### § 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 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.

Dated: June 4, 2018.

**Bruce Summers,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 2018–12245 Filed 6–7–18; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2018–0074; Product Identifier 2017–NM–148–AD; Amendment 39–19309; AD 2018–12–05]

RIN 2120–AA64

#### Airworthiness Directives; the Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by reports of cracks found in the rear spar web and lower chord on the left and right wings. This AD requires repetitive detailed inspections for cracking of the rear spar web and lower chord, and applicable on-condition actions. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 13, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 13, 2018.

**ADDRESSES:** For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet <https://www.myboeingfleet.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.