

**§ 1090.92 Announcement of established bases.**

On or before March 1 of each year, the market administrator shall notify each producer, and the handler receiving milk from such producer, of the daily average base established by such producer, and shall notify a cooperative association of which such producer is a member of such daily average base if the cooperative association so requests.

**EFFECTIVE TIME, SUSPENSION, OR TERMINATION**

**§ 1090.100 Effective time.**

The provisions of this part, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

**§ 1090.101 Suspension or termination.**

The Secretary shall, whenever he finds that any or all provisions of this part, or any amendment thereto, obstruct or do not tend to effectuate the declared policy of the act, terminate or suspend the operation of any or all provisions of this part or any amendment thereto.

**§ 1090.102 Continuing obligations.**

If, upon the suspension or termination of any or all provisions of this part, or any amendment thereto, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

**§ 1090.103 Liquidation.**

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding

obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

**MISCELLANEOUS PROVISIONS**

**§ 1090.110 Agents.**

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent and representative in connection with any of the provisions of this part.

**§ 1090.111 Separability of provisions.**

If any provisions of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

**PART 1094—MILK IN NEW ORLEANS, LA., MARKETING AREA**

**Subpart—Order Regulating Handling**

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AUTHORITY: The provisions of this Part 1094 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: The provisions of this Part 1094 appear at 35 F.R. 10665, July 1, 1970, unless otherwise noted.

## DEFINITIONS

## § 1094.1 Act.

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

## § 1094.2 Secretary.

Secretary means the Secretary of Agriculture or any officer or employee of the United States who is authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

## § 1094.3 Department of Agriculture.

Department of Agriculture means the United States Department of Agriculture or such other Federal agency as may be authorized to perform the price reporting functions specified in this part.

## § 1094.4 Cooperative association.

Cooperative association means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1932, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

## § 1094.5 Person.

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

## § 1094.6 New Orleans marketing area.

New Orleans marketing area, hereinafter referred to as the marketing area means all territory; including incorporated municipalities within Jefferson Lafourche, Orleans, Plaquemines, St.

Bernard, St. Charles, and Terrebonne Parishes all in the State of Louisiana.

§ 1094.7 Route.

“Route” means any delivery of a fluid milk product from a milk processing plant to wholesale or retail outlets (including any delivery by a vendor and from a plant store or through a vending machine) other than a delivery to any milk or filled milk receiving and/or processing plant.

§ 1094.8 Distributing plant.

Distributing plant means any plant at which fluid milk products, eligible for distribution in the marketing area under a Grade A label, are processed and packaged and from which fluid milk products are disposed of on a route(s) in the marketing area.

§ 1094.9 Supply plant.

Supply plant means any plant at which milk eligible for distribution in the marketing area under a Grade A label, is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1094.10 Pool plant.

Pool plant means:

(a) A distributing plant, other than that of a producer-handler or one described in § 1094.63(a), from which during the month:

(1) Disposition in the marketing area of fluid milk products, except filled milk, on routes is at least the lesser of a daily average of 1,500 pounds or 20 percent of receipts from dairy farmers, cooperatives in their capacities as handlers pursuant to § 1094.12(d) and supply plants; and

(2) Total disposition of fluid milk products, except filled milk, on routes is 50 percent or more of receipts from dairy farmers, cooperatives in their capacities as handlers pursuant to § 1094.12(d) and supply plants;

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of milk from dairy farmers which is eligible for distribution in the marketing area under a Grade A label is moved to and received at a pool plant(s) described in paragraph (a) of this section; and

(c) Any supply plant that was a pool plant during each of the months of September through November immediately preceding shall continue to be a pool plant the following month of December unless written notice to the contrary is filed by the handler with the market administrator on or before the first day of such month; and any supply plant that was a pool plant pursuant to paragraph (b) of this section, during each of the months of September through November and also during either the month of December or the month of January immediately preceding shall continue to be a pool plant the following months of January or February through August, as the case may be, unless the operator notifies the market administrator in writing before the first day of any such month of its intention to withdraw such plant as a pool plant, in which case such plant shall thereafter be a nonpool plant except in any month it qualifies as a supply plant pursuant to paragraph (b) of this section.

(d) A plant, other than a distributing plant, which is operated by a cooperative association and which does not meet the requirements of paragraphs (b) or (c) of this section, in any month in which the volume of milk received at pool distributing plants directly from member-producers of such cooperative association is not less than 50 percent of the total pounds of such association's member-producer milk (including that received at such plant), if written request is made to the market administrator by the cooperative association prior to or during the month that the plant be a pool plant pursuant to this provision for the month, or for each month, such request to be effective until withdrawn.

§ 1094.11 Nonpool plant.

“Nonpool plant” means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) “Other order plant” means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) “Producer-handler plant” means a plant operated by a producer-handler

as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

#### § 1094.12 Handler.

Handler means:

(a) Any person in his capacity as the operator of a pool plant(s); or

(b) Any person who operates a partially regulated distributing plant; or

(c) A cooperative association with respect to milk of producers diverted for the account of such association from a pool plant to a nonpool plant in accordance with § 1094.14; or

(d) Any cooperative association with respect to the milk of producers which it causes to be delivered directly from the farm to the pool plant of another handler in a tank truck owned and operated by, under contract to, or under the control of such association, unless the association and the transferee handler both notify the market administrator, in writing, prior to the time of delivery that the transferee handler is to be held the responsible handler for such milk. Such milk shall be deemed to have been received by the association from producers at a pool plant at the location of the pool plant at which such milk is physically received.

(e) A producer-handler, or any person who operates an other order plant described in § 1094.63.

#### § 1094.13 Producer-handler.

"Producer-handler" means a dairy farmer who operates a distributing plant at which no fluid milk or fluid milk products are received during the month except his own production or transfers from a pool plant(s) and which has no receipts of milk products other than fluid milk products disposed of as Class I milk.

#### § 1094.14 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority which milk is received at a pool plant (except milk received by diversion from a plant at which such milk is fully subject to the pricing provisions of another order issued pursuant to the Act, and which is allocated to Class II pursuant to § 1094.46(a) (4) (iii) and the corresponding provisions of § 1094.46(b)) or by a cooperative association pursuant to § 1094.12(d) or is diverted pursuant to paragraphs (a) through (c) of this section: *Provided*, That milk so diverted shall be deemed to have been received at the location of the pool plant from which diverted.

(a) To the pool plant of another handler;

(b) To a nonpool plant (except that diversion to an other order plant shall be limited to Class II use) during any month(s) of December and February through August;

(c) Except as provided in subparagraphs (1) and (2) of this paragraph, to a nonpool plant (except that diversion to an other order plant shall be limited to Class II use) during each month of January and September through November, but not more than 15 days production of any dairy farmer during any such month: *Provided*, That if this limit is exceeded for any dairy farmer, such dairy farmer shall be a producer only with respect to that milk physically received at pool plants during such month:

(1) A cooperative association may divert for its account the milk of any member-producer without limit during the month if the total volume of milk so diverted does not exceed 20 percent of its member-producer milk physically received at all pool plants during the month: *Provided*, That if this percentage limitation is exceeded all diversions by such association during the month shall be subject to the 15-day limitation prescribed above.

(2) A handler in his capacity as the operator of a pool plant may divert for

his account the milk of any nonmember producer without limit during the month if the total volume of nonmember milk so diverted does not exceed 20 percent of the nonmember producer milk physically received at such pool plant during the month: *Provided*, That if this percentage limitation is exceeded all diversions by such handler during the month shall be subject to the 15-day limitation prescribed above.

#### § 1094.15 Producer milk.

“Producer milk” means milk received at a pool plant directly from producers or diverted pursuant to § 1094.14: *Provided*, That milk received at a pool plant by diversion from a plant at which such milk is fully subject to the pricing provisions of another order issued pursuant to the Act and which is allocated to Class II pursuant to § 1094.46(a)(4)(iii) and the corresponding provisions of § 1094.46(b) shall not be producer milk.

#### § 1094.16 Other source milk.

Other source milk means all skim milk and butterfat contained in:

(a) Receipts of fluid milk products during the month, except:

(1) Fluid milk products received from pool plants;

(2) Milk received from a cooperative association in its capacity as a handler pursuant to § 1094.12(d); and

(3) Producer milk.

(b) Products, other than fluid milk products, from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month, or for which other utilization or disposition is not established pursuant to § 1094.34.

#### § 1094.17 Fluid milk product.

“Fluid milk product” means all skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, filled milk, concentrated milk or skim milk, fortified milk or skim milk, flavored milk, flavored milk drinks (including eggnog), yogurt, cream (other than frozen storage cream), cultured sour cream, sour cream products labeled Grade A and any mixture of cream and milk or skim milk in fluid form (other than ice cream

mixes, other frozen dessert mixes and sterilized products contained in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

#### § 1094.18 Chicago butter price.

Chicago butter price means the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department of Agriculture.

#### § 1094.19 Base and excess milk.

(a) Base milk means milk received at pool plants from a producer during any of the months of the base-operating period of each year which is not in excess of such producer's daily average base computed pursuant to § 1094.92 multiplied by the number of days in such month.

(b) Excess milk means milk received at pool plant(s) from a producer during any of the months of the base-operating period of each year in excess of such producer's base milk.

#### § 1094.19a Filled milk.

“Filled milk” means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

#### MARKET ADMINISTRATOR

#### § 1094.20 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

#### § 1094.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

#### § 1094.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond effective as of the date on which he enters upon his duties, and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds received pursuant to § 1094.86:

(1) The cost of his bond and of the bonds of his employees,

(2) His own compensation, and

(3) All other expenses (except those incurred under § 1094.85) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this section, and upon request by the Secretary, surrender the same to such other persons as the Secretary may designate;

(f) Publicly disclose to handlers and producers, at his discretion, unless otherwise directed by the Secretary, the name of any handler who, after the date on which he is required to perform such acts, has not made reports pursuant to §§ 1094.30 and 1094.31, or payments pur-

suant to §§ 1094.80, 1094.82, 1094.84, 1094.85 and 1094.86.

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) Prepare and make available for the benefit of producers, consumers and handlers, general statistics and information concerning the operation of this part which do not reveal confidential information;

(i) Verify all reports and payments of each handler by audit of the records of such handler or any other handler or person to whom skim milk and butterfat are transferred, or by such other means as are necessary;

(j) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

(k) On or before the date specified, publicly announce and mail to each handler at his last known address a notice of the following:

(1) The 5th day of each month, the Class I milk price and the Class I butterfat differential, both for the current month, and the Class II milk price and the Class II butterfat differential, both for the preceding month;

(2) The 11th day of each month, the applicable uniform price computed pursuant to §§ 1094.72 through 1094.74 and the butterfat differential computed pursuant to § 1094.75 both for the preceding month.

(l) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1094.46(a)(8) and the corresponding step of § 1094.46(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator, of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1094.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

REPORTS, RECORDS AND FACILITIES

§ 1094.30 Reports of receipts and utilization.

On or before the 5th day of each month each handler shall report for the preceding month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(a) Each handler who operates a pool plant(s), and any cooperative association with respect to milk for which it is a handler pursuant to § 1094.12 (c) or (d) shall report the quantities of skim milk and butterfat contained in:

(1) Producer milk, and for each month of the base-operating period, the total quantities of base and excess milk received;

(2) Milk received from a cooperative association in its capacity as a handler pursuant to § 1094.12(d);

(3) Fluid milk products received from other pool plants;

(4) Other source milk;

(5) Inventories of fluid milk products on hand at the beginning and end of the month;

(6) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, including a separate statement with respect to Class I milk disposed of inside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk.

(7) Such other information with respect to sources and utilization of skim

milk and butterfat as the market administrator may prescribe.

(b) Each handler specified in § 1094.12 (b) who operates a partially regulated distributing plant shall report in the same manner as required in paragraph (a) of this section with respect to all receipts and utilization, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk and base and excess milk. Such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively in fluid milk products and the quantity thereof which is reconstituted skim milk.

§ 1094.31 Payroll reports.

(a) On or before the 20th day of each month each handler operating a pool plant(s) and each cooperative association which is a handler pursuant to § 1094.12 (c) or (d) shall report their producer payroll for the preceding month which shall show for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producers and for the base-operating period the total pounds of base and excess milk;

(3) The number of days on which milk was received from such producer if less than a full calendar month;

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

(5) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions;

(b) Each handler who received producer milk for which payment is to be made to a cooperative association pursuant to § 1094.80(b) shall report to such cooperative association with respect to each such producer, as follows:

(1) On or before the 25th day of each month the total pounds of milk received during the first 15 days of the month.

(2) On or before the 7th day after the end of each month;

(i) The daily and total pounds of milk received during the month with separate totals for base and excess milk for the base-operating period, and the average butterfat test thereof; and

(ii) The amount, rate and nature of any deductions.

(c) Each handler operating a partially regulated distributing plant who does not elect to make payments pur-

suant to § 1094.62(b) shall report to the market administrator on or before the 20th day after the end of the month his payments to dairy farmers qualified to be producers as if such plant were a pool plant, showing for each such dairy farmer:

- (1) The pounds of milk received;
- (2) The average butterfat content thereof; and
- (3) The date and net amount of payment to such dairy farmer with a statement of the prices, deductions and charges used in computing such payment and the nature of each.

#### § 1094.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator shall request.

(b) Each handler who operates an other order plant with disposition of fluid milk products on routes in the marketing area shall report such disposition to the market administrator on or before the 7th day after the end of each month.

#### § 1094.34 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data for each month with respect to:

- (a) The receipt and utilization of all skim milk and butterfat handled in any form;
- (b) The weights and tests for butterfat and other content of all products handled;
- (c) The pounds of skim milk and butterfat contained in or represented by all items of products on hand at the beginning and end of each month; and
- (d) Payments to producers, including any deductions authorized by producers, and disbursement of money so deducted.

#### § 1094.35 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and rec-

ords, or of specified books and records is necessary in connection with a proceeding under section 8c(15)(A) of the act or a court action specified in such notice, the handler shall retain such books and records or specified books and records until further written notifications from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

#### CLASSIFICATION OF MILK

#### § 1094.40 Skim milk and butterfat to be classified.

The skim milk and butterfat to be reported for pool plants pursuant to § 1094.30 shall be classified each month by the market administrator, pursuant to the provisions of §§ 1094.41 through 1094.46.

#### § 1094.41 Classes of utilization.

Subject to the conditions set forth in §§ 1094.42 through 1094.46, the classes of utilization shall be as follows:

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

(1) Disposed of in the form of fluid milk products, except those classified as Class II milk pursuant to (b) (3), (4), and (5) of this section: *Provided*, That if any fluid milk products are fortified by the addition of nonfat milk solids the extent of classification of such products as Class I milk shall be an equal volume of the unmodified product of the same butterfat test; and (2) Not specifically accounted for as Class II milk.

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

(1) Used to produce any product other than a fluid milk product;

(2) Contained in inventories of fluid milk products on hand at the end of the month;

(3) Disposed of as dumped skim milk, provided the market administrator is notified in advance and given opportunity to verify such dumping;

(4) Disposed of as skim milk and used for livestock feed; and

(5) That portion of fluid milk products not classified as Class I pursuant to paragraph (a) (1) of this section;

(6) In shrinkage of skim milk and butterfat, respectively, assigned pur-



suant to § 1094.42(b)(1), but not to exceed the following:

(i) Two percent of fluid milk products received directly from producers; plus

(ii) One and one-half percent of fluid milk products received in bulk from pool plants of other handlers; plus

(iii) One and one-half percent of fluid milk products received from a cooperative association which is the handler for such milk pursuant to § 1094.12(d); plus

(iv) One and one-half percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the operator of such plant and the handler; plus

(v) One and one-half percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; less

(vi) One and one-half percent of fluid milk products disposed of in bulk to plants of other handlers and to nonpool plants; and

(7) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1094.42(b)(2).

**§ 1094.42 Shrinkage.**

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively for each handler; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat contained in:

(1) Items specified in § 1094.41(b)(6)(i) through (v); and

(2) Remaining receipts of other source milk in bulk.

**§ 1094.43 Responsibility of handlers.**

All skim milk and butterfat to be classified pursuant to this part shall be classified as Class I milk, unless the handler who first receives such skim milk and butterfat establishes to the satisfaction of the market administrator that it should be classified as Class II milk.

**§ 1094.44 Transfers.**

Skim milk and butterfat transferred or diverted from a pool plant (including milk transferred by a cooperative association in its capacity as a handler

pursuant to § 1094.12(d)) in the form of a fluid milk product shall be classified as follows:

(a) Except as provided in paragraph (f) of this section, at the utilization indicated by the operators of both plants if such fluid milk products are moved in bulk to a pool plant, otherwise as Class I milk, subject in either event to the following conditions:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the plant(s) of the transferee handler after computations pursuant to § 1094.46(a)(8) and the corresponding step of § 1094.46(b);

(2) If the transferor handler received during the month other source milk to be allocated pursuant to § 1094.46(a)(3) and the corresponding step of § 1094.46(b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1094.46(a)(7) or (8) and the corresponding steps of § 1094.46(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if such fluid milk products are moved to a plant operated by a producer-handler;

(c) As Class I milk, if transferred in bulk as milk, filled milk, skim milk or cream, or diverted, to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification pursuant to the assignments set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1094.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat

received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants.

(i) Any Class I utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply of Grade A milk for such nonpool plant;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply of Grade A milk for such nonpool plant;

(iii) Remaining Class I utilization (exclusive of transfers to Federal order plants) shall be assigned first to the receipts from dairy farmers who the market administrator determines constitute the regular source of supply of Grade A milk for such nonpool plant, and all remaining Class I utilization shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk;

(d) Unless a different utilization is claimed by both handlers pursuant to paragraph (a) of this section, skim milk and butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as the operator of a pool plant or a handler pursuant to § 1094.12(d) shall be classified pro rata to the respective amounts thereof remaining in each class for such months at the pool plant of the receiving handler after the computations pursu-

ant to § 1094.46(a)(9) and the corresponding step of § 1094.46(b).

#### § 1094.45 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and obvious errors the monthly report submitted by each handler pursuant to § 1094.30 and compute the total pounds of skim milk and butterfat respectively, in Class I and Class II at all pool plants of such handler: *Provided*, That the skim milk contained in any product utilized, produced, or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

#### § 1094.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1094.45, the market administrator shall determine the classification of producer milk for each handler as follows:

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

(1) Subtract from the total pounds of skim milk classified:

(i) From Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(ii) From Class II the pounds of skim milk classified as Class II pursuant to § 1094.41(b)(6);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning

with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants that were not subtracted pursuant to subparagraph (1) (i) of this paragraph; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (1) (i) and (3) (iv) of this paragraph:

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers, receipts from a cooperative association in its capacity as a handler pursuant to § 1094.12(d) and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler; and

(iii) Receipts of milk by diversion from an other order plant for which Class II utilization was requested by the receiving handler and by the diverting handler under the other order;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) (ii) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (1) (i), (3) (iv), or (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (3) (v) or (4) (ii) of this paragraph:

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1094.22(1) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers and from a cooperative association as a handler pursuant to § 1094.12(d), according to the classification assigned pursuant to § 1094.44(a);

(10) Subtract pro rata from the pounds of skim milk remaining in each class, the pounds of skim milk to be classified pursuant to § 1094.44(e); and

(11) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amounts so subtracted shall be known as "overage";

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

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

#### MINIMUM PRICES

#### § 1094.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the Department of Agriculture for the month, adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent. For the purpose of computing Class I prices from the effective date hereof, the basic formula price shall not be less than \$4.33.

#### § 1094.51 Class prices.

Subject to the provisions of §§ 1094.52 and 1094.53, the minimum class prices per hundredweight of milk containing 3.5 percent butterfat shall be determined for each month as follows:

(a) *Class I milk price.* The Class I milk price shall be the basic formula price for the preceding month plus \$2.65, plus 20 cents.

(b) *Class II milk prices.* The Class II milk price during the months of September through January shall be the basic formula price for the month computed pursuant to § 1094.50 and during all other months shall be the basic formula price minus 10 cents but not less than a price computed as follows:

(1) Multiply by 4.2 the Chicago butter price for the month;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption, f.o.b. manufacturing plants in the Chicago area, as published by the Department for the period from the 26th day of the immediately preceding month through the 25th day of the current month; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph, subtract 48 cents and round to the nearest cent. The result shall be the Class II price except as provided in subparagraph (4) of this paragraph.

(4) If the price computed pursuant to subparagraphs (1), (2), and (3) of this paragraph exceeds the basic formula price, the basic formula price shall be the Class II price.

#### § 1094.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1094.51 shall be increased or decreased respectively, for each one-tenth percent butterfat at the appropriate rate determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the previous month by 0.12;

(b) *Class II price.* Multiply the Chicago butter price for the month by 0.11.

#### § 1094.53 Location differentials to handlers.

(a) For that milk which is received from producers or from a cooperative association as a handler pursuant to § 1094.12(d) at a pool plant more than 50 miles by shortest toll-free highway distance, as determined by the market administrator, from the nearer of the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma, Louisiana, and utilized as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section and for other source milk for which a location adjustment is applicable, the price specified in § 1094.51(a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

	<i>Rate per hundredweight (cents)</i>
Zones measured from the nearer of the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma, Louisiana (miles):	
More than 50 but not more than 60....	13.5
Each additional 10 miles or fraction thereof.....	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at

which the least location adjustment would apply.

(c) The market administrator shall determine and publicly announce the zone location of each plant of each handler according to the shortest toll-free highway distance between such plant and the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

**§ 1094.54 Use of equivalent prices.**

If, for any reason, a price specified in this part for use in computing class prices or for other purposes is not reported or published in the manner described in this part, the market administrator shall use a price determined by the secretary to be equivalent to or comparable with the price which is specified.

**APPLICATION OF PROVISIONS**

**§ 1094.60 Producer-handler exemption.**

A producer-handler shall be exempt from all provisions of this part except §§ 1094.32, 1094.34, and 1094.35.

**§ 1094.62 Obligations of handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1094.30(b) and 1094.31(c) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1094.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated

to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1094.70(e) and a credit in the amount specified in § 1094.82(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1094.30(b) and 1094.31(c) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1094.10(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such non-pool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant;

(i) As Class I milk from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) Received from a nonpool plant which is not an other order plant to the extent that an equivalent amount disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

#### § 1094.63 Plants subject to other Federal orders.

The handler operating a plant specified in paragraphs (a) or (b) of this section shall be exempt from all provisions of this part except §§ 1094.32, 1094.34 and 1094.35 and as specified in paragraph (c):

(a) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless a greater volume of Class I milk, except filled milk, is disposed of during the month on routes in the New Orleans marketing area than in the marketing area defined in such other order;

(b) Any supply plant which would be subject to the classification and pricing provision of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to § 1094.10(c).

(c) Each handler operating a plant specified in paragraph (a) of this section if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th

day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant and subtract its value at the Class II price.

#### DETERMINATION OF PRICES TO PRODUCERS

##### § 1094.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1094.46(c), by the applicable class prices (adjusted pursuant to §§ 1094.52 and 1094.53);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1094.46(a)(11) and the corresponding step of § 1094.46(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1094.46(a)(5) and the corresponding step of § 1094.46(b);

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class II price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1094.46(a)(3) and the corresponding step of § 1094.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1094.46(a)(3)(iv) and (v) and the corresponding steps of § 1094.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

(e) With respect to skim milk and butterfat subtracted from Class I pursuant to § 1094.46(a) (7) and the corresponding step of § 1094.46(b) (excluding such skim milk or butterfat in bulk 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 under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order), add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, but in no event shall such adjustment result in a Class I price lower than the Class II price.

**§ 1094.71 Computation of the 3.5 percent value of all milk.**

For each month, the market administrator shall compute the 3.5 percent value of all milk specified in § 1094.72, as follows:

(a) Combine into one total the individual values of milk of all handlers computed pursuant to § 1094.70 except those of handlers who failed to make payments required pursuant to § 1094.80 through § 1094.82 for the preceding month;

(b) Add an amount equal to the total value of the location differentials computed pursuant to § 1094.76;

(c) Subtract, if the average butterfat content of the milk specified in § 1094.-72 is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1094.-75 and multiplying the result by the total hundredweight of such milk;

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

**§ 1094.72 Weighted average and uniform price.**

For each month the market administrator shall make the following computation:

(a) Divide the amount computed pursuant to paragraphs (a) through (d) in § 1094.71 by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk included pursuant to § 1094.-71(a); and

(2) The total hundredweight for which a value is computed pursuant to § 1094.70(e);

(b) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and also the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers in the months of August through January;

**§ 1094.73 Uniform excess milk price.**

For each of the months of February through July the market administrator shall compute the uniform price for excess milk containing 3.5 percent butterfat as follows:

(a) Multiply the hundredweight of excess milk not in excess of the total quantity of Class II milk represented by the values included in § 1094.71(a) by the price for 3.5 percent Class II milk pursuant to § 1094.51(b);

(b) Multiply the hundredweight of any excess milk not included in the computation described in paragraph (a) of this section by the price for 3.5 percent Class I utilization pursuant to § 1094.51 (a); and

(c) Combine into one total the values computed pursuant to paragraphs (a) and (b) of this section, divide by the hundredweight of excess milk and round to the nearest cent.

**§ 1094.74 Uniform base milk price.**

For each of the months of February through July the market administrator shall compute the uniform price for base milk containing 3.5 percent butterfat received from producers as follows:

(a) Multiply the total pounds of excess milk by the excess price for the month;

(b) Subtract the total value arrived at in paragraph (a) of this section from the total 3.5 percent value of all producer milk arrived at in § 1094.71;

(c) From the amount resulting from the computations pursuant to paragraph (b) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in § 1094.72(a) (2) by the weighted average price;

(d) Divide the amount calculated pursuant to paragraph (c) of this section by the total hundredweight of base milk

for handlers included in these computations; and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The resulting figure shall be the uniform price per hundredweight for base milk of 3.5 percent butterfat received from producers.

#### § 1094.75 Producer butterfat differential.

In making payments pursuant to § 1094.80, the uniform price, base price and excess price shall be increased or decreased for each one-tenth of one percent of butterfat content in the milk received from each producer or a cooperative association above or below 3.5 percent, as the case may be, by a butterfat differential equal to the average of the butterfat differentials pursuant to § 1094.52 weighted by the pounds of butterfat in producer milk in each class, rounded to the nearest tenth cent.

#### § 1094.76 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk and the uniform price for base milk received at a pool plant shall be reduced according to the location of the pool plant, each at the rates set forth in § 1094.53(a);

(b) For purposes of computations pursuant to §§ 1094.82 and 1094.83 the weighted average price shall be adjusted at the rates set forth in § 1094.53(a) applicable at the location of the nonpool plant from which the milk was received.

#### § 1094.77 Notification of handlers.

On or before the 11th day after the end of each month, the market administrator shall mail to each handler receiving milk from producers, who submitted the report(s) prescribed in § 1094.30, at his last known address a statement showing:

(a) The amount and value of his producer milk in each class and the totals thereof;

(b) The amounts and value of his base and excess milk, respectively;

(c) The weighted average and uniform price(s) computed pursuant to §§ 1094.72 through 1094.74 and the butterfat differential computed pursuant to § 1094.75;

(d) The amount due such handler from the producer-settlement fund or the amount to be paid by such handler

to the producer-settlement fund, as the case may be; and

(e) The totals of the minimum amounts to be paid by such handler pursuant to §§ 1094.85 and 1094.86.

#### PAYMENTS

#### § 1094.80 Time and method of payments to producers.

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

(1) On or before the last day of each month to each producer, who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class II milk price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, each handler shall make payment to each producer for milk which was received from him during the month at not less than the uniform price(s) computed pursuant to § 1094.72 or to §§ 1094.73 and 1094.74, as the case may be, subject to the following adjustments:

(i) The butterfat differential pursuant to § 1094.75;

(ii) The location differential pursuant to § 1094.76;

(iii) Less payments made to such producer pursuant to subparagraph (1) of this paragraph;

(iv) Less marketing services deductions made pursuant to § 1094.85;

(v) Plus or minus adjustments for errors made in previous payments to such producer;

(vi) Less deductions authorized in writing by such producer; and

(vii) If by such date such handler has not received full payment from the market administrator pursuant to § 1094.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.



(b) Each handler shall furnish to the producer the following information:

(1) On or before the 25th day of the month, the pounds of milk received from the producer during the first 15 days of such month;

(2) On or before the 15th day of the following month (i) the pounds of milk received from the producer each day and the total for the month, together with the butterfat content of such milk, (ii) the pounds of base and excess milk received, (iii) the amount (or rate) and nature of deductions made from payments, and (iv) the amount and nature of payments due pursuant to § 1094.84.

(c) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any claim on the part of the association, each handler:

(1) Shall pay to the cooperative association, in lieu of payments pursuant to paragraph (a) of this section, on or before the 2d day prior to the date on which payments are due individual producers, an amount equal to not less than the amount due such certified members as determined pursuant to paragraph (a) of this section;

(2) Report to the cooperative association on or before the 25th day of the month, the pounds of milk received from each member of the cooperative association during the first 15 days of such month and on or before the 7th day of the following month to the cooperative association for its individual members the following information: (i) The pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) the pounds of base and excess milk received, (iii) the amount (or rate) and nature of deductions made from payments and (iv) the amount and nature of payments due pursuant to § 1094.84.

The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of mem-

bership or until the original request is rescinded in writing by the association.

(3) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) Each handler shall make payment to a cooperative association for milk received from such association in its capacity as a handler pursuant to § 1094.12(a) and § 1094.12(d) as follows:

(1) On or before the 22d day of each month an amount equal to not less than the Class II price for the preceding month multiplied by the hundredweight of milk received from any cooperative association during the first 15 days of the current month; and

(2) On or before the 12th day after the end of each month in which it was received at not less than the applicable class prices plus the amount due the market administrator from the cooperative association on such milk pursuant to § 1094.86, less amounts paid pursuant to subparagraph (1) of this paragraph.

**§ 1094.81 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1094.62, 1094.63, 1094.82, and 1094.84, and out of which he shall make all payments pursuant to §§ 1094.83 and 1094.84: *Provided*, That, any payments due to any handler shall be offset by any payments due from such handler.

**§ 1094.82 Payments to the producer-settlement fund.**

On or before the 12th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The total of the net pool obligation computed pursuant to § 1094.70 for such handlers; and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform

prices computed pursuant to §§ 1094.72 and 1094.73 adjusted by the producer butterfat and location differentials; and

(2) The value at the weighted average price(s) applicable at the location of the plant(s), from which received (not to be less than the value at the Class II price) with respect to other source milk for which a value is computed pursuant to § 1094.70(e).

**§ 1094.83 Payments out of the producer-settlement fund.**

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1094.82(b) exceeds the amount computed pursuant to § 1094.82(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 such payments as soon as the appropriate funds are available.

**§ 1094.84 Adjustment of accounts.**

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

**§ 1094.85 Marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1094.80, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

**§ 1094.86 Expense of administration.**

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may, from time to time, prescribe, to be announced by the market administrator on or before the 11th day after the end of such month, with respect to all skim milk and butterfat received by such handler in:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1094.46(a) (3) and (7) and the corresponding steps of § 1094.46(b), except such other source milk on which no handler obligation applies pursuant to § 1094.70(e); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk specified in § 1094.62 (b) (2).

**§ 1094.87 Termination of obligations.**

The provisions of this section shall apply to any obligations under this part for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the

skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers; or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representative.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler, if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

#### DETERMINATION OF BASE

##### § 1094.90 Base-operating period.

The base-operating period shall be the months of February through July.

##### § 1094.91 Base-forming period.

The base-forming period shall be the months of September through January immediately preceding the base-operating period.

##### § 1094.92 Determination of daily base.

The daily base of each producer shall be calculated by the market administrator as follows: Divide the total pounds of milk received by all handlers of pool plants from such producer during the base-forming period by the number of days in such period.

##### § 1094.93 Base rules.

The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base as calculated pursuant to § 1094.92 to each person for whose account producer milk was delivered to pool plants during the months of the base-forming period: *Provided*, That in the case of a pool plant which did not qualify as a pool plant during each month of the base-forming period, but which is a pool plant during any of the months of the base-operating period, bases shall be assigned to each person for whose account milk was delivered to such plant at the time such plant becomes a pool plant in the same manner as if such plant were a pool plant during the base-forming period.

(b) An entire base shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be signed by the base-holder, or his heirs, and by the person to whom such base is to be transferred: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

##### § 1094.94 Announcement of established bases.

On or before March 1 of each year, the market administrator shall notify each producer, and the handler receiv-

ing milk from such producer, of the daily base established by such producer, except that for March 1960 the announcement of such bases shall be on or before March 31, 1960.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1094.100 Effective time.

The provisions of this part, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1094.101 Suspension or termination.

The Secretary shall, whenever he finds that any or all provisions of this part, or any amendment thereto, obstruct or do not tend to effectuate the declared policy of the Act, terminate or suspend the operation of any or all provisions of this part or any amendment thereto.

§ 1094.102 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, or any amendment thereto, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1094.103 Liquidation.

Upon the suspension or termination of any or all of the provisions of this part, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1094.110 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent and representative in connection with any of the provisions of this part.

§ 1094.111 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

PART 1096—MILK IN NORTHERN LOUISIANA MARKETING AREA

Subpart—Order Regulating Handling

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1096.2	Department.
1096.3	Person.
1096.4	Cooperative association.
1096.5	Northern Louisiana marketing area.
1096.6	Producer.
1096.7	Handler.
1096.8	Producer-handler.
1096.9	Plant.
1096.10	Distributing plant.
1096.11	Supply plant.
1096.12	Pool plant.
1096.13	Route.
1096.14	Fluid milk product.
1096.15	Producer milk.
1096.16	Other source milk.
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MARKET ADMINISTRATOR

1096.25	Designation.
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REPORTS, RECORDS AND FACILITIES

1096.30	Reports of receipts and utilization.
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CLASSIFICATION

1096.40	Skim milk and butterfat to be classified.
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