

(revised 1/00)

STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS  
DIVISION OF DAIRY INDUSTRY SERVICES  
I NYCRR PART 21  
WESTERN NEW YORK MILK MARKETING AREA  
-OFFICIAL ORDER NO. 127-

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## DEFINITIONS

### Section

- 21.1 Statute. Statute means the Agriculture and Markets Law as amended.
- 21.2 Commissioner. Commissioner means the Commissioner of Agriculture and Markets of the State of New York.
- 21.3 Western New York Milk Marketing Area. Western New York Milk Marketing Area means all territory, including government institutions or reservations, within the Counties of Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne and Wyoming; the townships of Freedom and Yorkshire in Cattaraugus County; the townships of Alfred, Almond, Burns, Centerville, Granger, Grove and Hume in Allegany County; the city of Hornell, and the townships of Avoca, Bath, Bradford, Canisteo, Cohocton, Dansville, Fremont, Pulteney, Hartsville, Hornellsville, Howard, Prattsburg, Urbana, Wayland, Wayne and Wheeler in Steuben County; the townships of Conquest, Montezuma, Sterling and Victory in Cayuga County; the townships of Italy, Middlesex and Potter in Yates County; all located in the State of New York and all hereinafter called the marketing area.
- 21.4 Reserved.
- 21.5 Federal Milk Marketing Order. Federal Milk Marketing Order means an order issued by the Secretary of Agriculture of the United States, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 as amended, regulating the handling of milk in an area described in such order.
- 21.6 Person. Person means any individual, partnership, corporation, association or other business unit, and shall be deemed to include broker, agent, cooperative corporation and unincorporated cooperative association.
- 21.7 Producer. Producer means any person, including members of any cooperative association, who delivers milk of his own production to a pool plant or whose milk is diverted by a marketer to a designated diversion plant pursuant to section 21.17 of this Part.
- 21.8 Route Disposition. Route disposition means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery through a distribution depot, by a vendor, from a plant store or through a vending machine) except any delivery to a plant.
- 21.9 Marketer. Marketer means any person who purchases or handles or sells milk produced or received by him or by another marketer from producers: Provided, that any person who sells or moves into the marketing area as route disposition fluid milk products obtained from sources other than producers or pool plants shall be deemed to be a marketer with respect to such sales or movements.

## 21.10 Types of Cooperatives.

(a) Cooperative association means a cooperative association of milk producers which the commissioner determines:

- (1) Is incorporated pursuant to the provisions of the Cooperative Corporations Law of New York State or pursuant to similar laws of other states;
- (2) Is duly licensed pursuant to the provisions of Article 21 of the Agriculture and Markets Law;
- (3) Has full authority in the sale of its members' milk and is engaged in making collective sales of or marketing milk or milk products for its members; and
- (4) Has its entire organization and all of its activities under the control of its members.

(b) Bargaining cooperative means a cooperative association of milk producers which causes the milk of its members to be delivered to marketers' plants and upon which milk such marketers have made the reports and payments required by this order.

(c) Collecting cooperative means a cooperative association of milk producers which causes the milk of its members to be delivered to marketers' plants and collects payments therefor.

(d) Operating cooperative means a cooperative association of milk producers which is a collecting cooperative and, in addition, operates a pool plant in the marketing area where milk may be received and handled.

21.11 Plant. Plant means the land, buildings and processing equipment, not including trucks used to transport milk, constituting a single operating unit for the receiving, handling or processing of milk or milk products.

## 21.12 Types of plants.

(a) Pool plant means a plant, other than a pool plant pursuant to a Federal Milk Marketing Order, where milk is received from producers, is approved by a health authority for processing of fluid milk for distribution in any part of the marketing area, and which meets the requirement of paragraph (1) or (2) of this subdivision:

- (1) At least 50 percent of the milk received from producers and as transfers of bulk milk from other plants during the month is processed at the plant and disposed of as route disposition of fluid milk products in the marketing area or as transfers of packaged fluid milk products to pool plants.
- (2) A plant which meets the requirement of paragraph (1) during any month shall remain a pool plant until the second consecutive month in which it fails to meet such requirement.

(b) Nonpool plant means a plant other than a pool plant pursuant to this Part from which fluid milk products are distributed or otherwise sold as route disposition in the marketing area.

(c) Diversion plant means a plant other than a pool plant designated by the commissioner pursuant to section 21.17 to which milk may be diverted by direct delivery from farms of producers in bulk farm tank trucks.

21.13 Bulk farm tank truck. Bulk farm tank truck means a truck used to transport milk in bulk from the farms of producers to plants.

21.14 Bargaining agency. Bargaining agency means the Western New York Cooperative Milk Producers' Bargaining Agency, Inc.

21.15 Fiscal agent. Fiscal agent means such trust company as may be designated by the commissioner.

21.16 Milk and milk products.

(a) Fluid milk product means:

(1) that except as provided in paragraph (2) of this subdivision, any milk products in fluid or frozen form containing less than nine percent butterfat that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: milk, fat free milk, lowfat milk, light milk, reduced fat milk, milk drinks, and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, concentrated meaning milk that contains not less than 25.5 percent, and not more than 50 percent total milk solids, or reconstituted.

(2) The term "fluid milk product" shall not include:

(i) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(ii) The quantity of skim milk in any modified product specified in paragraph (1) of this subdivision that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

(b) Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream or a mixture of cream and milk or skim milk containing 9.0 percent or more butterfat with or without the addition of other ingredients.

(c) Pool milk means:

(1) except as provided in paragraph (2) of this subdivision, any skim milk and butterfat in milk received directly at a pool plant from producers (including milk from the marketer's own farm or a municipal farm which is not exempt from pooling) or which the marketer diverts by direct delivery from the farms of producers to a designated diversion plant. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received.

(2) "Pool milk" shall not include:

(i) milk of producers diverted in excess of the limits prescribed in section 21.17.

(ii) milk of producers assigned pursuant paragraphs (7) and (8) of subdivision (a) of section 21.34, and the corresponding allocation to paragraphs (7) and (8) of subdivision (b) of section 21.34.

(d) Exempt milk is a quantity not to exceed 1,500 quarts daily which was produced by the marketer and processed, packaged and sold as route distribution and/or which was used on such farm and any quantity received from a farm owned and operated by a municipal corporation to the extent that an equal quantity of milk is returned to and used by such municipal corporation.

(e) Other source milk means all skim milk and butterfat contained in or represented by:

(1) Receipts in the form of fluid milk products from any source other than receipts of pool milk from producers or other plants;

(2) Receipts in the form of fluid cream products; and

(3) Receipts in a form other than a fluid milk product or fluid cream product (including those produced at the plant during a prior month) which are reprocessed, converted or combined with another product during the month, or for which the marketer fails to establish a disposition.

21.17 Diversion of pool milk. Milk may be diverted from a pool plant(s) by direct delivery from the farms of producers by bulk farm tank trucks to diversion plants designated by the commissioner pursuant to subdivision (a) of this section, and shall be deemed to be pool milk within the limits provided in subdivision (b) of this section. Diverted milk shall be priced at the location of the plant to which diverted.

(a) Designation of a diversion plant may be made by the commissioner upon application by a marketer operating a pool plant or a collecting cooperative. Such application may be denied or the designation of diversion plant rescinded by the commissioner upon a finding by him, after hearing, that such diversion is or would be disruptive of

orderly marketing conditions in this or any other market, or that the conditions of diversion specified in paragraphs (1) through (5) of this subdivision are not being met.

(1) The marketer diverting the milk shall operate a pool plant during the month or be a collecting cooperative which has arranged to make the reports and payments with respect to the milk of producers.

(2) The bulk farm tank truck used for diverting such milk shall be owned and operated by or under contract to said marketer.

(3) The marketer shall report each month to the commissioner with respect to milk of producers delivered to a diversion plant, the identity of the producers, their affiliation, and the pounds of milk of each producer so diverted, including milk diverted in excess of the limits provided in subdivision (b) of this section.

(4) The milk diverted from the farms of producers to diversion plants and which is pool milk is classified in accordance with the provisions of sections 21.30 through 21.34 of this Part and the marketer responsible for diverting such milk makes the payments required pursuant to sections 21.60 through 21.68 of this part.

(5) The operator of the diversion plant to which milk of producers is diverted maintains and makes available to the commissioner all records necessary for an accurate determination of the quantity and utilization of pool milk diverted to said plant.

(b) The quantity of milk of producers which a marketer operating a pool plant or a collecting cooperative may divert to designated diversion plants as pool milk during each of the months of September through February, and which is classified as other than Class I milk, shall not exceed 70 percent of the total milk of producers received at or diverted from pool plants for the account of such marketer or collecting cooperative: Provided, that with respect to any marketer or collecting cooperative which as of April 15, 1988 has permission to divert milk pursuant to section 21.17(a) as in effect on said date, the quantity of milk of producers which such marketer or cooperative may divert to designated diversion plants as pool milk in each such month, and which is classified as other than Class I milk, shall not exceed the above percentage limitation or 8 million pounds per month, whichever is greater.

21.18 Commercial food processing establishment. "Commercial food processing establishment" means any facility other than a milk plant, to which fluid milk products and fluid cream products are disposed of that uses such receipts as ingredients in food products and has no disposition of fluid milk products or fluid cream products other than those received in consumer type packages (one gallon or less).

**REPORTS AND RECORDS OF MARKETERS**

21.20 Reports of receipts and utilization. Each marketer shall report monthly so that the commissioner 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. The Commissioner shall audit for mathematical correctness and obvious errors the reports that are submitted.

(a) Each marketer operating 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 nonfat solids other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting marketer, from sources other than a collecting cooperative which receives milk for its account from the farm of a producer and delivers to pool plants or diverts to nonpool plants; and

(ii) Receipts of milk from any collecting cooperative which receives milk for its own account from the farm of a producer and delivers to pool plants or diverts to nonpool plants;

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

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants, from nonpool plants where receipts represent pool milk and receipts of exempt milk;

(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 of disposition of all milk and milk products required to be reported pursuant to this subdivision; and

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

(b) Each marketer other than those reporting pursuant to subdivision (a) or (c) of this section, shall report with respect to such plant in the same manner as prescribed for reports required by subdivision (a) of this section and such information as the Commissioner may require to calculate and verify payments described in section 21.51(b)(2) of this Part. 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 collecting cooperative that receives milk for its account from the farm of a producer and delivers to pool plants or diverts to nonpool plants shall report the following information (unless the cooperative and operator of a pool plant notify the commissioner prior to the time that milk is delivered to the pool plant that the operator of the pool plant shall report the information pursuant to subdivision (a) of this section.

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

(2) The utilization or disposition of such receipts.

(d) Each marketer not specified in subdivision (a), (b) or (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the commissioner may prescribe.

21.21 Reports to collecting cooperatives. Marketers purchasing from collecting or operating cooperatives shall also make reports in the manner and form prescribed in section 21.20 to such collecting or operating cooperatives on or before the 5th day of each month with respect to milk received during the preceding month.

21.22 Marketer responsibility for records and facilities. Each marketer shall maintain and retain records of its operations and make such records and facilities available to the commissioner. If adequate records of a marketer, or of any other persons, that are relevant to the obligation of such marketer are not maintained and made available, any skim milk and butterfat required to be reported by such marketer for which adequate records are not available shall be considered as used in the highest-priced class.

(a) Records to be maintained.

(1) Each marketer shall maintain records of its operations (including, but not limited to, records of purchases, sales, processing, packaging, and disposition) as are necessary to verify whether such marketer has any obligation under the order and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers, and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each marketer shall keep such other specific records as the commissioner deems necessary to verify or establish such marketer's obligation under the order.

(b) Availability of records and facilities. Each marketer shall make available all records pertaining to such marketer's operations and all facilities the commissioner finds are necessary to verify the information required to be reported by the order and/or to ascertain such marketer's reporting, monetary, or other obligation under the order. Each marketer shall permit the commissioner to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the commissioner such facilities as are necessary to carry out his or her duties.

(c) Retention of records. All records required under the order to be made available to the commissioner shall be retained by the marketer for a period of three years to begin at the end of the month to which such records pertain. If, within such three-year period, the commissioner notifies the marketer in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding related to this order or a court action specified in such notice, the marketer shall retain such records, or specified records, until further written notification from the commissioner. The commissioner 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**

##### **21.30 Basis of classification.**

(a) The skim milk and butterfat required to be reported by each marketer as set forth in section 21.20 of this Part shall be classified each month pursuant to the provisions of section 21.31 through 21.34. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a marketer, the pounds of skim milk used or disposed of in such product shall be considered an amount equivalent to the nonfat milk solids contained in such products plus all the water originally associated with such solids.

(b) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and non-fluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the marketer) prior to any assignments under section 21.34 of this Part. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under section 21.34 of this Part on a pro rata basis, unless a specific use of such receipts is established by the marketer.

(c) Skim milk and butterfat contained in bulk inventory of fluid milk and fluid cream products at the end of the month at a plant other than a pool plant shall be classified to the lowest class of utilization at the plant or to such classification assigned by a Federal Milk Marketing Order.

21.31 Classes of utilization. Subject to the conditions set forth in sections 21.30 and 21.32 through 21.34, the classes of utilization shall be as follows:

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

- (1) Utilized and disposed of as a fluid milk product in packaged form;
- (2) Moved to a plant as a fluid milk product in bulk form where it is utilized or allocated as Class I milk, which in the case of movements to a nonpool plant not regulated by a Federal order shall be a quantity of fluid milk products not less than that distributed as route disposition in the marketing area from such plant;
- (3) Contained in inventory of packaged fluid milk products on hand at the end of the month;
- (4) In shrinkage assigned pursuant to section 21.32 of this Part; and
- (5) Not specifically accounted for as Class II, III or IV milk.

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

- (1) Moved to a plant as a fluid milk product or fluid cream product in bulk form where it is utilized or allocated as a Class II product; and
- (2) In fluid milk products in containers larger than one gallon and fluid cream products disposed of to any commercial food processor if the commissioner is permitted to audit the records of the commercial food processing establishment for the purpose of verification; otherwise such use shall be Class I; and
- (3) Used to produce:
  - (i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;
  - (ii) Milk shake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form;

(iii) Frozen cream, aerated cream, sour cream, sour half and half, sour cream mixtures containing non-milk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings and other buttermilk for baking that contains food starch in excess of 2 percent of the total solids, batter and similar products;

(v) Any concentrated milk product in bulk fluid form other than that specified in paragraph (1) of subdivision (c) and paragraph (5) of subdivision (d) of this section;

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

(vii) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;

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

(4) In shrinkage classified as class II pursuant to section 21.32 of this Part.

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

(1) Used to produce:

(i) Cream cheese and other spreadable cheese, and hard cheese of types that may be shredded, grated, or crumbled, and are not included in subparagraph (i) of paragraph (3) of subdivision (b) of this section;

(ii) Plastic cream, anhydrous milk fat and butteroil;

(iii) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(iv) Evaporated or sweetened condensed milk/skim milk in a consumer-type package.

(2) Moved to a plant as a fluid milk or fluid cream product in bulk form where it is utilized or allocated as Class III milk;

(3) In shrinkage classified as Class III pursuant to section 21.32 of this Part.

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

(1) Used to produce:

(i) Butter;

(ii) Any milk product in dried form;

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

(3) Skim milk represented by the nonfat solids added to a fluid milk product for fortification which is in excess of the volume included within the fluid milk product definition of subdivision (a) of section 21.16 of this Part;

(4) Moved to a plant as a fluid milk or fluid cream product in bulk form where it is utilized or allocated as Class IV;

(5) Any concentrated milk product in bulk form that is used to produce a Class IV product;

(6) Any shrinkage classified as Class IV pursuant to section 21.32 of this Part; and

(7) Any product not otherwise specified in this section.

(e) Skim milk and butterfat used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a marketer in a vehicular accident, flood, fire, or similar occurrence beyond the marketer's control shall be assigned to the lowest priced class for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the commissioner.

21.32 Classification of shrinkage. Shrinkage shall be classified at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively.

(b) Such shrinkage shall be assigned pro rata to each class of use in accordance with the respective volumes of skim milk and butterfat actually accounted for in each class, except that the shrinkage assigned to each Class shall not exceed two percent of the skim milk and butterfat, respectively, in such class and any excess thereof shall be assigned to the highest priced class available at the plant.

21.33 Responsibility of marketers and the reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the marketer who first received such skim milk and butterfat, including that diverted as pool milk or otherwise moved to any other plant, satisfies the commissioner that such skim milk and butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the commissioner discloses that the original classification was incorrect.

21.34 Allocation of skim milk and butterfat classified. The classification of pool milk received from producers by each marketer operating a pool plant and each collecting cooperative which has arranged to make the reports and payments with respect to the milk of producers, shall be determined each month pursuant to subdivisions (a), (b) and (c) of this section.

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

(1) Subtract from the pounds of skim milk in each class the pounds of skim milk in exempt milk in accordance with the class in which it was used or sold.

(2) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in packaged fluid milk products received from a plant regulated by a Federal Milk Marketing Order and which are classified and priced as Class I milk.

(3) Subtract from the remaining pounds of skim milk in each class according to its Federal Order classification, the pounds of skim milk in fluid milk products in bulk transferred or diverted from plants regulated by a Federal Milk Marketing Order.

(4) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month which were classified and priced as Class I milk the preceding month.

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in 21.31(b)(3)(viii) of this Part that were in inventory at the beginning of the month in packaged form or bulk form if used to produce a Class II product, but not in excess of the pounds of skim milk remaining in Class II. (This paragraph only applies if the plant were subject to this provision in the preceding month)

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in 21.31(b) but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract from the remaining pounds of skim milk in class I, the pounds of skim milk in route disposition of fluid milk products outside the marketing area that are not distributed in the marketing area of a Federal milk marketing order, other than that subtracted pursuant to (2) and (3) in this subdivision.

(8) Subtract from the remaining pounds of skim milk in series beginning with Class IV the pounds of skim milk in the cream associated with the pounds of fluid milk products subtracted in 21.34(a)(7) and the corresponding step of 21.34(b)(7) of this Part. Such associated cream shall be determined by using the Pearson's square method of standardization using the average butterfat test of milk received from producers, a 40% butterfat test for cream and the average butterfat test of the fluid milk products in route disposition outside of the marketing area.

(9) Subtract from the pounds of skim milk remaining in each class in series beginning with Class IV milk the pounds of skim milk in other source milk as follows:

(i) Receipts in a form other than that of a fluid milk product; if not subtracted pursuant to paragraphs (5) or (6) of this subdivision; and

(ii) Receipts of reconstituted skim milk in fluid milk products which are not classified and priced as Class I milk by a Federal Milk Marketing Order.

(10) Subtract from the pounds of skim milk remaining in Class II, III or IV milk, the remaining pounds of skim milk in receipts of other source milk in the form of fluid milk products which are not classified or priced by a Federal Milk Marketing Order and for which both the transferor and transferee marketers request Class II, III, or IV utilization.

(11) Subtract from the pounds of skim milk remaining in each class in series beginning with Class IV milk, the pounds of skim milk in inventory of fluid milk and fluid cream products in bulk on hand at the beginning of the month which were classified and priced as Class IV milk the preceding month.

(12) Subtract pro rata from the pounds of skim milk remaining in each class, the remaining pounds of skim milk in receipts of other source milk in the form of fluid milk products which are not classified or priced by a Federal Milk Marketing Order.

(13) Subtract from the remaining pounds of skim milk in each class, the pounds of skim milk in the form of fluid milk products received from other pool plants and in pool milk received from a nonpool plant in accordance with the classification assigned by the transferee marketer. The skim milk so allocated to each class shall be limited to the amount remaining in such class.

(14) Subtract from the remaining pounds of skim milk in each class, the pounds of skim milk in pool milk received from a collecting cooperative which has arranged to make the reports and payments with respect to the milk of producers in accordance with the classification assigned and agreed upon by the transferor and transferee marketer. The skim milk so allocated to each class is limited to the amount remaining in such class.

(15) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in pool milk received from producers, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class IV. Any amount so subtracted shall be known as "overage".

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in subdivision (a) of this section, except that subparagraph (9)(ii) shall not apply to butterfat.

(c) Combine the amounts of skim milk and butterfat determined pursuant to subdivisions (a) and (b) of this section into one total for each class.

#### MINIMUM PRICES

21.40 Class prices, component prices, and advanced pricing factors. Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in subdivisions (a), (b), (c), (e), (f), and (q) of this section shall be based on a weighted average of the most recent 2 weekly prices announced by the National Agricultural Statistical Service (NASS) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in subdivisions (g) - (o) of this section shall be based on a weighted average for the preceding month of weekly prices announced by NASS on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in subdivision (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) Class I price. The Class I price per hundredweight, rounded to the nearest cent, shall be .965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) Class I skim milk price. The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in 21.42 of this Part plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) Class I butterfat price. The Class I butterfat price per pound shall be the adjusted Class I differential specified in 21.42 of this Part divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

(d) The Class II price per hundredweight, rounded to the nearest cent, shall be .965 times the Class II skim milk price plus 3.5 times the Class II butterfat price.

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

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

(g) Class II butterfat price. The Class II butterfat price per pound shall be the butterfat price plus \$.007.

(h) Class III price. The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the butterfat price.

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

(j) Class IV price. The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the butterfat price.

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

(l) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the U.S. Department of Agriculture for the month less 11.4 cents, with the result divided by 0.82.

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the U.S. Department of Agriculture for the month less 13.7 cents, with the result divided by 1.02.

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

(1) Compute a weighted average of the amounts described in subparagraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-pound block cheddar cheese reported by the U.S. Department of Agriculture for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (39 percent moisture) reported by the U.S. Department of Agriculture for the month plus 3 cents;

(2) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

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

(i) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.582;

(ii) Subtract the butterfat price computed pursuant to paragraph (n)(1) of this section from the amount computed pursuant to subparagraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to subparagraph (n)(3)(ii) of this section by 1.28.

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the U.S. Department of Agriculture for the month minus 13.7 cents, with the result divided by 0.968.

(p) Reserved.

(q) Advanced pricing factors. For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the weighted average of the two most recent NASS U.S. average weekly survey prices announced before the 24th day of the month:

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

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the weighted average of the two most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price and an other solids price;

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

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

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

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

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

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

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the two most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.4 cents from this average, and dividing the result by 0.82.

21.41 Class I differential and price. The Class I differential shall be the differential established for Monroe County which is reported in 21.42(a) of this Part. The Class I price shall be the price computed pursuant to 21.40(a) of this Part for Monroe County.

21.42 Adjusted Class I differentials.

(a) The Class I differential adjusted for location to be used in 21.40(b) and (c) of this Part shall be as follows:

<u>County in New York</u>	<u>Differential</u>
Allegany	2.30
Cattaraugus	2.10
Cayuga	2.30
Chautauqua	2.10
Erie	2.20
Genesee	2.20
Livingston	2.30
Monroe	2.30
Niagara	2.20
Ontario	2.30
Orleans	2.20
Seneca	2.30
Steuben	2.30
Wayne	2.30
Wyoming	2.20
Yates	2.30

(b) If the location of a plant is not in one of the counties listed in 21.42(a) of this Part, the Class I differential for that location is as specified in section 1000.52 of the General provisions of Federal Marketing Orders, which appears at 64 FR47907-47951 (September 1, 1999), a copy of which is available for public inspection at the Division of Dairy Industry and Producer Security, Department of Agriculture and Markets, 1 Winners Circle, Albany, N.Y. 12235.

21.43 Announcement of class prices, component prices, and advanced pricing factors.

(a) On or before the 5th day of the month, the commissioner shall announce the following prices for the preceding month:

- (1) The Class II price;
- (2) The Class II butterfat price;
- (3) The Class III price;
- (4) The Class III skim milk price;
- (5) The Class IV price;
- (6) The Class IV skim milk price;
- (7) The butterfat price;
- (8) The nonfat solids price;
- (9) The protein price; and
- (10) The other solids price.

(b) On or before the 23rd day of the month, the commissioner shall announce the following prices and pricing factors for the following month:

- (1) The Class I price;
- (2) The Class I skim milk price;
- (3) The Class I butterfat price;
- (4) The Class II skim milk price;
- (5) The Class II nonfat solids price; and
- (6) The advanced pricing factors described in 21.40(q).

21.44 Equivalent price.

(a) If for any reason a price or pricing constituent required for computing the prices described in 21.40 of this Part is not available, the commissioner shall use a price or pricing constituent determined by him to be equivalent to the price or pricing constituent that is required.

(b) If any price quotation is affected by any subsidy or other payment by a governmental agency, and if such quotation does not properly reflect such subsidy or payment, the commissioner shall so adjust the quotation or resulting price as to properly include such subsidy or payment in the resulting class price.

**DETERMINATION OF UNIFORM PRICE**

21.50 Net pool obligation of marketers with pool plants. For the purpose of computing the net pool obligation of any marketer operating a pool plant and any collecting cooperative which has arranged to make the reports and payments with respect to the milk of producers each month, the commissioner shall determine for each month the value of milk of each marketer with respect to each of the marketer's pool plants and of such a collecting cooperative with respect to milk that was not received at a pool plant by adding the amounts computed in subdivisions (a) through (h) of this section and subtracting from that total amount the value computed in subdivision (i) of this section. Unless otherwise specified, the skim milk, butterfat, and

the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in section 21.34 of this Part 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 order shall be excluded from pricing under this section.

(a) Class I value

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

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

(b) Class II value

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

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

(c) Class III value

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

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

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

(d) Class IV value.

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

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

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to section 21.34(a)(15) of this Part and the corresponding step of section 21.34(b) of this Part by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to section 21.34(a)(11) of this Part and the corresponding step of section 21.34(b).

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to section 21.30(b) of this Part and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to section 21.34(a)(9) of this Part and the corresponding step of section 21.34(b) of this Part, excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest nonpool plant not regulated by a federal order 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 sections 21.30(b) and 21.34(a)(9) and the corresponding step of section 21.34(b) of this Part and the pounds of skim milk and butterfat subtracted from Class I pursuant to section 21.34(a)(12) of this Part and the corresponding step of section 21.34(b) of this Part, excluding such skim milk and butterfat in receipts of fluid milk products from a nonpool plant not regulated by a federal order to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by marketers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

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

21.51 Net pool obligation of any other marketer. On or before the 25th day after the end of the month (except as provided in section 21.92 of this Part), a marketer who distributes packaged fluid milk products into the Western New York Milk Marketing Area (other than by receipt at a pool plant) which fluid milk products are not otherwise priced under this part, by a Federal Milk Marketing Order, or by a State government's milk classification and pricing program that subjects the marketer's plant to market-wide pooling of producer returns shall pay to the commissioner for the equalization fund the amount computed pursuant to paragraph (a) of this section or, if the marketer submits the applicable information required pursuant to section 21.20 of this Part, the marketer may elect to pay the amount computed pursuant to paragraph (b) of this section. A marketer whose plant is subject to market-wide pooling of producer returns under a State government's milk classification and pricing program shall pay the amount computed pursuant to paragraph (c) of this section.

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

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

(i) Subtract receipts of fluid milk products classified as Class I milk from pool plants, plants fully regulated under Federal orders, and including such receipts from collecting cooperatives which have arranged to make the reports and payments with respect to the milk of producers each month, except those receipts subtracted under a similar provision of a Federal milk order;

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

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

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

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

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

(1) Determine the value that would have been computed pursuant to section 21.50 of this Part for the plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the plant from pool plants, plants which are fully regulated under a Federal order, and including such receipts from collecting cooperatives which have arranged to make the reports and payments with respect to the milk of producers each month shall be allocated at the plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the plant to pool plants or plants which are fully regulated under a Federal order shall be classified at the plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the plant from pool plants and plants fully regulated under Federal orders that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed pursuant to section 21.50 of this Part of similar sections of another order for the plant shall be priced at the statistical uniform price or uniform price, whichever is applicable, of the respective order regulating the handling of milk at the receiving plant, with such statistical uniform price or uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest announced class price of the respective order); and

(iii) If the operator of the plant so requests, the marketer's value of milk determined pursuant to section 21.50 of this Part shall include a value of milk determined for each nonpool plant that is not a plant fully regulated under a Federal order which serves as a supply plant for the plant by making shipments to the plant during the month equivalent to the requirements of section 7(c) of a Federal order subject to the following conditions:

(A) The operator of the plant submits with its reports filed pursuant to section 21.20 of this Part similar reports for each such nonpool supply plant;

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

(C) The value of milk determined pursuant to section 21.50 of this Part for the unregulated supply plant shall be determined in the same manner prescribed for computing the obligation of the plant; and

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

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

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

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

(c) The operator of a plant that is subject to market-wide pooling of returns under a milk classification and pricing program that is imposed under the authority of a State government shall pay on or before the 25th day after the end of the month (except as provided in section 21.92 of this Part) to the market administrator for the equalization fund an amount computed as follows:

After completing the computations described in subparagraphs (a)(1)(ii) of this section, determine the value of the remaining pounds of fluid milk products disposed of as route disposition in the marketing area by multiplying the hundredweight of such pounds by the amount, if greater than zero, that remains after subtracting the State program's class prices applicable to such products at the plant's location from the Class I price applicable at the location of the plant pursuant to section 21.42 of this Part.

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

21.52 Computation of producer price differential. For each month, the commissioner shall compute a producer price differential per hundredweight. The report of any marketer who has not made payments required pursuant to section 21.64 of this Part for the preceding month shall not be included in the computation of the producer price differential, and such marketer's report shall not be included in the computation for succeeding months until the marketer has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the commissioner shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to section 21.50 of this Part for all marketers required to file reports prescribed in section 21.20 of this Part;

(b) Subtract the total of the values obtained by multiplying each marketer's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to section 21.50 of this Part by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustment and subtract an amount equal to the plus location adjustment computed pursuant to section 21.61 of this Part;

(d) Add an amount equal to the balance in the equalization fund;

(e) Deduct any reserve which the commissioner may deem necessary to cover any item or items in litigation or substantial controversy, which reserve the commissioner is hereby authorized to establish and from which he shall subsequently make payment or distribution in an equitable manner.

(f) Subtract the total of payments required to be made for such month by sections 21.62 of this Part and 21.67 of this Part.

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to section 21.50(h); and

(h) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (g). The result, rounded to the nearest cent, shall be known as the producer price differential for the month.

21.53 Announcement of producer prices. On or before the 13th day after the end of the month, the commissioner shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, 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.

**PAYMENTS****21.60 Time and rate of payment to producers and cooperative associations.**

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) Partial payment. For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in section 21.92 of this Part) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) Final payment. For milk received during the month, payment shall be made so that it is received by each producer no later than the day after the payment date required in section 21.65 of this Part in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received by the producer price differential for the month as adjusted pursuant to section 21.61;

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

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

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

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

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

(B) Subtract the deduction for administrative expenses pursuant to section 21.80;

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

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

(b) One day before partial and final payments are due pursuant to subdivision (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

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

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

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

(i) Multiply the hundredweight of Class I skim milk by the Class I skim milk price for the month at the receiving plant;

(ii) Multiply the pounds of Class I butterfat by the Class I butterfat price for the month at the receiving plant;

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

(iv) Multiply the pounds of butterfat in Class II times the Class II butterfat price;

(v) Multiply the pounds of nonfat solids in Class IV milk by the nonfat solids price for the month;

(vi) Multiply the pounds of butterfat in Class III and IV milk by the butterfat price for the month;

(vii) Multiply the pounds of protein in Class III milk by the protein price for the month;

(viii) Multiply the pounds of other solids in Class III milk by the other solids price for the month;

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

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

(c) If a marketer has not received full payment from the commissioner pursuant to section 21.65 of this Part by the payment date specified in subdivision (a) or (b) of this section, the marketer may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the commissioner.

(d) If a marketer 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 equalization fund, and in the event that the marketer subsequently locates and pays the producer or a lawful claimant, or in the event that the marketer no longer exists and a lawful claim is later established, the commissioner shall make the required payment from the equalization fund to the marketer or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a collecting cooperative which has arranged to make the reports and payments with respect to the milk of producers, a supporting statement in such form that it may be retained by the recipient which shall show:

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

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

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

(4) The minimum rate or rates at which payment to the producer is required pursuant to 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.

(f) In the event that there is any underpayment by any marketer (other than an underpayment authorized pursuant to subdivision (c) of this section), the amount of such underpayment shall be remitted by such marketer promptly, upon receipt of statement therefor, to the producer, the collecting cooperative, or the fiscal agent as the case may be.

21.61 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 section 21.41 of this Part 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 sections 21.51 and 21.60 of this Part.

21.62 Payments by the commissioner to cooperative associations.

(a) Application for payments. Any cooperative association of producers may apply to the commissioner for a determination of its qualification to receive payments pursuant to this section.

(b) Qualifications to receive payments. Payments shall be made only to cooperative associations as defined in section 21.10 of this Part, which qualify as follows:

(1) At least three-fourths of its members are producers under contract with and delivering milk through such cooperative association and, with respect to any other members, the cooperative association has a satisfactory plan for either terminating the membership of such producers or requiring them to sell their milk under contract with or through such cooperative association.

(2) Agrees to use and uses its best efforts to secure utilization of the milk of all of its members in the class or classes which assure the greatest possible return to all producers.

(3) Such cooperative or, if a federation of cooperatives, each member of such federation is an active member of a duly organized cooperative milk producers' bargaining agency which performs services for the benefit of all producers supplying the market including the following:

(i) Analyzing milk marketing problems and their solutions, conducting market research and maintaining current information as to market developments, preparing and assembling statistical data relative to prices and marketing conditions, and making an economic analysis of such data;

(ii) Determining the need for the formulation of amendments to this order and proposing such amendments to the commissioner and requesting a hearing to consider the same; and

(iii) Participating in proceedings with respect to amendments to this order, including the preparation and presentation of evidence at public hearing.

(4) Such cooperative has a plan which it follows in keeping its members informed concerning current market conditions.

(5) Such cooperative association expresses approval, disapproval or its intention to abstain from approval or disapproval and its reasons therefor with respect to all amendments to this order as submitted by the commissioner.

(6) In the case of an operating cooperative, such cooperative meets all of the following additional qualifications:

(i) Such cooperative maintains and operates a plant or plants where the milk of members or non-members may be received and handled as a service to the market.

(ii) Such cooperative maintains facilities or has participating interest in cooperative facilities at all times where surplus milk may be handled as a service to the market.

(iii) Such cooperative agrees to furnish milk for use in Class I to any marketer who requests such milk, if such cooperative has milk which is currently being used in Class II or Class III, and if the marketer who so requests does not have milk being utilized in other than Class I.

(c) Payments by commissioner. After the commissioner has determined that a cooperative association is qualified to receive payments pursuant to this section, such cooperative association shall be entitled to receive such payments at the rates established pursuant to subdivision (d) of this section, except as provided in section 21.68.

(d) Rates of payment. The commissioner shall make payment from the equalization fund, or issue credit therefor, at the following rates:

(1) To a bargaining cooperative, \$.01 per hundredweight of pool milk of its members delivered to any marketer's pool plant, except for that milk which is reported as pool milk by a collecting or an operating cooperative;

(2) To a collecting cooperative, \$.02 per hundredweight of pool milk reported by such cooperative; and

(3) To an operating cooperative, \$.05 per hundredweight of pool milk reported by such cooperative.

21.63 Equalization fund. The commissioner shall designate a fiscal agent who shall establish and maintain a separate fund known as the "equalization fund" into which he shall deposit all payments made by marketers pursuant to sections 21.64 and 21.66, and out of which, at the direction of a person duly authorized by the commissioner, such fiscal agent shall make all payments pursuant to sections 21.62, 21.65, 21.66 and 21.67.

21.64 Payments to equalization fund. Each marketer shall make payment to the equalization fund in a manner that provides receipt of the funds by the commissioner no later than the 15th day after the end of the month (except as provided in section 21.92 of this Part). Payment shall be the amount, if any, by which the amount specified in subdivision (a) of this section exceeds the amount specified in subdivision (b) of this section:

(a) The total value of milk to the marketer for the month as determined pursuant to section 21.50 of this Part.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to section 21.34(c) of this Part by the producer price differential as adjusted pursuant to section 21.61 of this Part; and

(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 section 21.50(h) of this Part by the producer differential as adjusted pursuant to section 21.61 of this Part for the location of the plant from which received.

21.65 Payments out of the equalization fund. On or before the 16th day of each month (except as provided in section 21.92), the commissioner or a person authorized by him shall direct the fiscal agent to make payment out of the equalization fund to each marketer operating a pool plant and each collecting cooperative which has arranged to make the reports and payments with respect to the milk of producers, the amount by which the value of milk computed pursuant to subdivision (b) of section 21.64 exceeds the value computed pursuant to subdivision (a) of section 21.64. If, at such a time, the balance in the equalization fund is insufficient to make all such payments, the commissioner shall reduce uniformly such payments and shall direct the completion of such payments as soon as the necessary funds are available. No marketer who, on the day he is required to make payment pursuant to section 21.60 (c) shall be deemed to be in violation of such section if he reduces his payments to producers by not more than the amount of the reduction in payment from the equalization fund.

21.66 Adjustment of errors in payments.

(a) Whenever verification by the commissioner of reports or payments of any marketer discloses errors made in payments to or from the equalization fund, the commissioner shall promptly bill such marketer for any unpaid amount, and such marketer shall, within 5 days, make payment to the fiscal agent of the amount so billed. Whenever verification discloses that payment is due from the equalization fund to any marketer, the commissioner or a person duly designated by him, shall as promptly as possible direct the fiscal agent to make such payment to such marketer.

(b) Whenever the commissioner shall be required pursuant to sections 21.60 - 21.68 to make payment to a marketer from whom any amount is due to the equalization fund, he may instead issue credit therefor to the extent of such amount due.

(c) Whenever verification by the commissioner of the payments to any producer or cooperative association, for milk delivered to any marketer, discloses payments to such producer or cooperative association of less than is required pursuant to section 21.60 the marketer shall make up such payment to the producer or cooperative association not later than the time of making payment next following disclosure.

21.67 Payments to cooperative associations for service rendered in milk publicity, advertising, promotion, and merchandising.

(a) Any cooperative association of producers may apply to the commissioner for reimbursement of sums expended for the conduct of a campaign to increase the consumption of milk and dairy products.

(b) Such cooperative association shall make claim for reimbursement of sums expended in such a campaign, on forms provided by the commissioner, and shall have readily available for examination by the commissioner all records pertaining to such expenditures.

(c) Except as provided in section 21.68, and subject to the provisions of subdivisions (d) and (e) of this section, the commissioner shall pay to cooperative associations from the equalization fund, the cost of milk publicity, advertising, promotion and merchandising claimed by each such cooperative association. Each such claim shall be subject to audit by the commissioner, and in no event shall the rate of reimbursement exceed a rate per hundredweight of the pool milk of the claimant cooperative association, calculated by multiplying the simple average of the monthly uniform prices as announced by the Administrator of the Western New York Milk Marketing Order for the preceding calendar year by 0.8 of one percent rounded to the nearest one-half cent.

(d) Reimbursement shall be made pursuant to subdivision (c) of this section with respect to expenditures for milk publicity, advertising, promotion and merchandising which meet the following requirements:

(1) Is designed to promote increased consumption of milk and dairy products within the marketing area;

(2) Is conducted pursuant to a plan in which cooperatives representing at least two-thirds of all producers of milk for the marketing area are active, regular contributing participants; and

(3) Disseminates information as to the importance of milk and dairy products in the diet of people of all ages and its effect upon the public health.

(e) No reimbursements shall be made with respect to expenditures for milk publicity, advertising, promotion or merchandising which includes or endorses any brand name, trademark, or the milk of any particular marketer or cooperative.

21.68 Suspension and termination of payments. Whenever the commissioner has reason to believe that any cooperative association is not qualified, or is not performing the functions necessary to receive payments pursuant to sections 21.62 and 21.67, or for any other reason such payments should not be made, he may suspend such payments and shall hold them in reserve until after a hearing has been held and a determination made as to whether such payments should be restored or distributed to all producers. The commissioner shall proceed promptly in holding such hearing and making such determination.

#### **EXPENSE OF ADMINISTRATION**

21.80 Deduction by marketers. For the purpose of administering the terms of this Part, each marketer shall deduct from the prices otherwise to be paid to producers and cooperative associations (except a collecting cooperative which has arranged to make the reports and payments with respect to the milk of producers) an amount to be determined by the commissioner and not to exceed \$.05 per hundredweight on all pool milk received from producers to be paid to the commissioner, as trustee. Such funds shall not be deemed to be State Funds.

21.81 Payment by marketers. Each marketer and each collecting cooperative which has arranged to make the reports and payments with respect to the milk of producers shall, on or before the 15th day of each month, pay to the commissioner as trustee, the amounts deducted from producers on pool milk received during the preceding month in accordance with the terms of section 21.80 of this Part.

#### **MISCELLANEOUS PROVISIONS**

21.90 Continuing obligation of marketers. Unless otherwise provided by the commissioner in any notice of amendment, termination, or suspension of any or all of the provisions hereof, such amendment, termination or suspension shall not:

(a) affect, waive or terminate any right, duty, obligation or liability which shall have arisen or may thereafter arise in connection with any provision of this order;

(b) release or waive any violation of this order occurring prior to the effective date of such amendment, termination or suspension; or

(c) affect or impair any right or remedies of the commissioner or of any other person with respect to any such violations.

21.91 Bargaining agency. The bargaining agency may assist the commissioner as follows:

(a) Negotiate, advise and cooperate with the commissioner in regard to enforcing and carrying out the terms and provisions of this Part and for the purpose generally of carrying out the terms and provisions of Chapter 383 of the Laws of 1937, as amended;

(b) Certify to the commissioner the qualification of cooperatives for the payments pursuant to section 21.62 for the approval or disapproval of the commissioner; and

(c) Complain to the commissioner and request a hearing for the disqualification of any cooperative association as provided in section 21.62 or to request the suspension of and a hearing concerning termination of payments in accordance with section 21.68.

21.92 Dates. If a date required for a payment contained in this part falls on a Saturday, Sunday, or state or national holiday, such payment will be due on the next day that the commissioner's office is open for public business.

21.93 Termination and suspension. The commissioner shall terminate this part at the end of any month whenever he finds, after a public hearing, that the conditions which he found as the basis for the issuance of this order have ceased to exist or that such termination is favored by a least 35 percent of the producers as herein defined. This part shall, in any event, terminate whenever the provisions of the statute authorizing it ceases to be in effect.

21.94 Continuing power and duty. If, upon the termination or suspension of this Part, there are any obligations arising hereunder the final accrual or ascertainment of which require further acts by any marketer, or by the commissioner, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such termination or suspension.

21.95 Liquidation. Upon the termination or suspension of this Part, the commissioner shall dispose in an equitable manner of all funds received pursuant to the provisions of this Part, together with claims for any funds which are unpaid and owing at the time of such termination or suspension.