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Agencies in this issue—

The President
Agricultural Stabilization and
Conservation Service
Business and Defense Services
Administration
Census Bureau
Civil Aeronautics Board
Consumer and Marketing Service
Federal Aviation Administration
Federal Communications Commission
Federal Maritime Commission
Federal Power Commission
Federal Reserve System
Fish and Wildlife Service
Food and Drug Administration
Housing and Urban Development
Department
Housing Assistance Administration
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Securities and Exchange Commission

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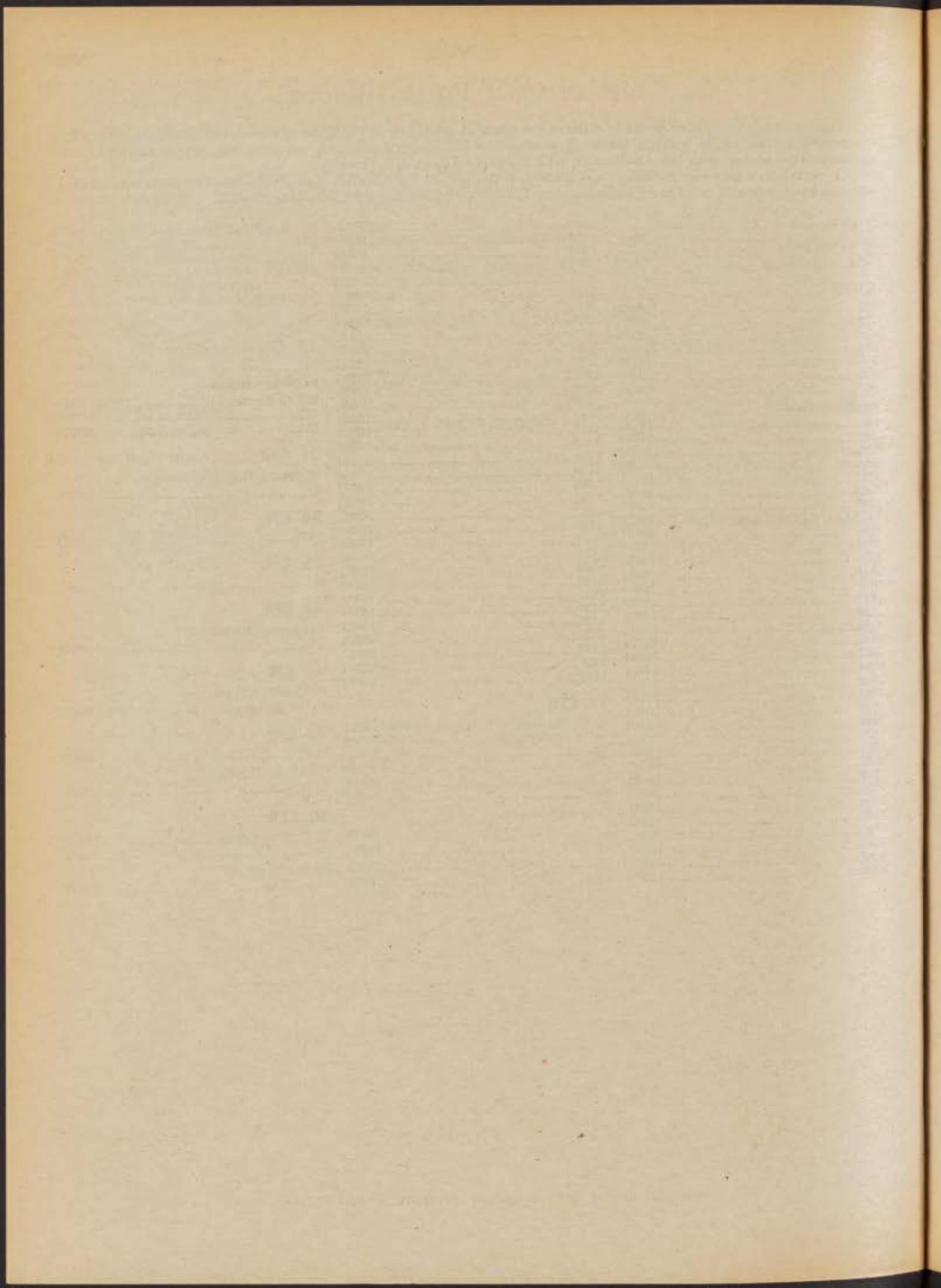
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Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3941

NATIONAL FAMILY HEALTH WEEK

By the President of the United States of America

A Proclamation

The American medical profession has made remarkable progress in the advancement of health. Constant expansion of medical knowledge, development of new, more and better hospitals and health facilities, growth of programs to assure access to health services to people who might otherwise lack them—all have combined to keep us moving toward the goal of higher standards for all our people.

Life expectancy has been increasing. Infant mortality rates have been declining slowly, as have maternal mortality rates. One after another, contagious diseases have been conquered.

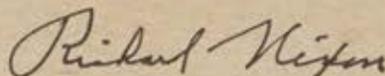
But these overall gains cannot mask the critically serious problems that remain. Heart disease, cancer, and stroke account for two-thirds of all deaths in the United States. Too many mothers and young babies do not receive life-saving care. Thousands of Americans are not able to work because of chronic disabling diseases that might have been prevented. Many Americans are still without adequate health care. Efforts to improve health services must be and will be intensified.

Amid all of the large scale advances and the remaining problems, the family physician continues to perform a unique service to the nation in helping to guard health and prevent disease. His dedication and skill are the foundation of good medical care. His work embraces the broad spectrum of medical science—from personal health to family planning to emotional well-being.

To focus national attention on the accomplishments of the American health care system and the central role of the family physician in maintaining superior medical services and improving the health of Americans of all ages and in all walks of life, the Congress, by Senate Joint Resolution 46, has requested the President to issue a proclamation designating the week of November 16 to 22, 1969, as National Family Health Week.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby proclaim the week beginning November 16, 1969, as National Family Health Week. I call upon the people of the United States, the medical and health professions, and other interested organizations and groups to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord nineteen hundred and sixty-nine, and of the Independence of the United States of America the one hundred ninety-fourth.



[F.R. Doc. 69-12542; Filed, Oct. 16, 1969; 3:24 p.m.]

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Rules and Regulations

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 1]

PART 722—COTTON

Subpart—1970 Crop of Upland Cotton; Acreage Allotments and Marketing Quotas

MISCELLANEOUS AMENDMENTS

This document is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.) for the purposes of (1) increasing the national marketing quota and national acreage allotment for the 1970 crop of upland cotton established in §§ 722.475 and 722.476 (34 F.R. 15445) and (2) establishing the national domestic allotment and projected national yield for such crop.

The national marketing quota established on September 30, 1969, was based on the latest available statistics of the Federal Government which indicated upland cotton production in 1969 at 10,984,000 bales (Consolidated Cotton Report, Sept. 8, 1969). The current Report (Consolidated Cotton Report, Oct. 8, 1969) indicates upland cotton production in 1969 at 10,428,000 bales, principally because of adverse weather conditions prevailing over most of the cotton producing area of the United States. In view of these developments it has been determined that an increase in the national marketing quota for the 1970 crop is necessary in order to assure the maintenance of adequate stocks in the United States to provide a continuous and stable supply of the different qualities of cotton needed in the United States and in foreign cotton consuming countries. The latest available statistics of the Federal Government have been used in making determinations under these provisions.

Notice that the Secretary was preparing to make determinations with respect to these provisions was published in the FEDERAL REGISTER on August 26, 1969 (34 F.R. 13662), in accordance with the provisions of 5 U.S.C. 553. No written submissions were received in response to such notice.

It is essential that this amendment be made effective as soon as possible to meet the requirements of section 342 of the Act. Accordingly, it is hereby found and determined that compliance with the 30-

day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest and this amendment shall be effective upon filing this document with the Director, Office of the Federal Register.

1. Section 722.475 is amended by revising paragraphs (a) (1) and (b) (1) and the last paragraph of paragraph (d) to read as follows:

§ 722.475 National marketing quota for the 1970 crop of cotton.

(a) *Finding of total supply.* * * *

(1) Total supply of cotton for the marketing year beginning August 1, 1969, in running bales or equivalent:

	Bales
(a) Carryover	6,273,000
(b) Estimated production	10,428,000
(c) Estimated imports	35,000
Total supply	16,736,000

(b) *Finding of normal supply.* * * *

(1) Normal supply of cotton for the marketing year beginning August 1, 1969, in running bales or equivalent:

	Bales
(a) Estimated domestic consumption	8,100,000
(b) Estimated exports	2,700,000
(c) 30 percent allowance for carryover	3,240,000
Normal supply	14,040,000

(d) *Proclamation of amount of national marketing quota in bales.* * * *

It is hereby determined and proclaimed that the national marketing quota for the 1970 crop of cotton (in terms of standard bales of 500 pounds gross weight) shall be 16,008,333 bales based on the formula expressed in subparagraph (2) of this paragraph (d) including an adjustment for stocks in the amount of 4,243,333 bales. This determination is based on the following data:

Determination for purpose of:	
(i) Section 722.475(d)(1) ²	9,368,000
(ii) Section 722.475(d)(4) ³	15,066,667
(iii) Section 722.475(d)(2) ¹	16,008,333
Based on:	
(iv) Estimated domestic consumption, 1969-70 ²	8,100,000
(v) Estimated domestic consumption, 1970-71 ²	8,300,000
(vi) Estimated exports, 1969-70 ²	2,700,000
(vii) Estimated exports, 1970-71 ²	3,500,000
(viii) Estimated imports, 1969-70 ²	35,000
(ix) Estimated imports, 1970-71 ²	35,000
(x) Adjustment for stocks	4,243,333

² Standard bales.

³ Running bales.

¹ Equivalent running bales.

2. Section 722.476 is revised to read as follows:

§ 722.476 National acreage allotment for the 1970 crop of cotton.

It is hereby determined and proclaimed that a national acreage allotment shall be in effect for the crop of cotton produced in the calendar year 1970. The amount of such national allotment is 17 million acres calculated by converting the national marketing quota in bales on the basis of the national average yield of 452 pounds per planted acre of cotton for the 4 calendar years, 1965, 1966, 1967, and 1968.

3. Section 722.478 is revised to read as follows:

§ 722.478 Apportionment of national allotment and national reserve to the States.

The apportionment under this section will be published in the near future.

4. Section 722.481 is added to read as follows:

§ 722.481 National domestic allotment and projected national yield.

(a) *Amount of national domestic allotment.* Under section 350 of the act, the Secretary is required to determine a national domestic allotment for the 1970 crop of cotton equal to the estimated domestic consumption of cotton (standard bales of 480 pounds net weight) for the marketing year beginning August 1, 1970. Such estimated domestic consumption is hereby determined to be 8.3 million bales (3.98 billion pounds). The national domestic allotment for the 1970 crop of cotton is hereby established as 8.3 million bales (3.98 billion pounds) of cotton (net weight).

(b) *Projected national yield.* The projected national yield for the 1970 crop of cotton under section 301(b)(13)(L) of the act is hereby determined to be 500 pounds per acre on the basis of the average yield per harvested acre in the United States during 1964, 1965, 1966, 1967, and 1968, adjusted for abnormal weather conditions affecting such yield, for trends in yields and for any significant changes in production practices.

(Secs. 301, 342, 344, 350, 375; 52 Stat. 38, as amended; 63 Stat. 670, as amended; 79 Stat. 1193, as amended; 52 Stat. 66, as amended; 7 U.S.C. 1301, 1342, 1344, 1350, 1375)

Effective date: Date of filing this document with the Director, Office of the Federal Register.

Signed at Washington, D.C., on October 15, 1969.

J. PHIL CAMPBELL,
Under Secretary.

[F.R. Doc. 69-12527; Filed, Oct. 15, 1969; 4:45 p.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 396]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.696 Lemon Regulation 396.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such lemons as will provide, in the interest of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held, the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act,

to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on October 14, 1969.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period October 19, 1969, through October 25, 1969, are hereby fixed as follows:

- (i) District 1: 2,790 cartons;
- (ii) District 2: 70,680 cartons;
- (iii) District 3: 131,073 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 15, 1969.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-12516; Filed, Oct. 17, 1969; 8:47 a.m.]

[Grapefruit Reg. 65]

PART 912—GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA

Limitation of Handling

§ 912.365 Grapefruit Regulation 65.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 912, as amended (7 CFR Part 912, 34 F.R. 12881), regulating the handling of grapefruit grown in the Indian River District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Indian River Grapefruit Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for

making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Indian River grapefruit, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Indian River grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on October 16, 1969.

(b) *Order.* (1) The quantity of grapefruit grown in the Indian River District which may be handled during the period October 20, 1969 through October 26, 1969, is hereby fixed at 112,216 standard packed boxes.

(2) As used in this section, "handled," "Indian River District," "grapefruit," and "standard packed box" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 17, 1969.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-12588; Filed, Oct. 17, 1969; 11:39 a.m.]

[Grapefruit Reg. 31]

PART 913—GRAPEFRUIT GROWN IN INTERIOR DISTRICT IN FLORIDA

Limitation of Handling

§ 913.331 Grapefruit Regulation 31.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 913, as amended (7 CFR Part 913; 34 F.R. 12428), regulating the handling of grapefruit grown in the Interior District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the Interior Grapefruit Marketing Committee, established under said marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Interior grapefruit, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee; and information concerning such provisions and effective time has been disseminated among handlers of such Interior grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on October 14, 1969.

(b) *Order.* (1) The quantity of grapefruit grown in the Interior District which may be handled during the period October 20, 1969, through October 26, 1969, is hereby fixed at 250,000 standard packed boxes.

(2) As used in this section, "handled," "Interior District," "grapefruit," and "standard packed box" have the same meaning as when used in said marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 15, 1969.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-12515; Filed, Oct. 17, 1969; 8:47 a.m.]

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Expenses and Rate of Assessment and Carryover of Unexpended Funds

On October 2, 1969, notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 15362) regarding proposed expenses and the related rate

of assessment for the fiscal period July 1, 1969, through June 30, 1970, and approval of carryover of unexpended funds from the fiscal period July 1, 1968, through June 30, 1969, pursuant to the marketing agreement and Order No. 931 (7 CFR Part 931) regulating the handling of Fresh Bartlett pears grown in Oregon and Washington. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Northwest Fresh Bartlett Pear Marketing Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 931.204 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Northwest Fresh Bartlett Pear Marketing Committee during the fiscal period July 1, 1969, through June 30, 1970, will amount to \$16,000.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 931.41, is fixed at \$0.01 per standard western pear box of pears, or an equivalent quantity of pears in other containers or in bulk.

(c) *Reserve.* Unexpended assessment funds, in excess of expenses incurred during the fiscal period ended June 30, 1969, in the amount of \$1,174.08, shall be carried over as a reserve in accordance with the applicable provisions of § 931.42 of said marketing agreement and order.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of the current crop of Bartlett pears grown in Oregon and Washington are now being made; (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable pears handled during the aforesaid period; and (3) such period began on July 1, 1969, and said rate of assessment will automatically apply to all such pears beginning with such date.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 15, 1969.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-12519; Filed, Oct. 17, 1969; 8:47 a.m.]

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREG.

Expenses and Rate of Assessment

Notice of rule making regarding proposed expenses and rate of assessment,

to be effective under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR Part 945), regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oreg., was published in the FEDERAL REGISTER October 4, 1969 (34 F.R. 15486). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to submit written data, views, or arguments pertaining thereto not later than 7 days following publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice which were recommended by the Idaho-Eastern Oregon Potato Committee, established pursuant to said amended marketing agreement and order, it is hereby found and determined that:

§ 945.222 Expenses and rate of assessment.

(a) *Expenses.* The reasonable expenses that are likely to be incurred during the fiscal period ending May 31, 1970, by the Idaho-Eastern Oregon Potato Committee, for its maintenance and functioning, and for such other purposes as the Secretary determines to be appropriate, will amount to \$33,000.

(b) *Rate of assessment.* The rate of assessment to be paid by each handler in accordance with the amended marketing agreement and this part, shall be \$0.0026 per hundredweight, or equivalent quantity, of potatoes handled by him as the first handler thereof during the fiscal period.

(c) *Reserve.* Unexpended income in excess of expenses for the fiscal period ending May 31, 1970, may be carried over as a reserve.

(d) *Definition of terms.* Terms used in this section have the same meaning as when used in the said amended marketing agreement and this part.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the relevant provisions of this part require that the rate of assessment fixed for a particular fiscal period shall be applicable to all assessable potatoes from the beginning of such period, and (2) the current fiscal period began on June 1, 1969, and the rate of assessment herein fixed will automatically apply to all assessable potatoes beginning with such date.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 15, 1969.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-12517; Filed, Oct. 17, 1969; 8:47 a.m.]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Preliminary Free and Reserve Percentages and Designation of Countries for Export Sale of Reserve Natural Thompson Seedless Raisins

Notice was published in the September 17, 1969, issue of the FEDERAL REGISTER (34 F.R. 14474) regarding proposals to designate for natural Thompson Seedless raisins for the 1969-70 crop year: (1) A preliminary free tonnage percentage which would release not less than 65 percent of the desirable free tonnage of 134,000 tons (34 F.R. 15340) for such raisins; and (2) certain countries for export sale by handlers of reserve tonnage raisins. Interested persons were afforded an opportunity to file written data, views, or arguments on the proposals not later than October 4, 1969.

The proposals were based on a recommendation of the Raisin Administrative Committee and other available information. The Committee is established under, and its recommendations are made in accordance with, the provisions of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "act."

Interested persons were afforded an opportunity to submit written data, views, or arguments on the proposals. During the period prescribed therefor, the Raisin Advisory Board advised the Secretary that it requested the Committee to recommend, upon establishment of the field price for natural Thompson Seedless raisins, a preliminary free tonnage percentage which would release nearly all of the desirable free tonnage rather than only 65 percent thereof.

Based upon the California Crop and Livestock Reporting Service October 2, 1969, estimate of the 1969 production of natural Thompson Seedless raisins of 255,000 tons and the firm establishment of the field price on October 7, 1969, the Committee on October 9, 1969, unanimously recommended 50 percent as the preliminary free tonnage percentage. Such percentage would tend to release approximately 127,500 tons, or about 95 percent, of the desirable free tonnage for such raisins. The increase in the free percentage over that proposed in the notice would permit handlers to use about 40,000 tons more of their raisin acquisitions as free tonnage, thereby enabling earlier payment to producers on a greater portion of the free tonnage and avoiding the costs of pooling that quantity.

The Committee also unanimously recommended that the countries to which sale in export of reserve tonnage natural Thompson Seedless raisins may be made by handlers be the same as those for the 1968-69 crop year.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation of the Committee, and other available information, it is found that designating: (1) Preliminary free and reserve percentages for natural Thompson Seedless raisins for the 1969-70 crop year as 50 percent for each; and (2) the countries for export sale by handlers of reserve tonnage raisins, as hereinafter set forth, will tend to effectuate the declared policy of the act. Therefore, it is ordered as follows:

§ 989.221 Countries to which sale in export of reserve tonnage natural Thompson Seedless raisins may be made by handlers.

The countries to which sale in export of reserve tonnage natural Thompson Seedless raisins may be made by handlers shall be all of those countries, other than Australia, outside of the Western Hemisphere. For purpose of this section, "Western Hemisphere" means the area east of the international dateline and west of 30° W. longitude but excluding all of Greenland and Mexico. All of the countries covered by this section to which sale in export of such reserve tonnage may be made shall be deemed listed in this section for the purposes of § 989.67(c).

§ 989.227 Free and reserve percentages for the 1969-70 crop year.

The preliminary percentages of standard natural Thompson Seedless raisins acquired by handlers during the crop year beginning September 1, 1969, which shall be free tonnage and reserve tonnage, respectively, are designated as follows: Preliminary free tonnage percentage, 50 percent; and preliminary reserve tonnage percentage, 50 percent.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The percentages designated herein for a crop year apply to all standard raisins of the applicable varietal type acquired by handlers from the beginning of the crop year, and such acquisitions for the current crop year have begun; (2) the current crop year began on September 1, 1969, and the preliminary free and reserve percentages will automatically apply to all such raisins acquired by handlers beginning on that date; and (3) the designation of countries to which sale of reserve raisins may be made should become effective immediately so that handlers can proceed accordingly and with certainty in planning and conducting their export sales of such raisins.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 15, 1969.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-12518; Filed, Oct. 17, 1969; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 69-CE-24-AD; Amdt. 39-862]

PART 39—AIRWORTHINESS DIRECTIVES

Allison Models 501-D13 and 501-D22 Series Engines

There have been failures to certain first stage compressor wheels in Allison Models 501-D13 and 501-D22 Series engines which in one instance caused complete separation of a segment of the wheel and resulted in engine failure.

Since this condition is likely to exist or develop in other engines of the same type design, an airworthiness directive is being issued requiring, after the effective date of this airworthiness directive, removal from service of those affected first stage compressor wheels with balance weight pin holes in the front lip of the outer rim prior to the wheel reaching 19,000 cycles, or unless already accomplished, inspection of the wheel in accordance with Allison Commercial Service Letter CSL-120 Supplement dated October 2, 1969, or Allison Commercial Service Letter 501-D22 CSL-1001 Supplement dated October 2, 1969, or any other method approved by the Chief, Engineering and Manufacturing Branch, Central Region. The airworthiness directive will also require that first stage compressor wheels which exceeded 16,000 cycles on September 30, 1969, must be removed from service in accordance with an inspection removal chart developed by the manufacturer and contained in the above-mentioned Commercial Service Letters. None of the affected compressor wheels may remain in service beyond 25,100 cycles. For purposes of this airworthiness directive, a cycle is defined as one takeoff.

Since immediate action is required in the interest of safety, compliance with the notice and public procedures provision of the Administrative Procedure Act is impracticable and good cause exists for making this amendment effective in less than thirty (30) days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

ALLISON. Applies to Models 501-D13 and 501-D22 Series Engines.

Compliance: Required as indicated.
To insure adequate life limit margin for Allison P/Ns 6738651, 6788581, 6789681, 6805651, 6805701, 6844081, and 6829661 first stage compressor wheels with balance weight pin holes in the front lip of the outer rim, accomplish the following:

(A) Wheels which have 16,000 cycles or less on September 30, 1969, shall be removed from service prior to reaching 19,000 cycles or, unless already accomplished, must be inspected in accordance with Allison Commercial Service Letter CSL-120 Supplement dated October 2, 1969, or Allison Commercial

Service Letter 501-D22 CSL-1001 Supplement dated October 2, 1969, or any other method approved by the Chief, Engineering and Manufacturing Branch, Central Region.

(B) Wheels which exceeded 16,000 cycles on September 30, 1969, must be removed from service in accordance with Inspection/Removal Chart contained on page 3 of Allison Commercial Service Letter CSL-120 Supplement dated October 2, 1969, or contained on page 3 of Allison Commercial Service Letter 501-D22 CSL-1001 Supplement dated October 2, 1969, unless inspected in accordance with said Allison Commercial Letters.

(C) No first stage compressor wheels shall remain in service beyond 25,100 cycles.

(D) For the purposes of this airworthiness directive, a cycle is defined as one takeoff.

This amendment becomes effective October 21, 1969.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on October 10, 1969.

DANIEL E. BARROW,
Director, Central Region.

[F.R. Doc. 69-12473; Filed, Oct. 17, 1969; 8:46 a.m.]

[Docket No. 9755; Amdt. 39-863]

PART 39—AIRWORTHINESS DIRECTIVES

British Aircraft Corporation Model BAC 1-11 200 and 400 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) requiring inspection of the ventral stairway starboard hinge bolt for signs of looseness or insecurity on BAC 1-11 200 and 400 Series Airplanes was published in 34 F.R. 13424.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BRITISH AIRCRAFT CORP. Applies to BAC 1-11 200 and 400 Series Airplanes.

Compliance required as indicated unless already accomplished.

To prevent a malfunction of the ventral stairway door, accomplish the following:

(a) Inspect ventral stairway starboard hinge bolt (M.M. 52-10) for signs of looseness or insecurity within the next 100 hours' time in service after the effective date of this AD unless already accomplished within the last 550 hours' time in service and thereafter at intervals not to exceed 650 hours from the last inspection.

(b) If during the inspection required by paragraph (a), the starboard hinge bolt (M.M. 52-10) is found to be insecure or to have rotated loose, secure the hinge bolt before further flight in accordance with BAC 1-11 Alert Service Bulletin 52-A-PM 3701, dated March 24, 1969, or later ARB-approved issue, or FAA-approved equivalent.

(c) The repetitive inspection required by paragraph (a) may be discontinued after

the hinge bolt has been secured in accordance with paragraph (b).

This amendment becomes effective November 17, 1969.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on October 14, 1969.

R. S. SLIFF,
Acting Director,
Flight Standards Service.

[F.R. Doc. 69-12474; Filed, Oct. 17, 1969; 8:46 a.m.]

[Airworthiness Docket No. 69-WE-7-AD; Amdt. 39-861]

PART 39—AIRWORTHINESS DIRECTIVES

McDonnell Douglas Model DC-3, DC-3A, DC-3C, and DC-3D Series Airplanes

Amendment 39-799 (34 F.R. 12159), AD 69-15-4 requires periodic inspections and repair of the wing center section in the area between stations 94.250 and 127.750, left and right sides, and from the lower front spar cap aft to the lower center spar on all Douglas Model DC-3, DC-3A, DC-3C, and DC-3D Series aircraft. After issuing Amendment 39-799, a repair for the lower front spar connecting strap has been proposed and an operator has proposed an alternate inspection and rework procedure. McDonnell Douglas has submitted engineering data to support the proposed procedure. The Agency has determined that ample data have been submitted to substantiate that the connecting strap repair as well as the alternate inspections and rework procedure will provide an equivalent level of safety. Therefore, the AD is being amended to provide for the repair of the lower front spar cap connecting strap if found cracked instead of replacing the strap and to permit alternate inspection and rework procedures upon submission of data sufficient to establish equivalent safety.

Since this amendment provides an alternate means of compliance and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-799 (34 F.R. 12159), AD 69-15-4 is amended as follows:

1. Paragraph (a): Change date of Service Bulletin No. 263, Revision 3, dated "March 10, 1963" to "March 10, 1969."

2. Paragraph (a) (5): Change to read: "Replace cracked spar cap connecting straps, or repair in accordance with McDonnell Douglas DC-3 Service Bulletin No. 263, Revision 4, dated September 4, 1969, or later FAA-approved revision. If

not previously incorporated, skin preventative reinforcing doublers must also be installed in accordance with Service Bulletin No. 263 when the connecting strap is repaired."

3. Add new paragraph:

(e) In lieu of the foregoing, an inspection and repair procedure may be approved by the Chief, Aircraft Engineering Division, FAA Western Region, upon submission of data sufficient to establish an equivalent level of safety.

This amendment becomes effective October 18, 1969.

(Sec. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Los Angeles, Calif., on October 9, 1969.

JAMES V. NIELSEN,
Acting Director,
FAA Western Region.

[F.R. Doc. 69-12475; Filed, Oct. 17, 1969; 8:46 a.m.]

[Airspace Docket No. 69-SW-58]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Ardmore, Okla., control zone.

The Ardmore control zone is presently designated full time in Part 71 (34 F.R. 4561) of the Federal Aviation Regulations. A control zone requires that a federally certificated weather observer shall take hourly and special weather observations at the airport upon which a control zone is designated during the times and dates the control zone is designated. Currently, these observations are taken at Ardmore only during the hours the control tower is in operation; i.e., 0600-2200 local time daily. No special weather observations are taken 2200-0600 local time daily.

In view of the foregoing, it is necessary to change the Ardmore control zone designation to part time with the effective dates and times established in advance by a Notice to Airmen and continuously published thereafter in the Airman's Information Manual.

Since this amendment does not increase the extent of controlled airspace and it is required in the interest of safety, notice and public procedures hereon are not practical and it may be made effective immediately.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 16, 1969, as herein set forth.

In § 71.171 (34 F.R. 4561), the Ardmore, Okla., control zone is amended by adding the following: "This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual."

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on October 8, 1969.

A. L. COULTER,
Acting Director, Southwest Region.

[F.R. Doc. 69-12476; Filed, Oct. 17, 1969;
8:46 a.m.]

[Airspace Docket No. 69-SO-68]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

On September 3, 1969, a notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 13999), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Huntsville, Ala., control zone and transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 11, 1969, as hereinafter set forth.

In § 71.171 (34 F.R. 4557), the Huntsville, Ala., control zone is amended to read:

HUNTSVILLE, ALA.

Within a 5-mile radius of Huntsville-Madison County Airport (lat. 34°38'19" N., long. 86°46'25" W.); within 2 miles each side of the Huntsville ILS localizer north course, extending from the 5-mile radius zone to 2.5 miles south of Capshaw RBN; within 2 miles each side of the Huntsville VOR 217° radial, extending from the 5-mile radius zone to 0.5 mile southwest of the VOR; within a 5-mile radius of Redstone AAF (lat. 34°40'29" N., long. 86°40'54" W.); within 2 miles each side of the 352° bearing from Whitesburg RBN extending from the 5-mile radius zone to the RBN; within 2 miles each side of the 356° bearing from Redstone RBN, extending from the 5-mile radius zone to 2 miles north of the RBN; within 2.5 miles each side of Runway 35 extended centerline, extending from the threshold to 5.5 miles south; within 2.5 miles each side of Runway 17 extended centerline, extending from the threshold to 6 miles north.

In § 71.181 (34 F.R. 4637), the Huntsville, Ala., transition area is amended to read:

HUNTSVILLE, ALA.

That airspace extending upward from 700 feet above the surface within a 15.5-mile radius of Redstone AAF (lat. 34°40'29" N., long. 86°40'54" W.); within 3 miles each side of Huntsville ILS localizer north course, extending from the Capshaw RBN to 8.5 miles north of the RBN; within 3 miles each side of Huntsville ILS localizer south course, extending from the localizer to 14.5 miles south; within an 8.5-mile radius of Pryor Field (lat. 34°39'09" N., long. 86°56'45" W.); within 9.5 miles west and 4.5 miles east of the Decatur VOR 351° radial, extending from the VOR to 18.5 miles north.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on October 8, 1969.

GORDON A. WILLIAMS, JR.,
Acting Director, Southern Region.

[F.R. Doc. 69-12477; Filed, Oct. 17, 1969;
8:46 a.m.]

[Airspace Docket No. 69-SO-102]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the NAS Memphis, Tenn., transition area.

The NAS Memphis transition area is described in § 71.181 (34 F.R. 4637). In the description, an extension is predicated on the NAS Memphis VOR 083° radial. Since the Navy plans to decommission the VOR, which is collocated with the NAS Memphis RBN, it is necessary to alter the description to reflect a change in the utilization of the RBN in lieu of the VOR.

Since this amendment is editorial in nature, notice and public procedure hereon are unnecessary and action is taken herein to amend the description accordingly.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

"* * * within 2 miles each side of the NAS Memphis VOR 083° radial * * *" is deleted and "* * * within 2 miles each side of the 083° bearing from the NAS Memphis RBN * * *" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act 49 U.S.C. 1655(c))

Issued in East Point, Ga., on October 9, 1969.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 69-12479; Filed, Oct. 17, 1969;
8:46 a.m.]

[Airspace Docket No. 69-SO-111]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Monroeville, Ala., transition area.

The Monroeville transition area is described in § 71.181 (34 F.R. 4637). In the description, extensions are predicated on the Monroeville VOR 039° and 201° radials and have designated widths of 2 miles each side of the radials.

U.S. Standards for Terminal Instrument Procedures (TERPs), issued after

extensive consideration and discussion with Government agencies concerned and affected industry groups, are now being applied to update the criteria for instrument approach procedures. The criteria for the designation of controlled airspace protection for these procedures was revised to conform to TERPs and achieve increased and efficient utilization of airspace.

Because of this revised criteria, it is necessary to alter the description by increasing the widths of the extensions predicated on the Monroeville VOR 039° and 201° radials from 2 to 3 miles each side, and increasing the lengths of these extensions from 8 to 8.5 miles.

In consideration of the foregoing, notice and public procedure hereon are unnecessary and Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.181 (34 F.R. 4637), the Monroeville, Ala., transition area is amended as follows:

"* * * within 2 miles each side of the Monroeville, Ala., VOR 039° and 201° radials, extending from the VOR to 8 miles northeast and 8 miles southwest * * *" is deleted and "* * * within 3 miles each side of Monroeville VOR 039° and 201° radials, extending from the VOR to 8.5 miles northeast and south of the VOR * * *" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on October 9, 1969.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 69-12480; Filed, Oct. 17, 1969;
8:46 a.m.]

[Airspace Docket No. 69-EA-45]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration, Designation, and Revocation of Federal Airway Segments and Revocation of Reporting Points; Correction

On September 24, 1969, F.R. Doc. 69-11364 was published in the FEDERAL REGISTER (34 F.R. 14728) and amended Part 71 of the Federal Aviation Regulations. These amendments will become effective December 11, 1969. Subsequent to the issuance of the document, it was determined that four VOR radials were in error by 1°. Accordingly, action is taken herein to show the correct radials.

Since this action is minor and editorial in nature, notice and public procedure hereon are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, effective upon publication in the FEDERAL REGISTER, F.R. Doc. 69-11364 (34 F.R. 14728) is amended as follows:

1. In Items 1 a, c, and k "Bellaire 108" is deleted and "Bellaire 107" is substituted therefor.

2. In Item 11 "Akron, Ohio, 182" is deleted and "Akron, Ohio, 181" is substituted therefor.

3. In Item 1m "Newcomerstown 037" is deleted and "Newcomerstown 038" is substituted therefor.

4. In Item 2, the following is added: In the Flint Stone Intersection "039" is deleted and "038" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on October 10, 1969.

LOUIS H. McCaughey,
Acting Chief, Airspace and
Air Traffic Rules Division.

[P.R. Doc. 69-12481; Filed, Oct. 17, 1969;
8:46 a.m.]

[Airspace Docket No. 69-EA-84]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

PART 75—ESTABLISHMENT OF JET ROUTES

Alteration of Jet Route and Designation of Reporting Point

On August 1, 1969, a notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 12597) stating that the Federal Aviation Administration was considering amendments to Parts 71 and 75 of the Federal Aviation Regulations that would realign and extend a segment of Jet Route No. 152 and designate the Harrisburg, Pa., VORTAC as a high altitude reporting point.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing Parts 71 and 75 of the Federal Aviation Regulations are amended effective, 0901 G.m.t., December 11, 1969, as hereinafter set forth.

1. In § 75.100 (34 F.R. 4856) Jet Route No. 152 is amended to read:

Jet Route No. 152 (Capital, Ill., to New Holland, Pa.) from Capital, Ill., via INT of Capital 091° and Rosewood, Ohio, 263° radials; Rosewood; INT Rosewood 084° and Harrisburg, Pa., 277° radials; Harrisburg; to INT Harrisburg 096° and Westminster, Md., 056° radials.

2. In § 71.207 (34 F.R. 4799) "Harrisburg, Pa." is added.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on October 9, 1969.

H. B. HELSTROM,
Chief, Airspace and Air
Traffic Rules Division.

[P.R. Doc. 69-12478; Filed, Oct. 17, 1969;
8:46 a.m.]

Chapter II—Civil Aeronautics Board

SUBCHAPTER D—SPECIAL REGULATIONS

[Reg. SPR-33; Amdt. 4]

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS, CERTAIN FOREIGN AIR CARRIERS, AND TOUR OPERATORS

Bulk Inclusive Tours by Tour Operators

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of October 1969.

In a notice of proposed rule making dated June 25, 1969 (SPDR-16, 34 F.R. 10000), the Board proposed a new Part 378a of the Special Regulations establishing the terms and conditions governing the furnishing of bulk inclusive tours in foreign air transportation by tour operators and foreign tour operators. In addition, certain amendments were proposed to Part 378. Pursuant to the notice a number of comments and reply comments were received.

For the reasons set forth in SPR-32, published simultaneously herewith, the Board has determined to adopt the proposed rule with certain modifications. Accordingly, the Civil Aeronautics Board hereby amends Part 378 of the Special Regulations (14 CFR Part 378) effective November 14, 1969, as follows:

1. Amend the table of contents to revise the titles of §§ 378.10, 378.11, and 378.12 and to delete § 378.18 as follows:

Sec.	Procedure.
378.10	Discrimination.
378.11	Methods of competition.
378.12	[Deleted]

2. Amend § 378.2(b) (4) to read as follows:

§ 378.2 Definitions.

(b) * * *

(4) The charge to the passengers for the tour, as set forth in the tour prospectus, shall be not less than 130 percent of any "bulk inclusive tour" fare charged by a certificated route air carrier or combination of such carriers (including charge for stopovers) or not less than 110 percent of any available fare or fares charged by a certificated route air carrier or combination of such carriers (including charge for stopovers) for individually ticketed service on the circle route beginning at the point of origin, to the various points where stopovers are made, and return to the point of origin: *Provided*, That the tour shall be subject to the terms and conditions which are applicable to such fare or fares, as set forth in the tariff of the certificated route carrier or carriers. For purposes of this provision, the term "available fare" includes promotional or discount fares, such as family fares, children's fares, excursion fares, fares applicable to special classes of persons, group fares, etc. Where similar promotional or discount

¹ As defined in § 378a.2 of this chapter.

fares are offered on both jet and propeller aircraft, the available fare shall be that charged for jet services. Where no regularly scheduled service is provided between the points involved, the available fare shall be based on the fares to the nearest point served by a certificated route air carrier; and

3. Delete § 378.18 and amend § 378.10 to read as follows:

§ 378.10 Procedure.

(a) No inclusive tour or series of tours shall be operated, nor shall any tour operator sell or offer to sell, solicit, or advertise such tour or tours, unless there is on file with the Board a tour Prospectus satisfying the requirements of § 378.13. If a series of tours is to be operated for one tour operator pursuant to one charter contract, the Prospectus may cover the entire series, provided the elapsed time between the commencement of the first tour and the departure of the last tour shall not exceed 1 year. The Tour Prospectus shall be filed at least 60 days before commencement of the tour or tours. Late filing of the Prospectus will not be permitted except for good cause shown.

(b) In the event of any change in the facts as reflected in the Prospectus, an amended Prospectus shall be filed no later than five (5) days following such change. Deviations from the Tour Prospectus, or the amended Prospectus, may not be made except where they are compelled by circumstances beyond the control of the carrier or tour operator and there is insufficient time to file an amended Prospectus.

§ 378.18 [Deleted]

4. Substitute for the contents of existing §§ 378.11 and 378.12 the following language:

§ 378.11 Discrimination.

No tour operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 378.12 Methods of competition.

No tour operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. Advertising by tour operators of tour prices shall be limited to the total tour price without a breakdown into component parts, except that additional charges for optional services or facilities may be reflected.

5. Amend § 378.13 to read in part as follows:

§ 378.13 Tour Prospectus.

The Prospectus shall include copies of the charter contract, the contract between the tour operator and tour participants, the tour operator's surety bond

and, where applicable, a copy of the depository agreement with a bank as provided in § 378.16(b)(2), and shall contain the following information:

6. Amend § 378.16(b)(2) to read as follows:

§ 378.16 Surety bond.

(b) * * *

(2) The supplemental air carrier and tour operator shall enter into an agreement with a designated bank, the terms of which shall include the following: (i) Each tour participant shall pay for his deposit and subsequent payments comprising the tour price only by check or money order payable to such bank which shall maintain a separate account for each tour: *Provided, however,* That if the tour participant makes a cash deposit, the tour operator or travel agent who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit without deduction of commission; (ii) the bank shall not pay the supplemental air carrier the charter price for the transportation earlier than 30 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the supplemental air carrier; (iii) the bank shall reimburse the tour operator for refunds made by the latter to the tour participant upon written notification from the tour operator; (iv) if the tour operator or the supplemental air carrier notifies the bank that a tour has been canceled, the bank shall make the applicable refunds directly to the tour participants; and (v) except as provided in subdivision (iii) of this subparagraph, the bank shall not pay any funds from the account to the tour operator prior to 2 banking days after completion of each tour, when the balance in the account shall be paid to the tour operator, upon certification of the completion date by the supplemental air carrier. As used in this subparagraph, the term "bank" includes a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(Secs. 204(a), 101(33), Federal Aviation Act of 1958, as amended (72 Stat. 743, 82 Stat. 867; 49 U.S.C. 1324, 1301))

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 69-12492; Filed, Oct. 17, 1969;
8:46 a.m.]

[Reg. SPR-32]

**PART 378a—BULK INCLUSIVE TOURS
BY TOUR OPERATORS**

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of October 1969.

In a notice of proposed rule making, dated June 25, 1969 (SPDR-16, 34 F.R.

10000), the Board proposed a special regulation establishing the terms and conditions governing the furnishing of bulk inclusive tours (BIT) in foreign air transportation by tour operators and foreign tour operators. In addition certain amendments were proposed to Part 378—Inclusive Tours by Supplemental Air Carriers, Certain Foreign Air Carriers, and Tour Operators.

Timely comments have been received pursuant to the notice,¹ and all relevant matter contained therein has been given full consideration.² For the reasons hereinafter set forth and those announced in SPDR-16, we have decided to adopt the proposed rule with modifications, and except as modified, the tentative findings set forth in the explanatory statement to the proposed rule are incorporated by reference and made final,³ the most significant modification is that ITC charges may be based on 130 percent of BIT fares. Before discussing the comments on the various proposals set forth in SPDR-16, we shall dispose of a legal argument raised by the NACA carriers.⁴

1. The NACA carriers argue that the Board cannot grant exemption to BIT tour operators absent a prior determination that the public convenience and necessity require the grant. Its position is premised upon two propositions: First, that BIT operations are "in substance a form of inclusive tour charter" and, second, that a finding of public convenience and necessity is an essential prerequisite to the grant of authority to tour operators to operate ITC's utilizing scheduled carriers.

¹ Comments and, in most cases, reply comments have been received from the following: Member Carriers of the National Air Carrier Association (NACA) and separate comments by Modern Air Transport and Overseas National Airways (ONA); Pan American World Airways; Trans World Airlines (TWA); American Society of Travel Agents (ASTA) and Association of Bank Travel Bureaus (ABTB); American International Travel Service (AITS); International Travel; Wholesale Tours International and Panmar; University Travel; Globus Tours and Gateway Holidays; Rogal/Colpitts Travel Corp.; Berry World Travel; and Creative Tour Operators Association (CTOA). In addition, American Express Co. (AMEXCO), pursuant to Rule 4(f) of the rules of practice, has filed a motion to file a late-filed comment on one aspect of the notice of proposed rule making. NACA and CTOA have filed motions for leave to file replies. The motions are granted, and the comment and replies thereto have been received and considered.

² Certain comments include new proposals for amending the regulations outside the scope of the notice and this proceeding. These have not been considered.

³ The notice indicated that if Part 378a is finalized, Part 389 (Fees and Charges for Special Services) would be amended to impose a filing fee of \$25 for contracts and bonds. In view of our action herein, Part 389 is being appropriately and concurrently amended.

⁴ In addition to the matters discussed hereinafter, the NACA carriers assert that the proposed Part 378a should be extended to tour operators under Mainland-Hawaii and other similar Group Inclusive Tour (GIT) fares. The request is outside the scope of this proceeding, and will not be considered herein.

We reject both propositions and, of course, the conclusion reached. BIT operations do not in fact involve the charter of aircraft. Instead they involve the sale of blocks of seats (at least 40 eastbound and 20 westbound) representing only a part of the capacity of an aircraft engaged in regularly scheduled services at a bulk fare price, not a charter price. But assuming arguendo that BIT operations are "in substance a form of inclusive tour charter", there is no merit to the contention that a finding of public convenience and necessity is an essential prerequisite to the grant of authority to tour operators to operate BIT's utilizing scheduled carriers. The NACA carriers find support for this view in the legislative history of Public Law 90-514 with respect to the so-called Pickle amendment, which added the parenthetical words "including inclusive tour charters" after the words "charter trips" in section 401(e)(6) of the Act.⁵ Specifically, the carriers cite a statement by Senator Monroney, Chairman of the Senate Aviation Subcommittee, that the Senate assumes that authority for independent tour operators to charter aircraft from scheduled carriers "would not be granted without a satisfactory demonstration that an expansion of the inclusive tour charter program was required by the conventional standards of public convenience and necessity." (Congressional Record, Sept. 13, 1968, at S10721).

This single statement, lifted from context and described by Congressman Pickle as a "misinterpretation of both the clear statutory language and its intent",⁶ hardly exhausts the legislative history of the Pickle amendment. When the legislative history of the amendment is examined in whole, it emphatically shows that the amendment was only clarifying in nature, and there was no intent by the Congress to curtail in any respect the Board's exemption powers under section 101(3) of the Act. In this connection we quote Senator Monroney's remarks which immediately precede the passage quoted by NACA:

Since the House amendment clearly makes it clear that inclusive tour charters are indeed charters for purposes of section 401(e)(6) and does not otherwise alter that section or any other provision of the Act conferring regulatory discretion on the Board, it follows that the Board will continue to enjoy precisely the same discretionary control over the scheduled carriers' charters that it has under existing law.

We next discuss the substantive proposals of SPDR-16, and the comments thereon.

2. In SPDR-16 it was noted that the BIT rules approved by the Board in Order 69-4-138 apply specific limitations

⁵ The section as amended reads: "Any air carrier, other than a supplemental air carrier, may perform charter trips (including inclusive tour charter trips) or any other special service, without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the Board."

⁶ Congressional Record, Oct. 8, 1968, at E8757.

regarding itinerary features and accommodations and the tour price. Accordingly, the limitations on inclusive tours in § 378.2(b) were found either unnecessary or inapplicable to BIT's and none of these limitations were proposed. In addition, the Board tentatively found that, unlike Part 378, a tour prospectus should not be required of tour operators for BIT's. It was noted that IATA Resolution 810e requires that the "Sponsoring Member" approve the tour literature, which must include a description of tour prices and features, contain at least one illustration or map promoting the tour, and shall show the dates between which the tours are to be operating—data substantially the same as that contained in a Tour Prospectus under Part 378. Since a BIT must conform to the IATA BIT rules approved by the Board and since the direct air carriers have an obligation to approve tour literature which conforms to these rules, the Board saw no need for filing with the Board a tour prospectus containing essentially the same matter as in the tour literature. In addition the Board found that there is no need for post tour reporting with respect to BIT's. Whereas it had been Board experience that from one-third to one-half of ITC's are not performed under Part 378 and a nonperformance factor of this extent needs monitoring, the Board considered that the possible nonperformance of BIT's would not appear likely since the tour operator has already purchased bulk space and has every incentive to go forward with the tour, even though all seats are not retained by him, rather than lose his investment.

ONA contends that restrictions similar to § 378.2(b) should be imposed on BIT's. As to a tour prospectus, ONA and the other NACA carriers submit that the requirement for a tour prospectus be deleted from Part 378 and the supplemental carriers also be relied on to approve tour literature, or else included in Part 378a. They also contend, in connection with post tour reporting, that there is no reason to expect that the "non-performance factor" under the BIT fares will be materially different than with respect to ITC's and that post tour reports should either be included in both parts or omitted from both.¹¹

We find the above arguments unconvincing and shall adhere to our prior determinations on these matters. Accordingly, with respect to BIT's we shall not impose any of the limitations found in § 378.2(b) or require a tour prospectus or post-tour reporting.

¹¹ In addition, the NACA carriers see no reason why a provision comparable to § 378.15 requiring the filing of tariffs showing applicable rules and practices should not be required under Part 378a. The short answer is that Part 378a, unlike Part 378, does not apply to direct carriers but only to tour operators and foreign tour operators (cf. §§ 378a.1 and 378.1). Of course, section 403(a) of the Act and Part 221 of the economic regulations nevertheless require the direct air carriers to file with the Board their BIT fares and rules, regulations, practices, and services in connection with such air transportation.

Concerning ONA's request that we impose the restrictions contained in § 378.2(b) on BIT's, certain of these restrictions are obviously inapplicable to BIT's.¹² Moreover, restrictions concerning such matters as stopovers, length of stay, etc., relate more to the economics of bulk fare rates than to the issues in this proceeding. Accordingly, we believe that these matters are more appropriate for consideration in Docket 20781, in which, *inter alia*, BIT fares are currently under investigation, and in fact there is an express issue in the case on this general question.¹³

With respect to the contention that a tour prospectus either be deleted from Part 378 or added to Part 378a, it is to be noted that Part 378a will require the filing of much of the matter included in a tour prospectus under Part 378. Specifically, § 378.13 provides that the prospectus shall include copies of the charter contract, the contract between the tour operator and tour participants, and the tour operator's surety bond and shall contain certain other information. In addition, as subsequently noted, § 378.13 is being amended to require the filing of a copy of the depositary agreement with a bank, where applicable. Part 378a will require the filing of the tour operator-tour participant contract, the tour operator's surety bond and, where applicable, a copy of the depositary agreement. Other matters required by § 378.13 are obviously inapplicable or inappropriate for BIT's.¹⁴ Indeed, the only relevant and conceivably burdensome information or material required under § 378.13, which will not be required under Part 378a, is the tour itinerary¹⁵ and samples of solicitation material. But equivalent material in the form of tour literature must be submitted by the BIT tour operator to the direct carrier and must conform to IATA Resolution 810e. To require a second filing of such material with the Board would serve no purpose, and we shall not require it. Finally, we shall not require post tour reporting under Part 378a, since we believe that a nonperformance factor with respect to ITC's would in all likelihood be materially greater than in the case of BIT's.¹⁶

¹² E.g., § 378.2(b) (4) and (5).

¹³ Among the subissues approved by the Examiner in his Prehearing Conference Report is the following: "12. If the BIT fare agreement is approved, what restrictions should be applied to the use of the BIT fares with respect to group size, stopovers, and charges therefor, travel together as a group, the amount of add-on for surface portions of the tour, advance ticket-purchase time, departure times, and periods of applicability, minimum and maximum stay provisions, etc.?"

¹⁴ E.g., the charter contract, charter price of the aircraft, and the individually ticketed air fare as provided in § 378.2(b) (4).

¹⁵ Including hotels (name and length of stay at each), and sightseeing or other arrangements.

¹⁶ A BIT tour operator must advance 10 percent nonrefundable deposits 3 months before departure and full payment 1 month before departure. There are no comparable requirements with respect to ITC tour operators, and consequently the possibility of nonperformance of BIT's is substantially reduced.

3. In the notice of rule making the Board expressed its concern as to the proper relationship between bulk inclusive tour fares and minimum prices for Part 378 inclusive tours. Section 378.2(b)

(4) provides that the charge to inclusive tour passengers shall not be less than 110 percent of any "available fare or fares charged by a certificated route air carrier or combination of such carriers" for individually ticketed service on the tour route. While the provision contemplates that the available fare be the charge to an individually ticketed passenger under the carrier's tariff, in the case of BIT's the seat price paid by the tour operator is less than the price paid by the passenger for the air transportation. Thus the Board noted that the tour operator must charge a sufficient price per seat to cover not only the seat price paid the direct carrier but also the number of seats which he anticipates he may be unable to sell, and his selling and other costs. Under these circumstances the notice stated that the 110 percent standard, as applied to the bulk fares, may not constitute an appropriate floor for ITC charges, and comments were invited on appropriate amendments to § 378.2(b) (4).

The NACA carriers, except Modern, oppose any such amendments. They assert that, as in the case of BIT fares, passengers travelling under existing GIT fares pay a fixed advertised tour price to a tour operator, which almost certainly includes an added element to cover cancellation penalties on reserved seats and to protect against the risk that the minimum group size upon which the tour price is predicated may not be achieved. Moreover, according to the NACA carriers, to exclude promotional fares involving indirect air carriers for purposes of the 110 percent rule would give the scheduled carriers a new and wholly unjustified competitive weapon against the supplementals.

Modern, on the other hand, believes that the 110 percent standard would not constitute an appropriate floor for ITC charges if applied to bulk fares. It asserts that there is no present danger that BIT charges will be so low that inclusive tour operators will be prevented from pricing competitively, and the Board has adequate power to prevent that eventuality in its supervision of IATA Agreements internationally and its ability to suspend such fares domestically. According to Modern the only effective result of lowering the floor for ITC charges at this time would be to cause and permit tour operators to put even greater pressure on supplementals with regard to their charter prices, and Modern would prefer at this time to place greater reliance upon the Board's ability to review and maintain competitively "reissuable" bulk rates should it eventually find them lawful at their present levels and terms. Pan American and TWA also take the position that the BIT fares are not an appropriate floor for ITC charges under the 110 percent standard.

We have decided to permit ITC charges to be established at 130 percent of a BIT fare. In our view, the 110 percent standard applied to BIT fares would

not constitute an appropriate floor for ITC charges. The present provision contemplates that the scheduled carrier fare used as the base for computing the tour price be a charge for individually ticketed service which is in fact available to the public. BIT fares reflect the characteristics of purchasing blocks of seats, rather than individual seats, are not for sale to the public but only to tour operators, and are less than the passenger pays for the air transportation.

On the other hand, to preclude ITC charges from being based on BIT fares would place the supplemental carriers at a severe disadvantage in competing with BIT's. While ITC's can compete with GIT's by basing the ITC charge on the GIT fare, ITS's cannot effectively compete with BIT's by basing the ITC charge on a GIT fare.¹³ Accordingly, we believe that ITC charges should be permitted to be based on BIT fares, but that, for reasons previously stated, there should be a greater spread than 10 percent between a BIT fare and a minimum ITC price. We have decided therefore to permit ITC charges to be based on 130 percent of BIT fares. The 130 percent figure is based on judgment and is intended to reflect the fact that a BIT passenger is necessarily charged somewhat more for air transportation than the per seat cost reflected in BIT tariffs.¹⁴

4. We turn next to the proposal that §§ 378a.12 and 378.12 include a provision that: "Advertising by tour operators of tour price without a breakdown into component parts, except that additional charges for optional services or facilities may be reflected." The proposal was motivated by the practice of certain tour operators under Part 378 of advertising in such a way as to disclose only in very small print that there are charges in addition to the price highlighted in very large print.

ASTA/ATBT and CTOA support the proposal. The NACA carriers believe that the rule would hamper ITC tour operators in advertising superior ground services and accommodations by prohibiting them from disclosing the amount of the charge for the ground portion of the tour, thus causing substantial competitive injury to supplementals. ONA considers that the obvious solution to the practice complained of is to require that price components be printed in equal intensity to that of the base price and that the component be published in print which is the size of at least one quarter of that used to print the base price. ONA and International Travel claim that the public generally wishes to know what services are included in a particular price and how much is to be paid for each service. ONA also points out that it is common practice for the scheduled carriers to quote and advertise fares that

do not include taxes. Berry and Rogal/Colpitts would permit advertising to include a charge for taxes for air transportation and hotel rooms and Globus Tours/Gateway Holidays would allow advertising separately the component parts for air transportation and ground services and facilities.

We have decided to adopt the rule as proposed. With respect to the request that "taxes" be permitted to be stated separately, we agree with CTOA that it is not appropriate in this regard to compare the custom of stating taxes in connection with most sales of goods and services including the sale of domestic airline tickets. The latter are normally sales or excise taxes precisely determinable and applicable to the actual sales price and paid directly to the taxing authorities by the person collecting them. In contrast, the figure quoted as "taxes" in connection with the sale of ITC's is not a tax actually levied on the sale of the tour, but an estimate of the sum of the taxes paid at various locations and in various forms for components of the tour arrangement.¹⁵

Concerning the request to break down the tour price into an air portion and a land portion, we also agree with CTOA that such a breakdown is not necessary for the purpose of enabling the public to evaluate the relative merits of different tours¹⁶ and that it would actually increase the possibility of public confusion and unfair practices. This is the case because there is no set price for the air portion of a BIT or an ITC. For example, in the case of a BIT, the tour operator will have to include in the air "portion" not only the price that he is paying the carrier for air transportation, but a markup covering the retail agent's commission, cancellation contingencies, and ancillary expenses such as bonding. The percentage of this markup will be determined individually by each tour operator and there is no uniform criterion that could be applied to the determination of the air portion. Moreover, as CTOA points out, the natural tendency of tour operators would be to state the cost of the air portion at the lowest possible level and the cost of the land portion at the highest possible level. It is not seen how this would help the public to evaluate competing tours. Accordingly, to permit a tour operator to break down the full package price of a tour into air and land portions by any method of allocation he selects would make it more difficult, rather than less difficult, for the public to compare competing tours and would introduce opportunities for misleading and undesirable promotional practices.

¹³ Berry World Travel believes that the rule would "compel" tour operators to pay a commission to retail agents on the amount of the "taxes." To the contrary, a tour operator would not be prohibited in dealing with a retail agent, rather than the public, in specifying that a certain amount of the tour price reflects tax expenses and is not commissionable.

¹⁴ Thus the rule would not prevent a full description of services and facilities offered in the land portion.

We have considered the suggestion of Globus Tours/Gateway Holidays that there might be a requirement that the air cost be advertised at 10 percent more than the BIT or prorated charter cost to insure uniformity. We have decided not to adopt the suggestion, however, for two reasons. First, although uniformity would be achieved, there still would be a degree of public misinformation involved, since the required advertised cost would not take into account the actual cost budgeted by the tour operator. Second, the proposal has not been endorsed by any other party in reply comments, and we are not prepared to adopt a proposal of this nature unless wider acceptance were indicated.

Finally, Rogal/Colpitts urges that the new requirement should be applicable to ITC's for which prospectuses have not been filed with the Board as of the effective date of the rule and to BIT's which have not been approved by the "Sponsoring Member" pursuant to IATA Resolution 810e as of that date. Any other course, according to Rogal/Colpitts, will cause great hardship to the tour operators, since brochures and advertising will have to be revised at great expense.

We shall not adopt the suggestion. To begin with, only Rogal/Colpitts has indicated any problem in this respect, and tour operators have had notice of the proposed regulation since June. Further, with respect to BIT's, as subsequently set forth, the rule will apply to tours commencing on and after January 1, 1970, allowing additional time to conform to the rule. As to ITC's, although the rule will become effective 30 days after issuance, there would appear to be no difficulty in having future newspaper advertising conform to the regulation. Finally, the Board would consider granting a waiver in individual cases upon a showing that the rule would cause substantial expense in revising advertising or brochures, where a violation of the rule would be only technical and a waiver would not result in misleading the public.¹⁷

5. In Order 69-4-138 the Board refused to limit the sale of bulk fares by the direct carriers to sales to IATA-approved agents, as suggested by ASTA, CTOA, and other parties, which contended that the restriction is needed to protect the public against unqualified tour operators. ASTA, ABTB, CTOA, Pan American, and TWA would restrict BIT tour operators to IATA-approved agents. Wholesale Tours, a non-IATA wholesaler of European and Middle Eastern tours and Panmarc, an IATA-approved travel agent, in their joint comments would not limit tour operators to IATA-approved agents, but suggest certain requirements to insure qualified tour operators.

¹⁷ In addition to the matters referred to above, § 378a.14 (Contract between tour operators and tour participants) will be revised to eliminate matters concerning aircraft equipment substitutions and seating accommodations. Since BIT's are carried on regularly scheduled aircraft, provisions concerning these matters would be inappropriate.

¹⁵ Pan American in its reply comment sets forth figures to show that using GIT fares for ITC pricing gives ITC prices well below BIT prices. However, the GIT fares employed in these calculations are at the current level. If the GIT fare levels, effective Apr. 1, 1970, are used, quite different results are reached.

¹⁶ See p. 8, supra.

The Board has decided to adhere to its prior holding that the sale of BIT fares should not be restricted to IATA-approved agents. Nothing new has been presented to cause us to alter our views in this matter, and no conditions are needed to protect the public in these respects in view of the surety requirements being imposed on all tour operators herein.

6. Proposed Part 378a contained the same bonding and surety arrangements as in Part 378. In addition, although there was no specific proposal on the matter, the Board stated it would consider adoption of an additional alternative arrangement in which a tour operator may enter into a contract with the direct air carrier and the latter undertake to guarantee all deposits made by the tour participant to the tour operator.¹⁸ The Board added that, if such an alternate surety arrangement is adopted, provision would be made for a similar arrangement under Part 378.

ASTA/ABTB, ONA, and CTOA support the guarantee arrangement. Pan American also supports the arrangement and would intend that it be carried out on a nondiscriminatory basis subject to the right of the carrier to establish certain necessary and appropriate standards. It does not believe any requirements beyond that the arrangement must be on a nondiscriminatory basis should be included in the rule. While TWA believes that no bonding requirements whatever are necessary, since virtually all tour operators would be IATA-approved agents, TWA would not oppose the guarantee arrangement, provided acceptable arrangements can be made between the carrier and tour operator. TWA does not believe the carrier guarantee arrangement would be appropriate with respect to non-IATA-approved agent tour operators since they "do not have a relationship with the direct air carrier comparable to the IATA agents and have not established a similar financial responsibility". Wholesale Tours/Panmare, however, take the position that the deposit guarantee arrangement, if adopted, should be available to both IATA and non-IATA-approved agents.

Both AITS and the NACA carriers, except ONA, oppose the guarantee alternative. AITS does not believe that the dangers of discrimination could be precluded by regulatory provisions. The NACA comment contends that the arrangement would impose a heavy financial burden on supplementals, since competitive realities would make such arrangements the rule for ITC's and would cause them to assume "large financial risks which would inevitably injure their ability to borrow money" and which, in the event of a tour operator bankruptcy, could be disastrous. By contrast, accord-

ing to the NACA comment, giant trunks like Pan American and TWA could undertake such carrier surety arrangements without difficulty.

Upon consideration we shall not adopt the deposit guarantee arrangement for the following reasons. In the first place, there is the danger that direct air carriers would enter into such arrangements only with favored tour operators, and it is doubtful that discrimination could be precluded effectively by regulatory provision. Secondly, we are persuaded that, as the NACA comment urges, the supplemental carriers would be under competitive pressures to enter into such arrangements to the exclusion of other surety arrangements and that they would be subject to serious financial risks by doing so.

The alternative escrow arrangement proposed in § 378a.13(b) was patterned after § 378.16(b) and provides that a depository bank shall not pay the direct air carrier the price for the transportation earlier than 2 days preceding the scheduled day of departure. Certain comments point out that the IATA resolution requires that the carrier receive full payment 1 month before departure and that unless the 2 days is changed to 30 days the tour operator would be exposed to advancing the entire price for air transportation from his own funds 30 days prior to departure, while the monies paid by tour participants would continue to be held by the bank.¹⁹ The NACA carriers contend that the same change should be made in Part 378. In light of these comments and in the interests of conformity, §§ 378a.13(b) and 378.16(b) will be revised to permit payment to the direct air carrier within 30 days prior to the scheduled day of departure.²⁰

7. Two final matters remain for disposition.²¹ In Order 69-8-104 the Board

¹⁸ Pan American also points out that § 378a.13(a) as proposed appears to reflect the concept of planeload transportation and is inappropriate for BIT's. The words "twice the amount of the price for the air transportation" have been revised in the final rule to read "twice the amount of the contract bulk price for the air transportation".

¹⁹ In addition, it has been standard administrative practice to require that a copy of the depository agreement with a bank pursuant to § 378.16(b)(2) be filed with the Tour Prospectus. It is appropriate therefore to amend § 378.13 to conform the regulation with practice in this regard and a corresponding revision will be made to § 378a.10. Accordingly a copy of the depository agreement shall be filed with the other documents required at least 60 days before the commencement of the tour or tours.

²⁰ In addition to the matters discussed above, CTOA has raised a question of interpretation of one aspect of the blanket exemption granted tour operators in Part 378a. Section 378a.3 relieves tour operators from various sections of title IV of the Act, including "Section 404(a), except the requirement to provide safe and adequate service, equipment and facilities in connection with tours operated hereunder." CTOA requests clarification of the exception and asks that the Board state "specifically that the regulation should not be deemed to expand the normal scope of responsibility that would

granted, pursuant to request by Pan American, interim relief to tour operators to permit them to market and provide BIT's commencing in November and December 1969. The relief granted, however, was subject to certain terms and conditions and further subject to Board action in this rule making proceeding.

In certain respects, the terms and conditions imposed herein differ from those under which tour operators may operate under Order 69-8-104. It would obviously be inequitable and impractical to impose new or different requirements on tour operators with respect to BIT's commencing in November and December. Accordingly, § 378a.1 will be revised to provide that the part establishes the terms and conditions governing the furnishing of BIT's commencing on or after January 1, 1970.

Finally, AMEXCO urges that the Board make clear in its final disposition of Part 378a that advertising and selling BIT's subsequent to March 1970 are not barred by the regulation. CTOA agrees with AMEXCO, but the NACA carriers take a contrary position. We shall defer action on this matter pending disposition of Pan American's motion and petition for reconsideration of Order 69-4-138, filed September 16, requesting that the Board extend its approval of the BIT fares from March 31, 1970, through September 30, 1970.

In consideration of the foregoing, the Civil Aeronautics Board hereby issues Part 378a of the economic regulations (14 CFR Part 378a), effective November 14, 1969, as follows:

Subpart A—General Provisions	
Sec.	
378a.1	Applicability.
378a.2	Definitions.
378a.3	Exemption.
378a.4	Duration of exemption.
378a.5	Approval of certain interlocking relationships.
378a.6	Effect of exemption on antitrust laws.
378a.7	Suspension of exemption authority.
378a.8	Jurisdiction over foreign tour operators.
Subpart B—Conditions and Limitations	
378a.10	Procedure.
378a.11	Discrimination.
378a.12	Methods of competition.
378a.13	Surety bond.
378a.14	Contract between tour operators and tour participants.
Subpart C—Miscellaneous	
378a.20	Waiver.
378a.21	Enforcement.

AUTHORITY: The provisions of this Part 378a issued under sections 101(3), 204(a), 409, and 416(a) of the Federal Aviation Act

otherwise be imposed upon the tour operator." The intent of the regulation is not to relieve tour operators from the requirements of section 404(a) to the extent indicated, but it is not intended to impose upon them any additional requirements. The specific question posed by CTOA has not been sufficiently developed in this proceeding to warrant any further clarification. This same language has appeared in Part 378 for several years without any problem as to its meaning, so far as the Board is aware.

²¹ In their comment the NACA carriers state that the notice did not make clear whether the carrier surety arrangement would require the posting of a surety bond by the direct air carrier or a simple "guarantee" in the sense of a binding legal obligation in the event of default. The latter type of arrangement was intended.

of 1958, as amended (72 Stat. 737, 743, 768, 771; 49 U.S.C. 1301, 1324, 1379 and 1386).

Subpart A—General Provisions

§ 378a.1 Applicability.

This part establishes the terms and conditions governing the furnishing of bulk inclusive tours in foreign air transportation by tour operators and foreign tour operators for tours commencing on and after January 1, 1970. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide bulk inclusive tours commencing on and after January 1, 1970, to members of the general public. It also contains a limited declination of exercise of jurisdiction over foreign tour operators. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires.

§ 378a.2 Definitions.

As used in this part, unless the context otherwise requires,

(a) "Bulk inclusive tour" means round, circle or single open jaw tour trip transportation performed pursuant to IATA Resolutions 079a and 079c as approved by the Board, which meets the requirements of said resolutions, as approved;

(b) "Foreign tour operator" means any person who is not a U.S. citizen (other than a direct foreign air carrier) engaging in the formation of groups for transportation on bulk inclusive tours and over which the Board by § 378a.8 has declined to exercise its jurisdiction;

(c) An "inclusive tour group" means an aggregate of persons who are assembled by a tour operator or a foreign tour operator for the purpose of participation as a single unit in a bulk inclusive tour;

(d) "Tour operator" means any person of U.S. citizenship (other than a direct air carrier) authorized hereunder to engage in the formation of groups for transportation on bulk inclusive tours;

(e) "Tour participant" means a member of the bulk inclusive tour group;

(f) "Tour price" means the total amount of money paid by the tour participant to the tour operator for the bulk inclusive tour.

§ 378a.3 Exemption.

Subject to the provisions of this part and the conditions imposed, tour operators are hereby temporarily relieved from the following provisions of title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to permit them to provide bulk inclusive tours:

Section 401.

Section 403.

Section 404(a), except the requirement to provide safe and adequate service, equipment and facilities in connection with tours operated hereunder.

Section 405(b).

Section 407 (b) and (c).

Sections 408(a) and 409, except control or interlocking relationships with direct air carriers.

Section 412.

§ 378a.4 Duration of exemption.

The relief granted by § 378a.3 shall continue in effect only for such period as

the Board approves IATA Resolutions 079a and 079c.

§ 378a.5 Approval of certain interlocking relationships.

To the extent that any officer or director of a tour operator would be in violation of any of the provisions of section 409(a) (3) and (6) by participating in interlocking relationships covered by the exemption granted by § 378a.3, such participation is hereby approved by the Board.

§ 378a.6 Effect of exemption on anti-trust laws.

The relief granted by §§ 378a.3 and 378a.5 from sections 408, 409, and 412 of the Act shall not constitute an order under such sections within the meaning of section 414 of the Act, and shall not confer any immunity or relief from operation of the "antitrust laws" or any other statute (except the Act) with respect to any transaction, interlocking relationship, or agreement otherwise within the purview of such sections.

§ 378a.7 Suspension of exemption authority.

The Board reserves the power to suspend the exemption authority of any tour operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

§ 378a.8 Jurisdiction over foreign tour operators.

The Board declines to exercise its jurisdiction over foreign tour operators with respect to bulk inclusive tours which originate in a foreign country. The Board reserves the right to exercise its jurisdiction over any foreign tour operator at any time if it finds that such action is in the public interest.

Subpart B—Conditions and Limitations

§ 378a.10 Procedure.

No bulk inclusive tour or series of tours shall be operated, nor shall any tour operator sell or offer to sell, solicit, or advertise such tour or tours, unless there is on file with the Board the form of contract between the tour operator and tour participants, the tour operator's surety bond and, where applicable, a copy of the depository agreement with a bank as provided in § 378a.13(b)(2). These documents shall be filed at least 60 days before commencement of the tour or tours and late filing will not be permitted except for good cause shown.

§ 378a.11 Discrimination.

No tour operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 378a.12 Methods of competition.

No tour operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. Advertising by tour operators of tour prices involving bulk fares shall be limited to the total tour price without a breakdown into component parts, except that additional charges for optional services or facilities may be reflected.

§ 378a.13 Surety bond.

(a) Except as provided in paragraph (b) of this section, the tour operator shall furnish a surety bond in an amount of not less than twice the amount of the contract bulk price for the air transportation to be furnished in connection with such tour: *Provided, however*, That the liability of the surety to any tour participant shall not exceed the tour price.

(b) The prospective tour operator may elect, in lieu of furnishing a surety bond as provided under paragraph (a) of this section, to comply with the requirements of subparagraphs (1) and (2) of this paragraph as follows:

(1) The tour operator shall furnish a surety bond in a minimum amount of \$10,000 per flight up to a maximum amount of \$100,000 for a series of 10 or more flights, for the protection of the tour participants, the bond to continue in effect until completion of the tour or series of tours: *Provided, however*, That the liability of the surety to any tour participant shall not exceed the tour price.

(2) The direct air carrier and tour operator shall enter into an agreement with a designated bank, the terms of which shall include the following:

(i) Each tour participant shall pay for his deposit and subsequent payments comprising the tour price only by check or money order payable to such bank which shall maintain a separate account for each tour: *Provided, however*, That if the tour participant makes a cash deposit, the tour operator or travel agent who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit without deduction of commission;

(ii) The bank shall not pay the direct air carrier the price for the transportation earlier than 30 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the direct air carrier;

(iii) The bank shall reimburse the tour operator for refunds made by the latter to the tour participant upon written notification from the tour operator;

(iv) If the tour operator or the direct air carrier notifies the bank that a tour has been canceled, the bank shall make the applicable refunds directly to the tour participants; and

(v) Except as provided in subdivision (iii) of the subparagraph, the bank shall not pay any funds from the account to the tour operator prior to 2 banking days after completion of each tour, when the balance in the account shall be paid

to the tour operator, upon certification of the completion date by the direct air carrier. As used in this subparagraph, the term "bank" includes a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) The bond required under paragraphs (a) and (b)(1) of this section shall insure the financial responsibility of the tour operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the tour operator and the tour participants, and shall be in the form set forth in the appendix to this Part 378a. Such bond shall be issued by a reputable and financially responsible bonding or surety company which is legally authorized to issue bonds of that type in the State in which the tour originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The Board will consider that a bonding or surety company is prima facie qualified under this section if such company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6, and if such company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier and the tour operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject tour of tours shall in no event be operated.

(d) The bond required by this section shall provide that unless the tour participant files a claim with the tour operator within sixty (60) days after completion of the tour, the surety shall be released from all liability under the bond to such tour participant. The contract between the tour operator and the tour participant shall contain notice of this provision.

§ 378a.14 Contract between tour operators and tour participants.

Where each participant in a tour receives the same accommodation, land tours, etc., the contract between the tour operator and the tour participants shall be the same. Contracts between tour operators and tour participants shall include provisions concerning the following matters:

- (a) Method of payment, e.g., installment payments;
- (b) Refunds in the event of the tour's cancellation or the passenger's change in plans;
- (c) Carriers' liability limitations for passengers' baggage;

¹ Appendix filed as part of original document.

(d) Nonperformance of tour because of insufficient number of participants and

(e) Unless the tour participant files a claim with the tour operator within sixty (60) days after completion of the tour, the surety shall be released from all liability under the bond to such tour participant (see § 378a.13(d)).

Subpart C—Miscellaneous

§ 378a.20 Waiver.

A waiver of any of the provisions of this regulation may be granted by the Board upon its own initiative, or upon the submission by a tour operator of a written request therefor, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

§ 378a.21 Enforcement.

In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 901(a) of the Act, or, in the case of willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions.

NOTE: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[P.R. Doc. 69-12491; Filed, Oct. 17, 1969; 8:46 a.m.]

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Reg. OR-43; Amdt. 7]

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

Bulk Inclusive Tours by Tour Operators

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of October 1969.

In a notice of proposed rule making dated June 25, 1969 (SPDR-16, 34 F.R. 10000), the Board proposed, inter alia, a new Part 378a of the Special Regulations establishing the terms and conditions governing the furnishing of bulk inclusive tours in foreign air transportation by tour operators and foreign tour operators. In addition, the Board expressed the intention of amending Part 389 by imposing a filing fee of \$25 for contracts and bonds covering a tour or series of tours, in the event Part 378a was finalized. Pursuant to the notice, comments and reply comments were received, although none was addressed to this aspect of the proposed rule.

For the reasons set forth in SPR-32, published simultaneously herewith, we have determined to issue Part 378a and shall therefore amend Part 389 in the manner indicated. Accordingly, the Civil Aeronautics Board hereby amends § 389.25(1) of the Organization Regulations (14 CFR 389.25(1)), effective immediately,¹ as follows:

§ 389.25 Schedule of filing and license fees.

(1) *Tour prospectus or bulk inclusive tour contracts and bonds.* The filing fee for each tour prospectus filed pursuant to § 378.10 or § 378.19 of this chapter or for contracts and bonds covering a bulk inclusive tour or series of tours filed pursuant to § 378a.10 of this chapter is \$25.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324(a), 31 U.S.C. 483a)

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[P.R. Doc. 69-12493; Filed, Oct. 17, 1969; 8:46 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce

PART 30—FOREIGN TRADE STATISTICS

Cargo Laden at One Port To Be Transferred to the Exporting Carrier at the Port of Exit

Pursuant to title 13, United States Code, section 302, the following amendment is made to the regulations published in the FEDERAL REGISTER on August 27, 1966 (31 F.R. 11368) (15 CFR Part 30). In accordance with administrative procedure, 5 U.S.C. 553, notice and hearing on these amendments and postponement of the effective date thereof are unnecessary because (1) the amendment is a change in the substantive rules which grant or recognize exemptions or relieve restrictions, and (2) is an interpretive rule and statement of policy.

Effective date. This amendment to the Foreign Trade Statistics Regulations is effective on the date of publication in the FEDERAL REGISTER.

Section 30.36(c)(5) is amended by the addition of Charlotte, N.C.; Dayton, Ohio; Salt Lake City, Utah; and Tulsa, Okla.; as inland ports of origin so as amended § 30.36(c)(5) now reads as follows:

¹ The rule is being made effective immediately, since the documents may be filed as soon as Part 378a is issued.

§ 30.36 Cargo laden at one port to be transferred to the exporting carrier at the port of exit.

(c)

(5) Only the following ports may be utilized as ports of origin for the designated methods of transportation of shipment:

Air only	Surface only	Air and surface
Atlanta, Ga.	Charleston, S.C.	Baltimore, Md.
Boston, Mass.	Jacksonville, Fla.	Buffalo, N.Y.
Dallas, Tex.		Charlotte, N.C.
Denver, Colo.		Chicago, Ill.
Honolulu, Hawaii		Cleveland, Ohio.
Kansas City, Mo.		Dayton, Ohio.
Memphis, Tenn.		Detroit, Mich.
Miami, Fla.		Houston, Tex.
Minneapolis, Minn.		Los Angeles, Calif.
Newark, N.J.		New Orleans, La.
Oklahoma City, Okla.		New York, N.Y.
Pittsburgh, Pa.		Philadelphia, Pa.
Port Everglades, Fla.		St. Louis, Mo.
Portland, Ore.		Salt Lake City, Utah.
San Diego, Calif.		San Francisco, Calif.
San Juan, P. R.		Tulsa, Okla.
Seattle, Wash.		
Tucson, Ariz.		

ROBERT J. DRURY,
Acting Director,
Bureau of the Census.

AUGUST 25, 1969.

I concur:

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

SEPTEMBER 19, 1969.

[F.R. Doc. 69-12503; Filed, Oct. 17, 1969;
8:47 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. 33-5009]

PART 231—INTERPRETATIVE RE- LEASES RELATING TO THE SECURI- TIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THERE- UNDER

Publication of Information Prior to or After Filing and Effective Date of Registration Statement

The Securities and Exchange Commission and its staff frequently receive inquiries concerning the impact of the registration and prospectus requirements of section 5 of the Securities Act of 1933 ("Act") on publication of information concerning an issuer and its affairs by the issuer, its management, and by underwriters and securities dealers. Some of the more common problems which have arisen in this connection are discussed in Securities Act of 1933

Release No. 3844 (Oct. 8, 1957; 22 F.R. 8359).¹

Since the publication of that release there have been a number of developments relevant to this subject, including the broader reach of the reporting and proxy disclosure requirements through the 1964 amendments to the Securities Exchange Act of 1934 and the increased awareness of various self-regulatory organizations, corporate managements and others of the importance of timely disclosure. Moreover, in recent years the Commission and its staff also have become increasingly aware of the need for more clearly defined standards in this area. Concurrently with the publication of this release the Commission is proposing to adopt various rules which would accomplish this objective in certain respects (see Securities Act Release No. 5010; 34 F.R. 17034). The Commission believes that a discussion of certain factors to be considered in dealing with other aspects of this subject may be of help to issuers, their advisers and professionals in the securities business.

There has been an ever-increasing tendency to publicize through many media information concerning corporate affairs which goes beyond statutory requirements. This practice reflects the commendable recognition on the part of business and the investment community of the importance of informing investors and the public with respect to important business and financial developments. It has been reinforced by the policies of various self-regulatory organizations regarding timely disclosure of information which might materially affect the market for an issuer's securities.² As the Commission has stated:

We realize, of course, that corporations regularly release various types of information and that a corporation in which there is wide interest may be called upon to release more information more frequently about its activities than would be expected of lesser known or privately held enterprises. In the normal conduct of its business a corporation may continue to advertise its products and services without interruption, it may send out its customary quarterly, annual and other periodic reports to security holders, and it may publish its proxy statements, send out its dividend notices and make routine announcements to the press. This flow of normal corporate news, unrelated to a selling effort for an issue of securities is natural, desirable and entirely consistent with the objectives of disclosure to the public which underlies the federal securities laws.³

However, the increasing obligations and incentives of corporations to make timely disclosures concerning their offerings raise a question as to a possible conflict between the obligation to make timely disclosure and the restriction on publication of information con-

cerning an issuer which may have securities "in registration."⁴ The Commission believes that such a conflict may be more apparent than real. Events resulting in a duty to make prompt disclosure under the antifraud provisions of the securities laws or timely disclosure policies of self-regulatory organizations at a time when a registered offering of securities is contemplated are relatively infrequent and normally may be effected in a manner which will not unduly influence the proposed offering. Disclosure of a material event would ordinarily not be subject to restrictions under section 5 of the Securities Act if it is purely factual and does not include predictions or opinions.

The Commission recognizes that difficult and close questions will inevitably arise with respect to whether particular items of publicity are subject to restriction, and encourages issuers and their counsel to seek informal consultation with the Commission's staff which is accustomed to dealing with such questions and is usually able to give rapid and definite responses.

A number of more specific questions have been raised concerning the restrictions on circulation of information by broker-dealers, particularly during the "pre-filing" period. There appears to be some confusion as to when the restrictions on publication activities commence. Ordinarily a broker-dealer becomes subject to restrictions at any time when he commences to participate in the preparation of a registration statement or otherwise reaches an understanding with the person on whose behalf a distribution is to be made that the firm will become a managing underwriter, whether or not the terms and conditions of the underwriting have been agreed upon. Other brokers become subject to restrictions at such time as they are invited by a managing underwriter or a person on whose behalf a distribution is to be made, to participate or seeks to participate. Persons who choose to forego such underwriting in order to be free to distribute such publications should not thereafter participate in the distribution as a dealer or otherwise.

Distribution of communications containing recommendations with respect to securities which have been registered for sale from time to time at prices prevailing in the market pose difficult questions. Usually no broker-dealer group has made arrangements with the selling shareholders for distribution of the securities. It does not appear that restrictions on the dissemination of such material are necessary until such time as a broker-dealer has reached an understanding that he will offer securities

¹ See also, Securities Act of 1933 Release No. 4697 (May 28, 1964; 29 F.R. 7317).

² See, e.g., New York Stock Exchange Company Manual, pp. A-18 through A-27, revised July 19, 1968; American Stock Exchange Guide, pp. 101-108.

³ Carl M. Loeb, Rhoades & Co., 38 Sec. 843, 853 (1959).

⁴ "In registration" is used herein to mean the entire process of registration, at least from the time an issuer reaches an understanding with the broker-dealer which is to act as managing underwriter until the completion of the offering and the period of 40 or 90 days during which dealers must deliver a prospectus.

on behalf of the selling shareholder, whether or not he has technically accepted an order to sell the security.

After a particular security is "in registration," broker-dealers often do not know the extent to which they may follow up recommendations concerning the security made before the security was "in registration." If a broker-dealer is a participant in a proposed underwriting and material events occurred during the "pre-filing" period, the broker should be able to make a brief, strictly factual report of these events to his customers.

After the registration statement is filed and until it becomes effective, written communications furnished to customers or others should be restricted to the preliminary prospectus ("red herring"), the summary prospectus described in section 10(b) of the Act, or the so-called "tombstone" announcements permitted under section 2(10) of the Act or Rule 134 (17 CFR 230.134) thereunder. Also, Rule 135 (17 CFR 230.135) permits certain announcements of offerings before and after a registration statement is filed.

It should be recognized that the foregoing discussion is intended to be only a general guide for brokers in disseminating information concerning an issuer which has securities "in registration." Particular fact situations may result in different conclusions. In such situations, a broker may find consultation with the staff of the Commission helpful.

Although the matters discussed herein reflect the policies and practices which the staff of the Commission will follow, they do not represent rules of the Commission. Accordingly, these interpretations are subject to change based on experience in their application, and the Commission would welcome comments and observations from interested persons. Such comments should be directed to the Director of the Division of Corporation Finance.

It should be noted that the Commission is also proposing to amend Rule 174 (17 CFR 230.174) which provides exemption from the prospectus delivery requirements of section 4(3) of the Act (see Securities Act of 1933 Release No. 5010; 34 F.R. 17034). The proposed amendments would eliminate the requirement for dealers to deliver a prospectus for trading transactions in securities of issuers required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934. If such a rule is adopted, dealers who have sold their allotments or who are not participating in the distribution would then be able to distribute information concerning an issuer subject to such reporting requirements during the period of 40 days after the effective date of the issuer's registration statement without the restrictions the existing prospectus delivery requirements may impose on their trading transactions.

The Commission is not proposing to revise prospectus delivery requirements as they apply to issuers not required to file periodic reports under the Exchange Act, primarily the 90-day requirement which applies to issuers which have not

previously filed a registration statement under the Act. Accordingly dealers desiring to publish information concerning such issuers during the 90-day period should consider the prospectus delivery requirements.

By the Commission, October 7, 1969.

(SEAL) ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 69-12463; Filed, Oct. 17, 1969;
8:45 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter III—Housing Assistance Administration, Department of Housing and Urban Development

PART 1540—COLLEGE HOUSING PROGRAM

In Title 24, Chapter III, a new Part 1540 is added as follows:

Sec.	
1540.1	Definitions.
1540.2	General policy.
1540.3	Eligible projects.
1540.4	Applications.
1540.5	Assistance terms.
1540.6	Assistance agreements.
1540.7	Grants to public educational institutions.
1540.8	Other requirements.

AUTHORITY: The provisions of this Part 1540 issued under title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749 et seq.); and Secretary's delegation of authority to Assistant Secretary for Renewal and Housing Assistance published at 34 F.R. 17041, October 18, 1969.

§ 1540.1 Definitions.

As used in this part:

(a) All terms shall have the same meaning as given them in the Act.

(b) "Act" means title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749 et seq.).

(c) "Construction" means erection of new structures, or rehabilitation, alteration, conversion, or improvement of existing structures.

(d) "Development cost" means the cost of construction, land and site improvements, and includes preliminary development expenses, architect and engineering expense, legal and administrative expense, and interest during construction; except that, in the case of purchase of facilities, such cost shall be as approved by the Secretary.

(e) "Educational institution" means any public or nonprofit private college, university, or other institution which offers or will offer within a reasonable time after completion of the facility at least a 2-year program acceptable for full credit toward a bachelor's degree; any hospital operating a school of nursing beyond the level of high school approved by State authority or internship and resident programs approved by recognized authority providing housing for their students; or any nonprofit corporation, student cooperative, or pub-

lic body, eligible under section 404(b) of the Act, providing housing and related facilities for students and faculty of educational institutions.

(f) "Housing and other educational facilities" means (1) structures suitable for dwelling use, including dormitories, apartments, and single family dwellings, and (2) structures suitable for use as cafeterias or dining halls, student centers or student unions, infirmaries, health facilities, or other essential service facilities.

(g) "Secretary" means the Secretary of Housing and Urban Development or any officer authorized to perform the functions of the Secretary.

(h) "State" means the several States, the District of Columbia, and the Territories and possessions of the United States, including the Commonwealth of Puerto Rico.

§ 1540.2 General policy.

The objective of this program is to assist educational institutions in providing housing and other educational facilities for students and faculties through direct loans for the construction or purchase of such facilities, or through annual debt service grants to reduce the cost of borrowing from other sources for such purposes, where private financing is not available on terms and conditions equally as favorable as for a direct loan. Assistance is also provided to hospitals operating nursing schools beyond the high school level or approved for internships.

§ 1540.3 Eligible projects.

Assistance in financing the construction or purchase of housing and other educational facilities may be provided under the following conditions:

(a) Construction must not be of elaborate or extravagant design or materials and must be undertaken in an economical manner.

(b) Construction must not have been completed at the time the application for assistance is made.

(c) A loan or grant-supported loan cannot be made solely for the purpose of refunding a long-term loan obtained prior to the filing of an application.

(d) Grant assistance will not accrue for any period prior to occupancy of the facilities.

(e) Site acquisition is limited to the amount of land reasonably necessary for the proposed housing or other educational facility.

(f) Projects to provide facilities for religious purposes or for theological seminaries or other schools providing training primarily for religious vocations are ineligible for assistance.

(g) Housing for the use of specific groups of students, such as fraternities or sororities, is eligible only if such housing is part of the overall housing plan of the college and if the housing will be operated under the direct responsibility and control of the college.

(h) An eligible service facility must provide an essential service in connection with the institution's housing plan.

§ 1540.4 Applications.

(a) Information and application forms may be obtained from and applications submitted to the Regional Office of the Department of Housing and Urban Development which serves the area in which the educational institution is located. A list of HUD Regional Offices with their addresses and areas of jurisdiction appears in Appendix A to § 1500.7 of this chapter. Applications will be received periodically and considered concurrently for both the direct loan and grant subsidy programs. In order to maintain flexibility in the allocation of available funds, HUD reserves the option to approve either a direct loan or a grant to a particular applicant.

(b) Prior to approval of a direct loan or grant, the applicant educational institution must establish that it:

- (1) Has the necessary legal authority to finance, construct, operate and maintain the proposed facilities, to apply for and receive the proposed assistance, and to provide such security as shall be required by the Secretary;
- (2) Has the ability to comply with the terms and conditions governing receipt of assistance and operation of the project;
- (3) Has or will have such interest in or title to the project site, including access thereto, as will assure undisturbed use, possession and operation of the facilities during the period of assistance; and
- (4) Will retain title to and all of its right, title, and interest in and to the project during the period of assistance, except as otherwise expressly approved by the Secretary.

§ 1540.5 Assistance terms.

(a) Direct loans for eligible development cost shall be for such period not to exceed 40 years (50 years for projects for which funds were reserved prior to July 1, 1968), bear interest at such rate not to exceed 3 percent per annum, and be so secured and subject to such terms and conditions, as shall be determined by the Secretary.

(b) Annual grants shall be made over a fixed period not exceeding 40 years, as determined by the Secretary, in an amount equal to the difference between the average annual debt service required to amortize the private market loan to cover eligible development cost and the average annual debt service which would be required to amortize a direct loan of like term. Fund limitations may require the setting of maximum limits for the grant.

§ 1540.6 Assistance agreements.

Upon approval of a direct loan or grant, together with reservation of funds, the Secretary will prepare and forward a loan agreement or grant agreement for execution by the educational institution. The agreement will set forth the terms and conditions of the loan or grant and

will also specify conditions which must be fulfilled precedent to making of the loan or grant. The fully executed agreement will constitute the contract between the educational institution and the Secretary during the life of the direct loan or grant, and in the case of a grant will guarantee continuation of the grant payments so long as the related private market bonds are outstanding.

§ 1540.7 Grants to public educational institutions.

All public educational institutions approved for grant assistance must comply with the following requirements except as otherwise expressly approved by the Secretary:

- (a) Submit a financing plan in form and substance acceptable to the private bond market and satisfying minimum standards established by the Secretary;
- (b) Publicly advertise the bonds in a financial newspaper of general use by the bond market to which the bonds will be offered;
- (c) Accept bids only for the entire issue; and
- (d) Obtain an unqualified approving opinion of bond counsel experienced in municipal bonds whose opinions are marketable by reason of previous acceptance by investment dealers, banks, or insurance companies.

§ 1540.8 Other requirements.

(a) All laborers and mechanics employed by contractors and subcontractors in the construction of housing and educational facilities assisted under the Act shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours Standards Act (40 U.S.C. 327-332).

(b) All contracts for construction work paid for in whole or in part from assistance funds provided under the Act shall provide that the contractor shall comply with the Copeland ("Anti-Kick-back") Act (40 U.S.C. 276c) and the regulations of the Secretary of Labor thereunder (29 CFR Part 3).

(c) The requirements of title VI of the Civil Rights Act (42 U.S.C. 2000d et seq.) that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination are applicable to educational institutions receiving assistance under the Act.

(d) All contracts for construction work paid for in whole or in part from assistance funds provided under the Act are subject to Executive Order 11246 (30

F.R. 12319, Sept. 28, 1965), as amended by Executive Order 11375 (32 F.R. 14303, Oct. 17, 1967), providing for equal opportunity in employment, and the rules and regulations of the Department of Labor with respect thereto.

(e) The provisions of title VIII (Fair Housing) of the Civil Rights Act of 1968 (Public Law 90-284, 42 U.S.C. 3601-3619), prohibiting refusal to rent to or discrimination against any person in terms or conditions of rental or provision of services on account of race, color, religion, or national origin, are applicable to projects assisted under the Act.

Effective date: October 18, 1969.

LAWRENCE M. COX,
Assistant Secretary for
Renewal and Housing Assistance.

[F.R. Doc. 69-12523; Filed, Oct. 17, 1969;
8:48 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service,
Department of the Interior

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

Sanford Recreation Area, Tex.

A proposal was published at page 8363 of the FEDERAL REGISTER of May 30, 1969, to add § 7.57 to Title 36 of the Code of Federal Regulations. The effect of the amendment is to establish restrictions on the use of alcoholic beverages at Sanford Recreation Area, Tex.

Interested persons were given 30 days within which to submit written comments, suggestions, or objections with respect to the proposed amendments. No comments, suggestions, or objections have been received. Therefore, the proposed amendment is hereby adopted without change and is set forth below. This amendment shall take effect 30 days following the date of publication in the FEDERAL REGISTER.

(5 U.S.C. 553; 39 Stat. 535; 16 U.S.C. 3; 78 Stat. 744; 43 U.S.C. 600d)

A new § 7.57 is added to this part as follows:

§ 7.57 Sanford Recreation Area.

(a) *Alcoholic beverages.* (1) The sale or gift of an alcoholic beverage to a person under 21 years of age is prohibited.

(2) Possession of alcoholic beverages by persons under 21 years of age is prohibited.

W. A. PARTIN,
Acting Superintendent,
Sanford Recreation Area.

[F.R. Doc. 69-12462; Filed, Oct. 17, 1969;
8:45 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 32—HUNTING

Crab Orchard National Wildlife Refuge, Ill.

The following special regulations is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

ILLINOIS

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

Public hunting of ducks and coots on the Crab Orchard National Wildlife Refuge, Ill., is permitted from November 1, through November 30, 1969, and the hunting of geese is permitted from November 17, through December 21, 1969, and from January 2, through January 11, 1970, but only on the area designated by signs as open to hunting. This open area comprising 12,380 acres is delineated on a map available at refuge headquarters, Carterville, Ill., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Season for hunting geese will be closed when a kill quota of 25,000 Canada geese is reached in the State of Illinois. Hunting will be in accordance with all applicable State and Federal regulations subject to the following special conditions:

(1) Blinds: Temporary blinds may be constructed. Blinds do not become the property of those constructing them.

(2) It is unlawful for any person to establish or use any blind for the taking of migratory waterfowl within 50 yards of any other blind on the refuge public hunting area.

(3) All persons hunting geese on the refuge public hunting area must register before entering and upon leaving the area and must register any geese taken on the area at the locations designated by the Project Manager.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuges generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 11, 1970.

S. E. JORGENSEN,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

OCTOBER 6, 1969.

[F.R. Doc. 69-12501; Filed, Oct. 17, 1969; 8:47 a.m.]

PART 32—HUNTING

PART 33—SPORT FISHING

Bear Lake National Wildlife Refuge, Idaho

On page 14474 of the FEDERAL REGISTER of September 17, 1969, there was published a notice of a proposed amendment to 50 CFR 32.11 and 33.4. The purpose of this amendment is to provide public hunting of migratory game birds and sport fishing on certain areas of the National Wildlife Refuge System, as legislatively permitted.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received. The proposed amendment is hereby adopted without change.

Since this amendment benefits the public by relieving existing restrictions on hunting and fishing, it shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 10, 45 Stat. 1224, 16 U.S.C. 7151; sec. 4, 80 Stat. 927, 16 U.S.C. 668dd)

Section 32.11 is amended by the following addition:

§ 32.11 List of open areas; migratory game birds.

* * * * *
IDAHO
Bear Lake National Wildlife Refuge.

2. Section 33.4 is amended by the following addition:

§ 33.4 List of open areas; sport fishing.

* * * * *

IDAHO

Bear Lake National Wildlife Refuge.

* * * * *
JOHN S. GOTTSCHALK,
Director, Bureau of Sport Fisheries and Wildlife.

OCTOBER 14, 1969.

[F.R. Doc. 69-12500; Filed, Oct. 17, 1969; 8:47 a.m.]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER C—ACCOUNTS, RECORDS, AND REPORTS [No. 35165]

PART 1222—SLEEPING CAR COMPANIES

Destruction of Records

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 3d day of October 1969.

With the Pullman Co.'s cessation of transportation operations, the need for regulations for the destruction of records of sleeping car companies has terminated. Since deletion of such regulations reduces the burden upon the public, the procedural requirements of section 553 of title 5, United States Code, are deemed unnecessary.

It is ordered, That effective October 3, 1969, Part 1222 is hereby deleted from Title 49 of the Code of Federal Regulations.

It is further ordered, That service of this order shall be made on the Pullman Co. and notice thereto shall be given the general public by depositing a copy of this order in the Office of the Secretary of the Commission at Washington, D.C., and by filing the order with the Director, Office of the Federal Register.

(Secs. 12, 20, 24 Stat. 383, 386, as amended; 49 U.S.C. 12, 20)

By the Commission, Division 2.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 69-12510; Filed, Oct. 17, 1969; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 279]

FROZEN RAW FISH PORTIONS

Standards for Grades

OCTOBER 14, 1969.

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by section 6(a) of the Fish and Wildlife Act of August 8, 1956 (16 U.S.C. 742e), it is proposed to amend Title 50, Code of Federal Regulations by the addition of Part 279. The purpose of this amendment is to issue Standards for Grades of Frozen Raw Fish Portions as indicated below in accordance with the authority contained in title II of the Agricultural Marketing Act of August 14, 1946, as amended (7 U.S.C. 1621-1627).

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Director, Bureau of Commercial Fisheries, U.S. Fish and Wildlife Service, Washington, D.C. 20240, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

§ 279.1 Description of the product.

The product described in this part consists of clean, wholesome, shaped masses of cohering pieces (not ground) of fish flesh. The fish portions are cut from frozen fish blocks, and are packaged in accordance with good manufacturing practice. They are maintained at temperatures necessary for the preservation of the product. All fish portions in an individual package are prepared from the flesh of one species of fish.

§ 279.2 Styles of frozen raw fish portions.

(a) *Style I—Skinless portions.* Portions prepared from fish blocks which have been made with skinless filets.

(b) *Style II—Skin-on portions.* Portions prepared from fish blocks which have been made from demonstrably acceptable skin-on filets.

§ 279.3 Types of frozen raw fish portions.

(a) *Type I—Uniform shaped.* All portions in the sample are uniformly shaped.

(b) *Type II—Specialty cut.* All portions not covered in Type I.

§ 279.4 Grades of frozen raw fish portions.

(a) "U.S. Grade A" is the quality of frozen raw fish portions that (1) possess

a good flavor and odor and that (2) for those factors that are rated in accordance with the scoring system outlined in this part, have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of frozen raw fish portions that (1) possess at least reasonably good flavor and odor, and that (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" or "Utility" is the quality of frozen raw fish portions that meet the requirements of § 279.1 but that otherwise fail to meet the requirements of "U.S. Grade B."

§ 279.5 Labeling requirements for styles of frozen fish portions.

Section 260.86 (a), (b), and (c) of this chapter states the requirements for the use of approved grade marks, inspection marks and combined grade and inspection marks on processed fishery products. When an approved inspection mark is used on Style II (§ 279.2) of frozen raw fish portions, that style shall be conspicuously revealed on the label as having been made from "skin-on filets."

§ 279.11 Determination of the grade.

The grade is determined by examining the product for factors 1-8 in the frozen state and factors 9-11 in the cooked state.

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table I. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100, the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting after the product has been cooked in accordance with § 279.21.

(1) Good flavor and odor (essential requirements for U.S. Grade A product)

means that the cooked product has the typical flavor and odor of the indicated species and is free from rancidity, bitterness, staleness, and other off-flavor and odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a U.S. Grade B product) means that the cooked product is lacking in good flavor and odor, but is free from objectionable off-flavors and off-odors of any kind.

§ 279.21 Definitions and methods.

(a) *Selection of the sample unit.* The sample unit shall consist of 10 frozen raw fish portions taken at random from one or more packages as required. The fish portions for examination in the frozen and cooked state are spread out on a flat pan or sheet and are examined according to Table I. Definition of factors for point deductions are as follows:

(b) *Examination of sample, frozen state.* (1) "Ease of separation" refers to the difficulty of separating the portions from each other or from the packaging material.

(2) "Broken portion" means a portion with a break or cut equal to or greater than one-half the width or length of the portion.

(3) "Damaged portion" means a portion that has been mashed, physically or mechanically injured, misshaped or mutilated to the extent that its appearance is materially affected. The amount of damage is determined by using a grid composed of squares $\frac{1}{4}$ inch x $\frac{1}{4}$ inch to measure the area of the portion affected. No deductions are made for damage of less than $\frac{1}{4}$ inch x $\frac{1}{4}$ inch.

(4) "Voids" refer to objectionable holes, spaces, or depressions in the fish flesh. Instances of voids refer to each occurrence measured by placing a plastic grid marked off in $\frac{1}{4}$ -inch squares at last $\frac{1}{8}$ inch in depth over the affected area. Each square is counted as one whether it is full or fractional. No deductions are made for voids of less than $\frac{1}{4}$ inch x $\frac{1}{4}$ inch.

TABLE I. SCHEDULE OF POINT DEDUCTIONS PER SAMPLE FROZEN STATE

Factors scored	Method of determining score	Deduct
1 Ease of separation	Minor: Hand separated with difficulty. Each affected	33
	Major: Separated only by knife or other instrument. Each affected	6
2 Broken portion	Break or cut greater than $\frac{1}{2}$ width or length. Each affected	10
3 Damaged portion	Mashed, mechanically and/or physically injured, misshaped or mutilated.	2
	Minor: 1 to 5 instances. Each affected	4
	Major: Over 5 instances. Each affected	1
4 Voids	Holes, spaces, or depressions:	
	Minor: 1 to 5 instances. Each affected	2
	Major: Over 5 instances. Each affected	10
5 Discoloration (overall assessment)	Small degree: Slight yellowing or rusting	31
	Large degree: Excessive yellowing or rusting	10
6 Dehydration (overall assessment)	Surface dehydration:	
	Small degree: Easily scraped off with fingernail. Each affected	8
	Large degree: Deep dehydration not easily scraped off, affecting over 10 percent of surface area. Each affected	10

See footnotes at end of table.

TABLE 1. SCHEDULE OF POINT DEDUCTIONS PER SAMPLE—Continued
FROZEN STATE—Continued

Factors scored	Method of determining score	Deduct
7 Uniformity of size.....	Deviation in length or width between the 2 largest and 2 smallest portions that are similarly shaped.	
	Up to 1/4 inch.....	0
	Over 1/4 inch and up to 1/2 inch.....	3
	Over 1/2 inch.....	10
8 Uniformity of weight.....	Weight ratio of 2 heaviest divided by the 2 lightest.	
	Over 1.0 but not over 1.2.....	0
	Over 1.2 but not over 1.3.....	2
	Over 1.3 but not over 1.4.....	5
	Over 1.4.....	10
COOKED STATE		
9 Blemishes.....	Skin (except for Style II) blood spots, bruises and discolorations.	
	Minor: 1 to 6 instances. ¹ Each affected.....	2
	Major: Over 6 instances. Each affected.....	4
10 Bones.....	Portions containing bones (potentially harmful). Each affected.....	10
11 Texture (overall assessment).	Small degree: Moderately dry, soggy, or tough.....	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, or rubbery skin (Style II).	15

¹ An instance—each 1/4-inch square.

(5) "Discoloration" is considered as a deviation in color from that normal to the species present in the portions.

(6) "Dehydration" refers to the presence of dehydrated (water-removed) tissue in the portions. Slight dehydration is surface dehydration which is not color-masking. Deep dehydration is color-masking and cannot be removed by scraping with a blunt instrument.

(7) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen portions. Deviations are measured from the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest in the sample. Deductions are not made for overall deviations in length or width up to 1/4 inch.

(8) "Uniformity of weight" refers to the degree of uniformity of the weights of portions. Uniformity is measured by the combined weight of the two heaviest portions divided by the combined weight of the two lightest portions in the sample. No deductions are made for weight ratios less than 1.2 for Type I.

(c) *Examination of sample, cooked state.* Cooked state means the state of the sample after cooking in accordance with instructions accompanying the product. However, if specific instructions are lacking, cooking is accomplished by:

(1) *Boil in bag method.* Insert the sample of frozen portions into a bollable film-type pouch; fold the open end of the pouch over a suspension bar and clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents for 20 minutes (until the internal temperature of the portions reaches 160° F.).

(2) *Steam method.* Use 10 frozen portions, wrap them individually or in a single layer in aluminum foil, and place the packaged portions on a wire rack suspended over boiling water in a covered container. Steam the packaged portions for 20 minutes.

(3) *Bake method.* Package the 10 frozen portions as previously described. Place the packaged portions on a flat

cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F. for 20 minutes.

(d) *Factors examined in cooked state.*
(1) "Blemishes" refers to skin (except for Style II), blood spots or bruises, objectionable dark fatty flesh, or extraneous material. Instances of blemishes refer to each occurrence measured by placing a plastic grid market off in 1/4-inch squares (1/16 square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(2) "Bones" means the presence of potentially harmful bones in a portion. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(3) "Texture defects of the fish flesh and texture of skin in Style II" refers to the absence of the normal textural properties of the cooked fish flesh and to the absence of tenderness of the cooked skin in Style II. Normal textural properties of cooked fish flesh are tenderness, firmness, and moistness without excess water. Texture defects of the cooked flesh are dryness, mushiness, toughness, and rubberiness. Texture defects of the cooked skin in Style II are mushiness, rubberiness, toughness, and stringiness.

(e) *General definitions.* (1) "Small" (overall assessment) refers to a condition that is noticeable but is only slightly objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(5) "Net weight": The net weight of the portions if glazed shall be determined by the following method:

(i) Weigh the portions with the glaze intact, which gives the gross weight.

(ii) Thaw the glaze from the surfaces of the product with flowing tap water.

(iii) Gently wipe off the excess water from the surfaces with a single water saturated paper towel.

(iv) Weigh the deglazed portions, which gives the net weight.

§ 279.25 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter (Regulations Governing Processed Fishery Products).

DAYTON L. ALVERSON,
Acting Director.

[F.R. Doc. 69-12461; Filed, Oct. 17, 1969;
8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 27]

CANNED APPLESAUCE

Identity Standard; Order Rejecting Proposed Amendments To List Nutritive Sweeteners and Change Label Declaration

In the matter of amending the definition and standard of identity for canned applesauce (21 CFR 27.80): (1) To specify the nutritive sweeteners that may be used; (2) to permit their label declaration by common names or, alternatively, by the term "sweetener added"; and (3) to provide that if the name of the food includes the word "sweetened" in accordance with the present standard, no additional label declaration that sweeteners have been added be required.

A notice of proposed rule making in the above-identified matter was published in the FEDERAL REGISTER of March 25, 1969 (34 F.R. 5805), based on a petition filed by the National Cannery Association, 1133 20th Street NW., Washington, D.C. 20036.

In response to the notice nine comments were filed. Seven favored the proposal. One opposed it, arguing that consumers should be informed which sweetener has been used (1) to preclude economic deception and (2) to inform consumers allergic to certain sweeteners. The ninth comment was submitted by the petitioner in rebuttal to the unfavorable one.

On the basis of the information submitted in the petition, the comments received, and other relevant information, the Commissioner of Food and Drugs does not conclude that it will promote honesty and fair dealing in the interest of consumers to adopt the proposed amendments.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended, 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR

2.120): *It is ordered*, That the standard for canned applesauce not be amended as proposed in the FEDERAL REGISTER of March 25, 1969 (34 F.R. 5605).

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing, and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in six copies.

Effective date. This order shall become effective 60 days from the date of its publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

Dated: October 13, 1969.

R. E. DUGGAN,
*Acting Associate Commissioner
for Compliance.*

[F.R. Doc. 69-12459; Filed, Oct. 17, 1969;
8:45 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 1, 91]

[Docket No. 9880; Notice 69-41A]

TERMINAL CONTROL AREAS; GENERAL

Extension of Comment Period

In a notice of proposed rule making published in the FEDERAL REGISTER on September 30, 1969 (34 F.R. 15252), it was stated that the Federal Aviation Administration proposed the adoption of air traffic rules for the control or segregation of all aircraft operated within airspace designated by the Administrator as "Terminal Control Areas." In accordance with the terms of the notice, the time for public comment was to expire October 27, 1969.

Several parties have requested an extension of the comment period to establish a position relative to this proposal. The Federal Aviation Administration considers that such extension is justified. Accordingly, notice is hereby given that all comments received on Docket No.

9880; Notice 69-41 on or before November 15, 1969, will be considered by the Federal Aviation Administration before action is taken on the regulatory proposal contained therein.

Communications should be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket GC-24, 800 Independence Avenue SW., Washington, D.C. 20590.

This amendment is proposed under the authority of sections 307 (a) and (c), and 313 of the Federal Aviation Act of 1958 (49 U.S.C. 1348 (a) and (c), and 1354 (a)), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1665(c)).

Issued in Washington, D.C., on October 15, 1969.

H. B. HELSTROM,
*Chief, Airspace and Air
Traffic Rules Division.*

[F.R. Doc. 69-12529; Filed, Oct. 17, 1969;
8:48 a.m.]

[14 CFR Parts 21, 25, 37, 121]

[Docket No. 9605; Notice No. 69-33A]

TRANSPORT CATEGORY AIRPLANES

Crashworthiness and Passenger Evacuation; Extension of Comment Period

The Federal Aviation Administration proposed in Notice 69-33, published in the FEDERAL REGISTER on August 12, 1969 (34 F.R. 13036), to amend the emergency evacuation requirements and operating procedures for transport category airplanes.

The Society of the Plastics Industry, Inc., has requested a 60-day extension of time for submission of comments. The extension was requested to enable the Society's membership to thoroughly consider the subject proposal and allow sufficient time for the compilation of a document for subsequent filing with the FAA which will be representative of the views of the plastics industry.

While it appears that a reasonable extension of time is justified, in view of the safety consideration which prompted the issuance of Notice 69-33, a grant of an extension for the requested length of time would not be consistent with the public interest. However, the petitioner has subsequently advised the FAA that the essential substance of the Society's comments could be filed within 30 days and the FAA has determined that the shorter period should be adequate.

In consideration of the foregoing, I find that the petitioner has shown a substantive interest in the proposed rule, that good cause exists for an extension of time, and that the extension is consistent with the public interest.

Therefore, pursuant to the authority delegated to me by the Administrator (14 CFR 11.45), the time within which comments on Notice 69-33 will be received is extended to November 13, 1969.

Issued in Washington, D.C., on October 16, 1969.

EDWARD C. HOBSON,
*Acting Director,
Flight Standards Service.*

[F.R. Doc. 69-12530; Filed, Oct. 17, 1969;
8:48 a.m.]

[14 CFR Part 71]

[Docket No. 9881; Notice 69-42A]

WASHINGTON, D.C., TERMINAL CONTROL AREA

Extension of Comment Period

In a notice of proposed rule making published in the FEDERAL REGISTER on September 30, 1969 (34 F.R. 15252), it was stated that the Federal Aviation Administration is considering the adoption of a "Terminal Control Area" for Washington, D.C. Rules for the control or segregation of all aircraft operated within terminal control areas are proposed concurrently in Docket 9880; Notice 69-41.

Several parties have requested an extension of the comment period to establish a position relative to this proposal. The Federal Aviation Administration considers that such extension is justified. Accordingly, notice is hereby given that all comments received on Docket 9881; Notice 69-42 on or before November 15, 1969, will be considered by the Federal Aviation Administration before action is taken on the proposal contained therein.

Communications should be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket GC-24, 800 Independence Avenue SW., Washington, D.C. 20590.

This amendment is proposed under the authority of sections 307 (a) and (c), and 313, of the Federal Aviation Act of 1958 (49 U.S.C. 1348 (a) and (c), and 1354 (a)), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on October 15, 1969.

H. B. HELSTROM,
*Chief, Airspace and Air
Traffic Rules Division.*

[F.R. Doc. 69-12531; Filed, Oct. 17, 1969;
8:48 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-80-92]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Biloxi, Miss., control zone and Gulfport, Miss., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be

submitted in triplicate to the Federal Aviation Administration, Area Manager, Memphis Area Office, Air Traffic Branch, Post Office Box 18097, Memphis, Tenn. 38118. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Regional Headquarters, Room 724, 3400 Whipple Street, East Point, Ga.

The Biloxi control zone described in § 71.171 (34 F.R. 4557) would be redesignated as:

Within a 5-mile radius of Keesler AFB (lat. 30°24'39.2" N., long. 88°55'25.9" W.); within 1.5 miles each side of Keesler TACAN 045° radial, extending from the 5-mile radius zone to 6.5 miles northeast of the TACAN; within 1.5 miles each side of Keesler TACAN 205° radial, extending from the 5-mile radius zone to 6 miles southwest of the TACAN, excluding the portion west of long. 89°00'00" W., effective from 0600 to 2200 hours, local time daily.

The Gulfport 700-foot transition area described in § 71.181 (34 F.R. 4637 and 7122) would be redesignated as:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Gulfport Municipal Airport (lat. 30°24'27.5" N., long. 89°04'05" W.); within an 8.5-mile radius of Keesler AFB (lat. 30°24'39.2" N., long. 88°55'25.9" W.); within 3 miles each side of the 036° bearing from Keesler RBN, extending from the 8.5-mile radius area to 8.5 miles northeast of the RBN; within 2 miles each side of Keesler TACAN 045° radial, extending from the 8.5-mile radius area to 13 miles northeast of the TACAN; within 2 miles each side of Keesler TACAN 205° radial, extending from the 8.5-mile radius area to 13 miles southwest of the TACAN;

The application of Terminal Instrument Procedures (TERPs) and current airspace criteria to the Gulfport/Biloxi terminal area requires alteration of the Keesler AFB control zone and the associated Gulfport transition area. Such alterations result in the following actions:

1. Decrease the widths of the control zone extensions predicated on Keesler TACAN 045° and 205° radials from 4 to 3 miles.
2. Revoke the control zone extension predicated on the 036° bearing from Keesler RBN.
3. Increase the transition area extension predicated on the 036° bearing from Keesler RBN 1 mile in width and 0.5 mile in length.

4. Increase the Gulfport transition area basic radius circle from 8 to 8.5 miles.

The proposed alteration is required to provide controlled airspace protection for IFR operations in climb to 1,200 feet above the surface and in descent from 1,500 feet above the surface.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on October 9, 1969.

JAMES G. ROGERS,
Director, Southern Region.

[P.R. Doc. 69-12482; Filed, Oct. 17, 1969;
8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-EA-30]

VOR FEDERAL AIRWAY

Proposed Designation; Supplemental Notice

In a notice of proposed rule making published in the FEDERAL REGISTER on September 26, 1969 (34 F.R. 14850) it was stated in part that the Federal Aviation Administration proposed to designate VOR Federal airway No. 205.

The proposed alignment contained in the notice failed to reflect Boston, Mass., as the terminating point for this airway. Accordingly, action is taken herein to correct Item No. 35 of the notice to read:

Designate VOR Federal airway No. 205 from Sparta with a 1,200-foot AGL floor via intersection of Sparta 023° T (034° M) and Pawling 238° T (250° M) radials; Pawling; intersection of Pawling 076° T (088° M) and Boston, Mass., 251° T (266° M) radials; to Boston.

The time within which comments will be received for consideration on the original notice expires on October 27, 1969. Since the alteration proposed herein is minor in nature, the time within which comments will be received for consideration on Airspace Docket No. 69-EA-30 will be retained. Communications should be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on October 10, 1969.

LOUIS H. McCaughey,
Acting Chief, Airspace and
Air Traffic Rules Division.

[P.R. Doc. 69-12483; Filed, Oct. 17, 1969;
8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-SO-110]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Natchez, Miss., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Area Manager, Memphis Area Office, Air Traffic Branch, Post Office Box 18097, Memphis, Tenn. 38118. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region Headquarters, Room 724, 3400 Whipple Street, East Point, Ga.

The Natchez transition area described in § 71.181 (34 F.R. 4637 and 7122) would be redesignated as:

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Hardy-Anders Field (lat. 31°36'50" N., long. 91°17'55" W.); within 3 miles each side of Natchez VOR 021° radial, extending from the 7-mile radius area to 8.5 miles north of the VOR; and that airspace extending upward from 1,200 feet above the surface within 9.5 miles west of Natchez VOR 021° radial, extending from the VOR to 18.5 miles north, excluding the portion within the State of Mississippi.

The application of Terminal Instrument Approach Procedures (TERPs) and current airspace criteria to Natchez terminal area requires the following actions:

1. Increase the 700-foot transition area basic radius circle from 5 to 7 miles.
2. Increase the extension predicated on Natchez VOR 021° radial 2 miles in width and 0.5 mile in length.
3. Designate a 1,200-foot transition area extension on Natchez VOR 021° radial 9.5 miles west, extending to 18.5 miles north of the VOR.

The proposed alteration is required to provide controlled airspace protection for IFR operations in climb from 700 to 1,200 feet above the surface and in descent to 1,000 feet above the surface.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a))

and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on October 8, 1969.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 69-12484; Filed, Oct. 17, 1969;
8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-SO-114]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Laurinburg, N.C., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Regional Headquarters, Air Traffic Division, Post Office Box 20636, Atlanta, Ga. 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Regional Headquarters, Room 724, 3400 Whipple Street, East Point, Ga.

The Laurinburg transition area described in § 71.181 (34 F.R. 4637) would be redesignated as:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Laurinburg-Maxton Airport (lat. 34°47'25" N., long. 79°21'55" W.); within 3 miles each side of Pinehurst VORTAC 157° radial, extending from the 8.5-mile radius area to 20 miles southeast of the VORTAC.

The application of Terminal Instrument Procedures (TERPs) and current airspace to the Laurinburg terminal area requires the following actions:

1. Increase the transition area basic radius circle from 8 to 8.5 miles.
2. Designate an extension predicated on Pinehurst VORTAC 157° radial 3 miles wide, extending from the 8.5-mile radius area to 20 miles southeast of the VORTAC.

The proposed alteration is required to provide controlled airspace protection for IFR operations in climb from 700 to 1,200 feet above the surface and in descent from 1,500 to 1,000 feet above the surface.

This amendment is proposed under the authority of section 307(a) of the Fed-

eral Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on October 9, 1969.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 69-12485; Filed, Oct. 17, 1969;
8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-SO-112]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Eufaula, Ala., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Area Manager, Memphis Area Office, Air Traffic Branch, Post Office Box 18097, Memphis, Tenn. 38118. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Regional Headquarters, Room 724, 3400 Whipple Street, East Point, Ga.

The Eufaula transition area described in § 71.181 (34 F.R. 4637) would be redesignated as:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Weedon Field (lat. 31°57'05" N., long. 85°07'45" W.); within 3 miles each side of Eufaula VOR 014° radial, extending from the 6.5-mile radius area to 8.5 miles north of the VOR.

The application of Terminal Instrument Procedures (TERPs) and current airspace criteria to Eufaula terminal area requires the following actions:

1. Increase the transition area basic radius circle from 4 to 6.5 miles.
2. Increase the extension predicated on the Eufaula VOR 014° radial 2 miles in width and 0.5 mile in length.

The proposed alteration is required to provide controlled airspace protection for IFR operations in climb from 700 to 1,200 feet above the surface and in descent from 1,500 to 1,000 feet above the surface.

This amendment is proposed under the authority of section 307(a) of the Fed-

eral Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on October 9, 1969.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 69-12486; Filed, Oct. 17, 1969;
8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-SO-113]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Lumberton, N.C., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Regional Headquarters, Air Traffic Division, Post Office Box 20636, Atlanta, Ga. 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Regional Headquarters, Room 724, 3400 Whipple Street, East Point, Ga.

The Lumberton transition area described in § 71.181 (34 F.R. 4637) would be redesignated as:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Lumberton Municipal Airport (lat. 34°36'36" N., long. 79°03'30" W.); within 3 miles each side of the 302° bearing from Lumberton RBN (lat. 34°36'48" N., long. 79°03'36" W.), extending from the 8.5-mile radius area to 8.5 miles northwest of the RBN.

The application of Terminal Instrument Approach Procedures (TERPs) and current airspace criteria to the Lumberton terminal area requires the following actions:

1. Increase the transition area basic radius circle from 8 to 8.5 miles.
2. Increase the extension predicated on the 302° bearing from Lumberton RBN 2 miles in width and 0.5 mile in length.

The proposed alteration is required to provide controlled airspace protection for IFR operations in climb from 700 to 1,200 feet above the surface and in descent from 1,500 to 1,000 feet above the surface.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on October 9, 1969.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 69-12487; Filed, Oct. 17, 1969;
8:46 a.m.]

[14 CFR Part 171]

[Regulatory Docket No. 9901; Notice 69-43]

NON-FEDERAL NAVIGATION FACILITIES

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 171 of the Federal Aviation Regulations to make certain sections consistent with current agency funding policy and ILS installation requirements.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before November 17, 1969, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Sections 171.5(a)(6), 171.25(a)(6), and 171.45(a)(6) of the Federal Aviation Regulations presently require the owner of a non-Federal navigation facility to bear the costs of any ground or flight inspections made before the facility is commissioned. In March 1969, a policy decision was made to encourage the establishment of non-Federal facilities. Pursuant to this end, it was determined that the Federal Aviation Administration may bear the cost of initial ground and flight inspection of nonfederally owned radio navigation facilities and their associated lighting aids used for purposes of IFR air navigation or approach to landing. An advisory circular will be issued implementing this policy determination to advise interested persons under what circumstances the FAA may bear certain costs now paid for by the owner of a non-Federal facility. A regulatory change is necessary to provide this exception to the general rule.

It should be noted that this proposed change in no way binds the Administrator to bear these additional costs but permits him to exercise his discretion with a

view toward current agency policy and immediate funding requirements.

It is also proposed to amend § 171.49(b) by deleting the requirement that facilities have a standby system unless primary power is supplied from at least two independent sources. It has been determined that this equipment will not be required except where the FAA deems it necessary in the interest of aviation safety.

Section 171.49(c) would be amended by deleting the requirement that all facilities have dual transmitting equipment. Again, to make this section consistent with agency policy, this equipment will not be mandatory except where the FAA deems it necessary.

A minor change is proposed to § 171.49(e)(1). It is believed that the utilization of voice on the ILS frequency should be determined by the facility operator on an individual basis.

In consideration of the foregoing, it is proposed to amend Part 171 of the Federal Aviation Regulations as follows:

1. By amending § 171.5(a)(6) of Subpart A to read as follows:

§ 171.5 Minimum requirements for approval.

(a) * * *

(6) The owner must bear all costs of meeting the requirements of this section and of any flight or ground inspection made before the facility is commissioned, except that the FAA may bear certain of these costs subject to budgetary limitations and policy established by the Administrator.

2. By amending § 171.25(a)(6) of Subpart B to read as follows:

§ 171.25 Minimum requirements for approval.

(a) * * *

(6) The owner must bear all costs of meeting the requirements of this section and of any flight or ground inspection made before the facility is commissioned, except that the FAA may bear certain of these costs subject to budgetary limitations and policy established by the Administrator.

3. By amending § 171.45(a)(6) of Subpart C to read as follows:

§ 171.45 Minimum requirements for approval.

(a) * * *

(6) The owner must bear all costs of meeting the requirements of this section and of any flight or ground inspection made before the facility is commissioned, except that the FAA may bear certain of these costs subject to budgetary limitations and policy established by the Administrator.

4. By amending § 171.49 as follows:

§ 171.49 Installation requirements.

(b) The facility must have a reliable source of suitable primary power, either from a power distribution system or

locally generated. A determination by the FAA as to whether a facility will be required to have a standby system for localizer glide slope and monitor accessories to supplement the primary system, will be made for each airport based upon operational minimums and density of air traffic.

(c) A determination by the FAA as to whether a facility will be required to have dual transmitting equipment with automatic changeover for localizer and glide slope components, will be made for each airport based upon operational minimums and density of air traffic.

(e) * * *

(1) At facilities outside of and not immediately adjacent to air traffic control zones or areas, there must be ground-air communications from the airport served by the facility. The utilization of voice on the ILS frequency should be determined by the facility operator on an individual basis.

These amendments are proposed under the authority of sections 305, 307, 313(a), 601, and 606 of the Federal Aviation Act of 1958 (49 U.S.C. 1346, 1348, 1354(a), 1421, and 1426), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on October 13, 1969.

J. H. SHAFFER,
Administrator.

[F.R. Doc. 69-12488; Filed, Oct. 17, 1969;
8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 18434]

ADVERTISING OF CIGARETTES

Order Extending Time for Filing Reply Comments

So that the comments may appropriately reflect evolving developments relating to the matters at issue in this proceeding, we are, on our own motion, further extending the time for filing reply comments to November 14, 1969.

Accordingly, it is ordered, That the time for filing reply comments in this proceeding is extended to November 14, 1969.

This action is taken pursuant to authority contained in section 5(d) of the Communications Act of 1934, as amended, 47 U.S.C. 155(d), and § 0.251(b) of the rules and regulations, 47 CFR 0.251(b).

Adopted: October 9, 1969.

Released: October 13, 1969.

[SEAL]

HENRY GELLER,
General Counsel.

[F.R. Doc. 69-12505; Filed, Oct. 17, 1969;
8:47 a.m.]

[47 CFR Part 73]

[Docket No. 6741]

CLEAR CHANNEL BROADCASTING IN
STANDARD BROADCAST BANDOrder Extending Time for Filing Reply
Comments

1. On April 25, 1969, the Commission released a notice of proposed rule making, Docket 6741 (FCC 69-405) reopening the "clear channel" proceeding for the purpose of seeking a solution to the long-standing "KOB problem". The time for filing comments has expired and the date designated for filing reply comments is October 22, 1969.

2. On October 7, 1969, Hubbard Broadcasting, Inc., requested the Commission to extend the date for filing reply comments to and including November 24, 1969. It states that the attorney with principal responsibility for handling the "KOB problem" is presently traveling abroad and is not due to return until early November. Counsel for American Broadcasting Cos., Inc., states he has no objection to a grant of the requested extension.

3. It appears that the additional time is warranted. Accordingly, it is ordered, That the time for filing reply comments is extended to November 24, 1969.

4. This action is taken pursuant to authority found in section 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: October 9, 1969.

Released: October 13, 1969.

FEDERAL COMMUNICATIONS
COMMISSION,[SEAL] GEORGE S. SMITH,
Chief, Broadcast Bureau.[F.R. Doc. 69-12506; Filed, Oct. 17, 1969;
8:47 a.m.]

FEDERAL MARITIME COMMISSION

[46 CFR Part 536]

[General Order 13; Docket No. 69-53]

FILING OF THROUGH ROUTES AND
THROUGH RATES

Notice of Proposed Rule Making

The Federal Maritime Commission is aware of the desire of carriers subject to its jurisdiction to establish through routes, and through rates in connection therewith. There is, however, uncertainty and confusion occasioned by the fact that the Commission's General Order 13 does not specifically provide for the filing of such rates and that such rates involve carriers not subject to our jurisdiction. The Commission has the authority and the regulatory responsibility to accept for filing any through rate which a common carrier by water in the foreign commerce of the United States desires to offer provided that the requirements of section 18(b) of the Shipping Act, 1916, have been satisfied. In order to eliminate

the uncertainty and confusion and to carry out our responsibilities, we are instituting by this notice a rulemaking proceeding to revise and clarify General Order 13 (46 CFR Part 536) to provide specifically for the filing of through routes and through rates by common carriers by water in the foreign commerce of the United States.

The Commission is of the opinion that section 18(b)(1) of the Shipping Act, 1916, requires all common carriers by water which either individually or in connection with any other carrier offer a through rate governing through transportation between ports or points in the United States and ports or points in a foreign country, to file with the Federal Maritime Commission and keep open to public inspection tariffs showing (a) the rates and charges for the entire transportation service performed, as well as (b) a separate statement of the divisions, rates and charges to be collected by the water carrier for its portion of the through service, (c) a description of the services to be performed by each carrier participating in the through route or through rate, and (d) the established through route.

The absence of specific procedures for filing the entire through rate which carriers subject to its jurisdiction desire to offer the public in addition to the water portion would constitute an unnecessary impediment to the development of through intermodal transportation and, moreover, would hinder the Commission in determining in what manner the port-to-port portion subject to our jurisdiction is affected, determined, or changed within the meaning of section 18(b)(1).

Although the Commission has no jurisdiction over the rates and charges imposed by participating carriers not subject to the Shipping Act, 1916, it does have jurisdiction over the carriers subject to the Act and the services they offer. The failure of carriers subject to our jurisdiction to file and disclose their portion of a through rate would make it impossible for the Commission to determine its lawfulness under the standards of the Shipping Act, 1916, and would constitute a violation of the filing requirements of section 18(b)(1) of the Act.

Section 15 of the Act requires filing and approval prior to effectuation of arrangements between parties regulated by this Commission, and section 21 authorizes the Commission to require filing of memoranda to which a carrier or other person it regulates is a party. The rule to be considered in this proceeding includes a provision to require the filing of memoranda of inter-carrier arrangements when joint rates have been established between carriers in order to enable the Commission to effectively regulate the water portion of such rates.

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553) and sections 15, 18(b), 21, and 43 of the Shipping Act, 1916 (46 U.S.C. 814, 817(b), 820, and 841(a)), it is proposed that Title 46, Part 536, Code

of Federal Regulations, be amended by adding a new § 536.16 to read as follows:

§ 536.16 Filing of through rates and
through routes.

Every common carrier by water in the foreign commerce of the United States, as defined in the Shipping Act, 1916, or conference of such carriers, shall file with the Commission tariffs of any through rates, charges, rules, and regulations governing the through transportation of freight between ports or points in the United States and ports or points in a foreign country in which such carrier or conference participates. Such tariffs shall include the names of all participating carriers, the established through route, a description of the service to be performed by each participating carrier, and shall clearly indicate the division, rate, or charge that is to be collected by the water carrier subject to the Shipping Act, 1916, for its port-to-port portion of the through service, which division, rate, or charge shall constitute a proportional rate subject to the provisions of the Shipping Act, 1916. Such tariffs will be filed and maintained in the manner provided in section 18(b) of the Shipping Act, 1916, and this part. A memorandum of every arrangement to which a carrier or conference of carriers subject to the jurisdiction of the Shipping Act, 1916, is or becomes a party, for transportation between a port or point in the United States and a port or point in a foreign country, establishing any joint rate which is offered in connection with any other carrier, shall be filed with this Commission concurrently with the filing of the through rate tariffs.¹

Interested persons may participate in this rulemaking proceeding by filing with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before November 17, 1969, an original and 15 copies of their views or arguments pertaining to the proposed rule. All suggestions for changes in the text as set out above should be accompanied by drafts of the language deemed necessary to accomplish the desired change and by statement and arguments in support thereof.

The Federal Maritime Commission, Bureau of Hearing Counsel, shall participate in the proceeding and shall file Reply to Comments on or before December 17, 1969, serving an original and 15 copies on the Federal Maritime Commission and one copy to each party who filed written comments. Answers to Hearing Counsel's replies shall be submitted to the Federal Maritime Commission on or before January 16, 1970.

By order of the Federal Maritime Commission.

[SEAL]

THOMAS LISI,
Secretary.[F.R. Doc. 69-12507; Filed, Oct. 17, 1969;
8:47 a.m.]

¹ Arrangements subject to section 15 of the Act must also be filed and approved in accordance with the requirements of General Order 24 (46 CFR Part 522).

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1001-1006, 1011-1013, 1015, 1016, 1030, 1032-1036, 1040, 1041, 1043, 1044, 1046, 1049, 1050, 1060, 1062-1065, 1068-1071, 1073, 1075, 1076, 1078, 1079, 1090, 1094, 1096-1099, 1101-1104, 1106, 1108, 1120, 1121, 1125-1130, 1132-1134, 1136-1138]

MILK IN MEMPHIS, TENN., AND CERTAIN OTHER MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing Area	Docket No.
1007	Memphis	AO-219-A21
1001	Massachusetts-Rhode Island-New Hampshire	AO-14-A43
1002	New York-New Jersey	AO-71-A55
1003	Washington, D.C.	AO-293-A18
1004	Delaware Valley	AO-160-A36
1005	Tri-State	AO-177-A32
1006	Upper Florida	AO-356-A3
1011	Appalachian	AO-251-A10
1012	Tampa Bay	AO-347-A7
1013	Southeastern Florida	AO-286-A15
1015	Connecticut	AO-305-A20
1016	Upper Chesapeake Bay	AO-312-A15
1030	Chicago Regional	AO-361-R01
1032	Southern Illinois	AO-313-A15
1033	Cincinnati	AO-166-A37
1034	Miami Valley	AO-175-A17
1035	Columbus	AO-176-A24
1036	Eastern Ohio-Western Pennsylvania	AO-179-A28-R01
1040	Southern Michigan	AO-225-A19-R01
1041	Northwestern Ohio	AO-72-A33
1043	Upstate Michigan	AO-247-A13
1044	Michigan Upper Peninsula	AO-290-A14
1046	Louisville-Lexington-Evansville	AO-123-A34
1040	Indiana	AO-319-A12
1050	Central Illinois	AO-355-A4
1060	Minnesota-North Dakota	AO-360-A1
1062	St. Louis-Ozarks	AO-10-A39-R01
1063	Quad Cities-Dubuque	AO-105-A27-R01
1064	Kansas City	AO-33-A33
1065	Nebraska-Western Iowa	AO-85-A21-R01
1068	Minneapolis-St. Paul	AO-178-A21
1069	Duluth-Superior	AO-153-A15
1070	Cedar Rapids-Iowa City	AO-229-A18
1071	Neosho Valley	AO-227-A21
1073	Wichita	AO-173-A22
1075	Black Hills	AO-248-A9
1076	Eastern South Dakota	AO-280-A12
1078	North Central Iowa	AO-272-A13
1079	Des Moines	AO-295-A15
1080	Chattanooga	AO-366-A10-R01
1094	New Orleans	AO-103-A26
1096	Northern Louisiana	AO-257-A16
1098	Nashville	AO-184-A26
1099	Padoch	AO-183-A26
1101	Knoxville	AO-195-A17
1102	Fort Smith	AO-237-A16
1103	Mississippi	AO-346-A6
1104	Red River Valley	AO-266-A12
1106	Oklahoma Metropolitan	AO-216-A25
1109	Central Arkansas	AO-243-A18
1120	Lubbock-Plainview	AO-328-A8
1121	South Texas	AO-364-R01
1123	Puget Sound	AO-226-A18-R01
1126	North Texas	AO-231-A32-R01
1127	San Antonio	AO-232-A18
1128	Central West Texas	AO-238-A21
1129	Austin-Waco	AO-236-A14
1130	Corpus Christi	AO-259-A17
1132	Texas Panhandle	AO-262-A17
1133	Inland Empire	AO-275-A18-R01
1134	Western Colorado	AO-301-A8-R01
1136	Great Basin	AO-309-A12
1137	Eastern Colorado	AO-326-A13
1138	Rio Grande Valley	AO-335-A11

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Memphis, Tenn., on February 19-22, April 23-24, and May 21-24, 1968, pursuant to notice thereof issued February 6, 1968 (33 F.R. 2785).

Seventy-six milk orders were listed in the notice of hearing. Eleven of these orders have since been merged with another order(s). Greater Wheeling (Part 1008), Clarksburg (Part 1009) and Youngstown-Warren (Part 1048) were merged into the Eastern Ohio-Western Pennsylvania order. Northwestern Indiana (Part 1031), Rock River Valley (Part 1038, Milwaukee (Part 1039), Northeastern Wisconsin (Part 1045), and Madison (Part 1051) were merged into the Chicago Regional order. Fort Wayne (Part 1047) was merged into the Indiana order (formerly Indianapolis, Ind.). Sioux City (Part 1066) was merged into the Nebraska-Western Iowa order. Ozarks (Part 1067) was merged into the St. Louis-Ozarks order (formerly St. Louis).

The proposed amendments relate to the existing orders as merged. Such mergers have had no effect on the basic issue involved in this proceeding. This is because the decision herein deals with the matter of how filled milk should be classified and priced under Federal milk orders. The treatment would have been appropriate under each of the orders prior to merger and it is equally appropriate under the orders as merged. Therefore, the findings and conclusions of this decision are equally applicable to the orders as merged.

Certain changes are being made in the Central Arizona order in its application to filled milk and producer-handlers. These matters were considered at a hearing held in Phoenix, Ariz., February 7-10, 1967, on proposals to amend the Central Arizona order pursuant to notice issued December 14, 1966 (31 F.R. 16277), and January 12, 1967 (32 F.R. 415). The record of that hearing was reopened in connection with the national hearing on which record this decision is based. Comparable changes in the Central Arizona provisions relating to filled milk and producer-handlers are contained in a separate revised decision on that order issued concurrently with this decision.

For the Chicago Regional, Southern Michigan, Eastern Ohio-Western Pennsylvania, St. Louis-Ozarks, Quad Cities-Dubuque, Nebraska-Western Iowa, Chattanooga, Puget Sound, North Texas, Central Arizona, Inland Empire, South Texas, and Western Colorado markets the hearing constituted a reopening of prior hearings on matters relating to the particular markets, including issues other than the issues herein discussed.

In the case of the Minneapolis-St. Paul, Minn., and the Mississippi marketing areas, final decisions are reserved with respect to proposed amendments on this hearing record pending further consideration of such proposals in relation to territory added to the Minneapolis-St. Paul, Minn., marketing area effective May 1, 1969 (34 F.R. 5918), and new territory to be added to the Mississippi marketing area effective November 1, 1969 (34 F.R. 15248).

Prior to scheduling the hearing, the Department had received numerous expressions of concern from producer and handler groups about the possible competitive impact of filled milk and imitation milk on the existing structures of markets under Federal order regulation. In view of the widespread concern, the Department invited industry representatives to a series of public meetings. This was done to achieve the widest possible understanding of the problems before going to a hearing.

The hearing notice opened for discussion all problems which the various parties had indicated in their proposals or in the public meetings to be related to filled or imitation milk under order regulation.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on June 17, 1969 (34 F.R. 11809; F.R. Doc. 69-7283) filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings and general findings of the recommended decision (34 F.R. 11809; F.R. Doc. 69-7283) are hereby approved, adopted and are set forth in full herein, subject to the following modifications:

1. Under issue 3, paragraph 31 is revised, nine paragraphs are added after paragraph 31, paragraph 34 is deleted and a new paragraph is added after paragraph 34.

2. Under issue 4, six paragraphs are added after paragraph 7.

3. Under issue 6, the second paragraph is revised.

The material issues on the record of the hearing were:

1. Interstate commerce.
2. Classification of filled milk.
3. Treatment of reconstituted skim milk in filled milk disposed of by regulated handlers, partially regulated handlers or producer-handlers.
4. Definition of filled milk for order purposes.
5. Reclassification of fluid products of milk not now in Class I.
6. Conforming changes in order provisions.

FINDINGS AND CONCLUSIONS

The following findings and conclusions, on the material issues, are based on evi-

dence presented at the hearing and the record thereof:

1. *Interstate commerce.* Filled milk disposed of in any of the marketing areas of these orders directly burdens, obstructs or affects interstate commerce in milk and milk products. It has been previously determined (at the time of promulgation of the particular order) that all milk marketed in each of these marketing areas is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk and milk products. Filled milk disposed of in these markets is, in content, substantially a product of milk and competes for the same sales outlets as milk. It follows that the marketing of the milk ingredients contained in filled milk in a Federal order market burdens, obstructs or affects interstate commerce in milk and milk products. This conclusion applies whether the marketing of filled milk is by a regulated plant or by a plant not fully regulated under an order, since both compete for similar outlets in the market.

Manufactured milk products may be used in the production of filled milk. Manufactured milk products move in interstate commerce and compete in the national market irrespective of where the milk is produced. Therefore, manufactured milk products when used in the production of filled milk for disposition in these markets likewise burden, obstruct or affect interstate commerce in milk and milk products.

The shipment of filled milk across State lines is prohibited by the Filled Milk Act. Nevertheless, intrastate commerce in filled milk burdens, obstructs, and affects interstate commerce in milk and milk products regulated under Federal milk orders. This decision relates to the appropriate classification and pricing of milk and milk products under the Agricultural Marketing Agreement Act of 1937, as amended, when such milk or milk products are used in filled milk.

2. *Classification of filled milk.* Skim milk disposed of for fluid consumption in "filled milk" should be Class I milk under each of the respective orders.

The product marketed as "filled milk" in Federal order markets is a combination of skim milk and vegetable fat or oil in about the same proportions as the skim milk and milkfat in whole milk. Accordingly, well over 90 percent of the product is skim milk. In most filled milk the skim milk portion is fresh fluid skim milk as separated from whole milk. Some filled milk contains reconstituted fluid skim milk prepared from a concentrated product such as nonfat dry milk. Whether made from vegetable fat and fresh or reconstituted skim milk, or any combination thereof, the resulting product resembles whole milk in appearance.

Filled milk is distributed in regulated markets by milk handlers in the course of their regular business through the same outlets and in the same types of containers as whole milk.

At the time of the hearing filled milk products simulating whole fluid milk were being marketed by handlers under 24 of the 76 Federal orders then in force.

The combined volume of filled milk sales in these markets was about 4.6 million pounds in February 1968. For all Federal order markets this was about 0.15 percent of total Class I sales.

About half of the 4.6 million pounds of filled milk was sold in the Central Arizona market. There it represented about 6.8 percent of the Class I disposition of local handlers in February 1968. In February 1969, the sales of filled milk by Central Arizona handlers amounted to about 3.5 million pounds, or 10.3 percent of total Class I disposition of handlers. (Official notice is taken herein of the March 1969 issue of "Market Information Bulletin" prepared and distributed by the Central Arizona market administrator.)

In all but two markets where filled milk is sold, the milk product content therein has been subject to the same regulatory treatment as the general category of fluid milk products. That is, it is treated as a Class I disposition. Skim milk is the principal milk product involved in the classification since any residual butterfat would be minimal.

Even with Class I classification, regulated handlers disposing of filled milk make a savings in cost by substituting vegetable fat for butterfat. This then is the main incentive for the marketing of filled milk under the present application of the orders. Such cost difference of vegetable fat versus butterfat is not an issue in this hearing, however, and is relevant only to the extent that it explains a profit motivation for marketing the product under order regulation even though the skim milk content has been priced as Class I milk.

The net cost saving due to substitution of fat and allowing for the cost of added emulsifiers and stabilizers is about 2.9 cents per quart. This is based on costs of coconut oil, emulsifiers and stabilizers as shown in Exhibit No. 22, and on average Class I prices and butterfat differentials for February 1968.

The evidence in the hearing record supports the conclusion that classification of the skim milk and butterfat in filled milk as Class I disposition is appropriate. Filled milk marketed in simulation of milk is already, under most orders, properly treated as a Class I fluid milk product disposition.

The specific language of the Act with respect to classification is that each order shall contain terms " * * * classifying milk in accordance with the form in which or the purpose for which it is used * * * ". In applying the language of the Act we here consider the form and purpose of use for both filled milk and the milk ingredient content of the filled milk.

The form of filled milk and the purpose for which it is used are the same as the form and purpose of use of whole milk. Filled milk, just as whole milk, is disposed of in fluid form. It is marketed by handlers in the same types of packages and in the same trade channels as the whole milk they market, and is mainly intended as a beverage substitute for milk.

Similarly, the fluid skim milk content of the filled milk is in the same form as skim milk in whole milk and serves the same purpose, providing in each case the main body of the product thereby making it a milk beverage. The addition of the nonmilk ingredients, principally vegetable fat or oil and stabilizers, does not alter the basis for Class I classification. The addition of nonmilk ingredients in fluid milk products is not a new development. The addition of vegetable fat does not involve an essentially different consideration from that for other Class I fluid milk products to which a flavoring ingredient, such as chocolate (which also contains nonmilk fat) has been added.

For purpose of illustration, a product within the "fluid milk product" category containing a nonmilk additive is chocolate milk. The additive is not considered as changing the form of this product so that it is no longer a fluid milk product. For the purposes of classification, the flavoring material has never been regarded as significant in determining the form of the product or as a basis for altering its classification.

The same reasoning applies in the case of filled milk—that the additives do not change significantly the form or the purpose of use and therefore do not constitute a basis for classification other than in Class I.

The product "filled milk" therefore should be classified, for the purpose of pricing under the orders, in the same manner as whole milk. As in the case of other fluid milk products containing some nonmilk ingredients, the classification would apply only to the milk ingredients in the product.

Handlers generally opposed Class I classification although they acknowledged filled milk to be a substitute for fluid milk and intended for similar purposes. In view of the preceding findings and conclusions it is necessary to reject handlers' testimony that the skim milk portion of filled milk should be priced lower than Class I. Further, handlers' testimony on the possible competition of synthetic products has no particular application to filled milk. Such competition relates to the entire category of fluid milk products.

Since we are dealing with a product, filled milk, which is clearly marketed for the same use as whole milk, is composed principally of milk products, is made in the semblance of whole milk, and is, in fact, designed as a substitute for whole milk, returns to dairy farmers should be the same for the corresponding milk components of the two products. This recognizes that the appropriate Class I price level serves to assure an adequate but not excessive milk supply. Therefore, the skim milk (or butterfat) in both products, and in other fluid milk products, should make proportionate contributions to this objective. This is accomplished by the classification of all such products as Class I milk.

3. *Treatment of reconstituted skim milk in filled milk.* As previously stated, some of the filled milk sold in regulated markets is made by combining "recon-

stituted skim milk" with vegetable fat and other minor ingredients. "Reconstituted skim milk" commonly is made from nonfat dry milk to which water is added to return it essentially to a form and consistency similar to fresh skim milk.

Prior findings and conclusions (under issue No. 2) dealt with filled milk as a product made with fresh skim milk. But when filled milk is made with reconstituted skim milk a somewhat different regulatory problem is involved. Primarily the problem relates to the conversion by a handler of a product, such as nonfat dry milk, normally priced as a surplus use into another product for Class I use. In addition, the possible entrance into the market of reconstituted products from unregulated sources enlarges the problem.

The potential of these conditions for disruptive influence on the market for producer milk is extremely serious because disposition of a product for a Class I use but pricing it in a surplus price class undermines the classified pricing system.

A determination consequently must be made of the proper classification of the resultant reconstituted skim milk and its regulatory treatment whether received as such by the handler from an unregulated source or reconstituted in his own plant.

Reconstituted skim milk in filled milk disposed of for fluid consumption should be treated as Class I milk.

Filled milk made with reconstituted skim milk is from a marketing standpoint essentially similar to filled milk made with fresh skim milk. It has the same material composition, is in the same form, and is intended for the same primary purpose—to be used as a beverage in substitution for milk. The reconstituted product competes in the same market channels and for the same wholesale and retail market outlets as filled milk made from fresh skim milk. It is a competitor of whole milk at the consumer level.

Reconstituted skim milk in filled milk should be classified and priced on the same basis as reconstituted milk in other fluid milk products to achieve uniformity of pricing for milk in similar uses. Uniformity of pricing could not be achieved if some handlers have a lower cost by substituting a surplus class product (in this case usually nonfat dry milk) for a Class I use.

Nonfat dry milk is an important product outlet for the daily and seasonal surpluses in many of the regulated fluid milk markets. Consequently, it not only may be derived from milk of manufacturing quality but often will be readily available from graded milk which is surplus to the local fluid market. Whichever the source, it is priced at the manufacturing milk price level—the lowest price for any use of milk.

The objectives of classified pricing are uniformity of pricing according to form or use and providing an adequate return to producers for the fluid market. Therefore, the widespread disposition of filled milk made from reconstituted skim milk, if the skim milk were not subject to some

"equalizing" payment, could lead to total defeat of such objectives. Certainly, the classification and pricing plan should protect the Class I market from the potential effects of competition with products produced from the market's own surplus or similar products produced elsewhere at a manufacturing price when used in filled milk.

It should be noted that the orders already contain specific provisions dealing with disposition by a regulated handler of other fluid milk products which have been reconstituted from nonfluid milk products. The problem of proper classification and charge for such use of nonfluid milk products to produce products for Class I disposition was dealt with in the decision issued June 19, 1964 (29 F.R. 9002), official notice of which is taken. The decision applied to orders in 76 marketing areas.

The findings and conclusions which relate to this subject appearing at 29 F.R. 9010 were as follows: "Certain milk by its very nature must be treated as surplus when received at market pool plants regulated by a Federal order and, therefore, it must be assigned a surplus value. One such source is milk received at a regulated plant, in either bulk or packaged form, from a producer-handler (under any Federal order). Another source is milk produced by the reconstitution to fluid form of manufactured dairy products, such as fluid skim milk made by the addition of water to nonfat dry milk. Still another source is milk of manufacturing grade (non-Grade A milk) which is not eligible for disposition for fluid consumption in the market. As to milk from these sources, a payment into the producer-settlement fund at the difference between the Class I and surplus prices must be required of the receiving handler when such milk is allocated to Class I, following 'down-allocation' to the extent it can be absorbed in lower priced uses.

"A surplus value likewise is properly assigned to reconstituted milk (for instance, the result of combining nonfat dry milk or condensed milk with water). The products used in such reconstitution process are made from milk which always carries a manufacturing, or surplus, value. Producer milk used to produce such products is priced as surplus under each of these Federal orders. Since the milk used to produce these products is originally priced as surplus milk, payment into the producer-settlement fund at the difference between the Class I and surplus price is necessary to insure competitive equity with producer milk when reconstituted milk is used in Class I. No recognition should be given to processing costs involved in the manufacture of the products derived from unregulated milk and used in reconstitution since similar costs are incurred in processing producer milk into such products."

The method of treating reconstituted products described in the 1964 decision is appropriately applicable to reconstituted skim milk used in filled milk. The nonfluid milk products in such use are derived from milk having a surplus

value and should be assigned to surplus uses of the handler to the extent possible. To the extent that such reconstituted product cannot be assigned to a surplus use class it must be considered as used in Class I. In this case payment to the producer-settlement fund at the difference between the Class I price and surplus price is necessary not only to assure competitive equity among handlers but also to insure the integrity of the classified pricing system as a means of assuring reasonable prices to producers.

Uniform treatment of reconstituted skim milk in filled milk should apply to the several types of handling operations. While one handler may reconstitute skim milk from nonfluid milk products in his own regulated plant, another may purchase filled milk containing reconstituted skim milk from other handlers. A third type of operation is distribution of reconstituted product in the marketing area from a plant which is not fully regulated.

For skim milk reconstituted in a fully regulated plant, the allocation provisions of each order already assign "other source milk in a form other than a fluid milk product" first to surplus use, and then any remainder to Class I. For the quantity assigned to Class I disposition, a charge at the Class I price less the surplus price applies. This charge applies whether the reconstituted product is disposed of on routes, or to another plant. In the case of interplant transfers (including transfers between order markets), the orders already provide for the classification of the fluid milk product transferred. The quantity so classified as Class I would be subject to the charge at the transferor plant, except in some cases in a handler pool market.

New provisions would be needed to treat receipts of filled milk at a regulated plant if the receipt is from an unregulated source and contains reconstituted skim milk. The receipt should be assigned in series first to the surplus class and then successively to the next higher price classes. The receiving handler should be charged the Class I price less the surplus price for any quantity of skim milk or butterfat so assigned to Class I utilization. This method would extend the uniform application at the same rate of charge as applies in the case of a handler making reconstituted product in his own plant.

A situation similar to receipt from an unregulated source may arise if filled milk containing reconstituted skim milk is received from a plant regulated under an individual handler pool order. This could happen because the individual handler pool orders price only the Class I usage assignable to receipts of producer milk at the handler pool plant. If the Class I disposition of the plant exceeds producer milk received there, which is possible if reconstituted product is used for filled milk, then this Class I usage is not priced.

In this case the receipt at a market order pool plant from a handler pool plant should be treated the same as a receipt from an unregulated plant. The

receipt of reconstituted filled milk would be allocated first to surplus class and any remainder to higher classes. The receiving handler would be obligated for any of such receipt assigned to Class I at the Class I price less surplus class price, adjusted to the location of the plant from which received.

Another aspect of disposition of reconstituted filled milk by a pool plant under an individual handler pool order is the possibility that such plant could dispose of the product on routes in another marketing area where market pooling applies. In such a case the operator of the handler pool plant should be obligated to pay the difference between the Class I and surplus prices on such disposition in the marketing area to the extent that such disposition is not assigned to producer milk at his pool plant. The payment should be made into the producer-settlement fund of the market where sold. The Class I price used for this purpose would be the order price of the market where the disposition is made, adjusted for location of the plant. Such payment is necessary to apply the same treatment to reconstituted filled milk sales by the pool plant under the individual-handler pool order as would apply to a plant regulated by the order applicable to the area in which the route sales are made.

Partially regulated distributing plants likewise may dispose of reconstituted filled milk in the marketing area. The term "partially regulated distributing plant" applies to a plant which has route disposition of fluid milk products in the marketing area too small to qualify it as a pool plant, or which otherwise does not meet the pooling requirements of the particular order. Each of the orders contains specific provisions which apply to such plants for the purpose of achieving a reasonable competitive parity between these plants and fully regulated handlers. These provisions should be modified with respect to Class I products containing reconstituted skim milk disposed of in the marketing area.

The provisions allow certain options to the operators of partially regulated distributing plants, except in the case of the Massachusetts-Rhode Island-New Hampshire, New York-New Jersey, and Connecticut orders. In each of these orders, fluid milk products disposed of by nonpool plants on routes in the marketing area or received from such plants at regulated plants for Class I use are pooled. In effect, the operator of the plant disposing of such fluid milk products that are classified in Class I is charged the difference between the Class I price and the blended price on any of such quantities in excess of receipts of pool milk classified as Class I.

Under all other orders, three additional options are allowed. Two are very similar to the treatment under the northeastern orders.

One would allow such a handler to offset his disposition in the marketing area by purchases of Class I milk from fully regulated plants.

The second alternative would allow such handler to make payment into the producer-settlement fund with respect to

his Class I disposition in the marketing area at a rate per hundredweight equal to the Class I price less the uniform price. The partially regulated handler is given credit for any quantity of Class I milk purchased from fully regulated plants.

Under a third option not allowed under the northeastern orders the value of such handler's milk utilization is computed in the same manner as for a pool plant. The handler then has the choice of paying this sum to the Grade A dairy farmers supplying his plant or dividing the sum between payments to such farmers and payments to the producer-settlement fund.

The options now provided in the orders are designed to apply to a partially regulated handler whose disposition in the marketing area is primarily milk received from dairy farmers. But if such disposition is wholly or largely filled milk made with reconstituted skim milk, the payment now required (Class I price less uniform price) would not be equitable in relation to the requirement upon pool handlers that they pay the Class I less surplus price for such Class I disposition. Also, fully regulated plants are subject to Class I price less surplus price obligation on all Class I disposition of reconstituted skim milk, whether in filled milk or in other Class I disposition. This same charge should apply to partially regulated plants with respect to disposition in the marketing area of any fluid milk product containing reconstituted skim milk. Such treatment is necessary to make the obligation for disposition of reconstituted product comparable to the obligation upon a pool handler for the same kind of utilization.

Provision accordingly should be made for a handler operating a partially regulated distributing plant to pay into the producer-settlement fund at the Class I price less surplus price with respect to the quantity of reconstituted skim milk in Class I products disposed of on routes in the marketing area. This would be similar to the provision which requires payment only on disposition in the marketing area.

Each partially regulated handler disposing of filled milk in a regulated marketing area must maintain adequate records of his receipts and utilization which will permit verification by the market administrator of his sources and disposition with respect to filled milk. Also, unless such a handler furnishes proof to the contrary, his disposition of filled milk in the marketing area should be treated as a reconstituted product. Unless a partially regulated handler were required to prove that this disposition in the marketing area is not reconstituted product, he could gain substantial advantage because he could avoid the higher rate of payment needed on conversion of a surplus product to Class I use. For this reason the burden of proof that the filled milk was not made from reconstituted skim milk should be on the handler.

On disposition made in a market pool market the payment should be made into the producer-settlement fund of such market. This is the only practical

disposition of the funds so collected. The distribution of such money among producers, as a part of the uniform price, results in an equitable disposition of the proceeds without advantage to any particular group. The money would assist in maintaining an adequate supply of high quality milk for the market. It is an administratively feasible plan which contributes to orderly marketing.

Handlers in supporting a special class for filled milk pointed out that the cost of nonfat dry milk purchased from wholesale distributors would exceed the surplus milk price for the equivalent quantities of raw fluid skim milk purchased from producers. Processing and handling costs in producing and marketing the dry product result in a higher cost for nonfat dry milk purchased as compared to fresh raw skim milk at the surplus or manufacturing milk price.

The reprocessing or reconstitution of fluid products from manufactured products involves handling and processing not characteristically part of supplying raw milk to a fluid market. To credit the handler with processing costs (even if they could be determined accurately in each instance) incurred in converting milk into its dry form would simply divert money to defray a portion of the handler's expense rather than using it to encourage the production of a sufficient supply of milk qualified for the fluid market. Certainly handlers would not at their own expense process the skim milk from producer milk into nonfat dry milk simply with the intention of reconstituting it to fluid form. This would be an uneconomical method of handling milk involving unnecessary expense and would serve no useful marketing purpose.

Exceptions to the payment applied on reconstituted skim milk in filled milk contended that this creates a barrier to the marketing of nonfat dry milk in violation of 608c(5)(G) of the Act. Exemptors used a two-pronged argument to support this contention. The first is that the Department exceeds its authorization under the Act by classifying the reconstituted skim as Class I milk; the second is that if the Act can be construed to grant authority for such a payment on the nonfat dry milk reconstituted to fluid form, then the rate provided is excessive.

With respect to the first argument, the milk orders carry out the basic authority of the Act to classify all skim milk and butterfat in accordance with the form in which, or the purpose for which, it is used. Under such authority it has been long established that skim milk and butterfat are reclassified if disposed of in a different use than that for which first classified. This is the case whether the reclassification is to a higher or lower class. There is no reason why the skim milk ingredient of filled milk should be an exception to this principle of reclassification which is necessary to carry out the intent of the statutory provisions.

The second argument of exemptors relates to the cost to the handler of nonfat dry milk used in reconstituting skim milk for filled milk. As explained previously, the price paid for nonfat dry milk pur-

chased in the open market by a handler invariably reflects processing and handling costs which are not in any way determined by the milk order for any market. Any difference in the cost of the reconstituted skim milk over raw skim milk derived from producer milk for filled milk is accounted for by such costs. These added costs cannot be construed, therefore, as being due to the milk order regulation and are not a barrier imposed by any order against the use of nonfat dry milk in the regulated market.

The marketing system customarily reflects these types (processing, handling, etc.) of costs no matter what the item. For example, a charge over the Class I price normally applies for handling when a regulated handler buys fluid milk from another regulated, or an unregulated, plant. Plant charges, handling charges, transportation (where applicable), and other markups over the class price are a matter of common trade practice. These increments over the class price cover the seller's expenses of handling and processing and profit margin.

Similarly, when a handler purchases a nonfluid milk product from either a regulated or unregulated plant, he normally must pay for comparable services—processing, handling, and transportation—which are in addition to the raw milk value in the product and are reflected in the price he pays to the seller.

Order pricing makes no attempt to determine these charges. Likewise, the orders do not require handlers to sell at precisely the applicable minimum class price.

In other cases, rather than purchase a milk product from another plant, a handler will process nonfat dry milk from his own producer milk, when it is plentiful, to be used subsequently in a Class I milk item when his producer supply must be supplemented to meet Class I needs. Such a handler has at least the costs of processing and storage on the nonfluid product. These costs are incurred as a business decision in pursuit of maximizing the profit margin. As previously stated, they are not costs which are appropriately passed back to the producer of the milk.

In all the above circumstances the additional costs over a class price are due to factors not controlled by order regulation but are determined by the marketing process itself. To allow a handler credits for the incurrence of such costs would render the minimum class prices meaningless.

The exceptions overlook the fact that the payment applies only if the handler converts the nonfluid product to a fluid form and use. The payment is not required on nonfat dry milk, per se, and therefore does not have the effect of limiting its marketing as a product of milk within the meaning of 608c(5)(G) of the Act.

Some producer groups suggested that such equalization payments should be returned to the dairy farmers who produced the milk which was the source of the reconstituted products no matter how far away the nonfat dry milk was produced. This proposal was not complete since no specific plan was presented for

accomplishing such payment to the dairy farmers whose milk was used. The practical difficulties involved preclude payment to such farmers.

In individual-handler pool markets the present practice that reconstituted skim milk shall be allocated to the handler's lowest class use should be continued.

In Parts 1104 and 1106, revisions are made in §§ 1104.61 and 1104.62, and §§ 1106.61 and 1106.62 to provide the same rate of obligation for reconstituted skim milk used in filled milk by partially regulated distributors and other order individual-handler pool distributors that is presently applicable to handlers operating pool plants.

Producer-handler disposition. Although producer-handler definitions vary among the several orders, the main intent in all markets is that the definitions shall apply only to a fluid milk processor who depends primarily on his own production for his milk supply. Some orders make provision for a producer-handler to supplement own production by purchases of milk from regulated sources, but safeguard the integrity of the pricing scheme by requiring that such transfers be priced as Class I milk to the seller.

The producer-handler definition of each order should be amended to preclude use of any reconstituted skim milk or unregulated milk in either filled milk or other fluid milk products.

The producer-handler is not subject to the pricing and pooling provisions of the applicable order. It should be made clear in each order, therefore, that a producer-handler using reconstituted skim milk or unregulated milk in filled milk or other fluid milk product disposition by so doing will disqualify himself from his exempt status as a producer-handler.

Reconstituted skim milk in filled milk has been marketed by at least one producer-handler in the Central Arizona market. This disposition represents a substantial part of his sales. This market was the first Federal order market to experience competition of filled milk sales by a producer-handler. It is also the market where greatest penetration of filled milk has taken place. The filled milk operation has had a significant disruptive influence on the stable and orderly marketing of milk in this market, the problems of which are dealt with in more detail in the concurrent decision for such market.

Similarly, a threat to uniformity of pricing could result in any market if producer-handlers were permitted to use reconstituted skim milk or unregulated milk in either filled milk or other fluid milk product disposition without restriction. It is not practical for this purpose to distinguish between receipts of concentrated milk products for reconstitution and fluid milk from an unregulated source. Either type of receipt could result in the same kind of advantage to a producer-handler, compared to a regulated handler.

Only seven orders currently contain no limit on such receipts but no present use of such receipts by producer-hand-

lers in these markets is known. These orders are those regulating the Black Hills, Cedar Rapids, Cincinnati, Des Moines, Neosho Valley, Oklahoma Metropolitan, and Texas Panhandle marketing areas. These orders should be made similar to others to require that a producer-handler may not dispose of fluid milk products in excess of his own milk production and fluid milk products received from regulated plants as the individual orders provide. With such provision in the seven orders, all orders covered herein will preclude pool exemption of the producer-handler if he uses unregulated milk or milk products as Class I milk.

This kind of restriction on use of unregulated receipts does not interfere with the essential operation of a producer-handler in marketing his own milk production and in buying needed supplemental supplies, but is necessary to insure uniform pricing under the classified pricing plan.

4. Definition of filled milk for order purposes. A definition of filled milk should be constructed which meets the specific needs of order regulation and for such purpose only.

Most filled milk is made to simulate whole milk. There are however, many possible variations in the content of filled milk. Filled milk products within the beverage category may contain more or less vegetable fat than the normal fat content of whole milk. In order to cover all products which might be in this category, the order term "filled milk" should apply to products containing less than six percent of nonmilk fat.

Filled milk therefore should be defined as:

"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 milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than six percent nonmilk fat (or oil)."

Fluid products of the type described by the definition possibly could contain some milkfat as well as nonmilk fat. Such products also would be "filled milk" under this definition in order to assure the effectiveness of the proposed order provisions on filled milk. Filled milk, as so defined, should be included in the term "fluid milk product" as defined in each order.

Proposals submitted for the hearing would have defined filled milk in some markets to include higher fat products. There is insufficient information, however, on which to establish a Class I classification for filled milk products containing 6 percent or more nonmilk fat. While nonmilk fat products substituting for cream products are sold extensively, testimony did not develop the basis for defining such products as fluid milk products. Hence, on the basis of this record, skim milk and butterfat in a milk product containing 6 percent or more nonmilk fat should be classified in the surplus class in each order.

Sodium caseinate in any product regulated under these orders should be treated as a nonmilk ingredient at this time.

Some handlers requested that sodium caseinate, although derived in part from milk, not be regarded as a milk product if used as an ingredient in any kind of milk imitation or substitute. Sodium caseinate has been used as an ingredient in imitation milk made to resemble fluid milk. No proposal was made on the record for regulation of sodium caseinate as a milk product under the Federal milk orders.

One exception raised question as to the intent of the decision concerning prepared infant formulas in liquid form containing milk solids and nonmilk fat.

It is not intended by this decision to change the classification of milk ingredients of any such product from what each order now provides. Its classification, therefore, would remain dependent on the provisions of the particular order.

Whey and lactose were mentioned by one exceptor as possible ingredients which should be covered by provisions relating to filled milk.

The record evidence does not cover use of whey or lactose as a base for a product similar to filled milk. Filled milk as here defined is a product made from skim milk (whether fresh or reconstituted).

The definition of "filled milk" specifies resemblance to other fluid milk products as defined in the particular order.

The term "filled milk" therefore is not intended to include skim milk marketed in a form or for a purpose specifically currently excluded from the fluid milk product definition. For example, "evaporated milk" is a use of skim milk not treated as a fluid milk product in any order. If a product containing skim milk and any amount of vegetable fat were marketed in the same form and manner as evaporated milk it likewise would be excluded from the term filled milk.

5. *Change in classification of certain milk products.* No change should be made in the classification of milk products other than filled milk.

Notice was given to consider changing the classification of certain milk products. Handler testimony opposed such changes except on the basis of their consideration in further hearings dealing with particular situations in individual markets. The evidence adduced in this hearing is sufficient only with respect to the manner in which each order should classify the components of milk used in filled milk.

6. *Conforming changes in order provisions.* Order definitions serve, *inter alia*, to identify dairy farmers who are producers for the market and to identify plants to be regulated. The amendments with respect to filled milk require several changes in definitions.

Presently, the provisions defining pool plants and producers serve to qualify for pooling the milk approved for fluid use and regularly supplied to the fluid market. The order provisions should not result in pooling milk from unapproved and intermittent sources with milk of

farmers regularly supplying and approved for the fluid market. Therefore, the determination of whether a distributing plant is qualified for pooling should not be affected by its disposition of filled milk in the marketing area. Similarly, inclusion of shipments of filled milk would not be a proper basis for qualifying a plant as a pool supply plant. Appropriate changes to accomplish these objectives are made as corollary amendments.

The definition of "partially regulated distributing plant" also should be modified to include any plant making disposition of filled milk on routes in the marketing area. This is done by deleting the specification that fluid milk products disposed of on routes in the marketing area be Grade A.

Throughout this decision reference is made to the term "distributing plant" and to the term "partially regulated distributing plant." These terms have been used to describe plants from which filled milk is, or may be, distributed. Under the present orders, a distributing plant is a plant that by meeting certain performance standards may obtain pool plant status. A partially regulated distributing plant is defined under a "nonpool plant" provision and in no event could become pooled without meeting the terms provided for distributing plants and pool plants. Where used in this decision, the two definitions "partially regulated distributing plant" and "distributing plant," are treated as separate and independent definitions.

The definition of "unregulated supply plant" should be modified to cover possible shipments of filled milk. While no monetary obligation is imposed on an unregulated supply plant, the term is used in the order to identify sources of receipts of unregulated milk. The location of the unregulated supply plant is considered in establishing the obligation of the receiving plant.

Order provisions with respect to reports, records and facilities, and market administrators' functions are modified to insert the term "filled milk" wherever needed to clarify the intention that the product is covered by the applicable order provision. Additional reports are needed with respect to quantities of disposition in the marketing area by pool plants and partially regulated distributing plants. These reports should show quantities of Class I disposition separately for filled milk and other fluid milk products. In the case of the partially regulated plant, the report should show also the quantity of reconstituted skim milk in fluid milk products disposed of in the marketing area.

Throughout the classification and allocation provisions, filled milk would be treated generally in the same manner as other fluid milk products. Inventories of filled milk would be treated the same as inventories of whole milk. In those orders in which all inventories of fluid milk products are in the surplus class, the same basis of classification would apply to filled milk. If the order provides that packaged fluid milk products in inventory are in Class I, the same

would apply to packaged inventory of filled milk. With respect to filled milk modified by the addition of nonfat milk solids, the same type of accounting would apply as now applies under each order to modified whole milk.

Receipts of filled milk containing reconstituted skim milk from a handler pool plant or an unregulated supply plant would be allocated so as to properly apply the charges which prior findings and conclusions state should apply to transfers from such plants. These receipts would be allocated first to the surplus class and then in series to the higher priced classification. Receipts of packaged filled milk from another order plant would be allocated in the same manner as other packaged fluid milk products from other order plants, except filled milk containing reconstituted skim milk.

The provisions with respect to any plant which qualifies as a pool plant under more than one order should be modified in order that the determination of which order applies will be based on disposition of fluid milk products other than filled milk. These changes will coordinate these provisions with the modifications of pool plant provisions previously described.

In most orders, the present administrative expense provision does not require amendment to include filled milk disposition. However, the administrative expense provision of the orders located in the Northeast require amendment to conform with all others. In certain orders, the present exemption from regulation (including administrative expense) on limited quantities of such Class I route disposition is continued.

In some provisions the words "skim milk and butterfat" are substituted for the word "milk" where this provides a more specific meaning. One instance is the provision (used in all orders) referring to termination of obligations.

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Proposed findings and conclusions with respect to the conduct of the hearing are denied. Each of the rulings of the hearing examiner with respect to the conduct of the hearing is approved.

GENERAL FINDINGS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the

aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein. The following findings are hereby made with respect to each of the aforesaid orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in Certain Specified Marketing Areas", and "Order Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

DETERMINATION OF REPRESENTATIVE PERIOD

The month of May 1969 is hereby determined to be the representative period for the purpose of ascertaining whether

the issuance of the attached orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the certain specified marketing areas, is approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing areas.

Signed at Washington, D.C., on October 13, 1969.

RICHARD E. LYG, Assistant Secretary.

Order amending the orders regulating the handling of milk in certain specified marketing areas

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein. The following findings are hereby made with respect to each of the aforesaid orders.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practices and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the above designated marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the respectively designated marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the respective orders contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on June 17, 1969, and published in the FEDERAL REGISTER on July 15, 1969 (34 F.R. 11809; F.R. Doc. 69-7283), shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following revisions:

1. The "Producer-handler" definition in several of the orders is revised.

2. The section on "Plants subject to other Federal orders" is revised in most of the orders.

3. The section on "Computation of the net pool obligation of each pool handler" under the marketwide pool orders is proposed to be amended except for Parts 1001, 1002, and 1015.

4. Revisions are made in Parts 1060, 1075, and 1132 to adopt amendments, based on separate hearing records, made since issuance of the recommended decision on this record.

5. Minor revisions and typographical corrections are made elsewhere throughout the proposed amendatory language of the orders.

PART 1001—MILK IN THE MASSACHUSETTS-RHODE ISLAND-NEW HAMPSHIRE MARKETING AREA

1. Section 1001.17 is revised to read as follows:

§ 1001.17 Exempt distributing plant.

"Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order, which meets all the requirements for status as a pool distributing plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

2. Section 1001.22 is revised to read as follows:

§ 1001.22 Fluid milk products.

"Fluid milk products" means milk, skimmed milk, flavored milk or skimmed milk, cultured skimmed milk, buttermilk, filled milk, concentrated milk, any mixture of milk or skimmed milk and cream containing less than 10 percent butterfat, and 50 percent of the quantity by weight of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 16 percent butterfat. The term includes these products in fluid, frozen, fortified, or reconstituted form but does not include sterilized products in hermetically sealed containers and such

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products as eggnog, yogurt, whey, ice cream mix, ice milk mix, milk shake base mix, evaporated or condensed milk or skimmed milk, in either plain or sweetened form, and any product which contains 6 percent or more nonmilk fat (or oil). Fluid milk products which have been placed in containers for disposition to retail or wholesale outlets are referred to in this part as packaged fluid milk products.

3. In § 1001.25 the introductory text preceding paragraph (a) of the section is revised to read as follows:

§ 1001.25 Pool milk.

"Pool milk" means fluid milk products (other than exempt milk) received or disposed of as specified in this section, except that with respect to filled milk the term shall include only the quantity proved to have been made from other fresh fluid milk products.

4. A new § 1001.28 is added to read as follows:

§ 1001.28 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skimmed milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, 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).

5. In § 1001.35 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1001.35 Distributing plants.

Each processing and packaging plant (other than a producer-handler's plant under any Federal order or a regulated plant under another Federal order) shall be a pool distributing plant in any month in which it meets the conditions specified in this section. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

6. Section 1001.36 is revised to read as follows:

§ 1001.36 Cooperative association plants located in the marketing area.

Each plant which is located in the marketing area and which is operated by a cooperative association shall be a pool plant in any month in which its route disposition does not exceed 2 percent of its total receipts of fluid milk products. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

7. In § 1001.37 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1001.37 Supply plants.

Each plant (other than a plant described in paragraph (e) of this section) shall be a pool supply plant in any month in which it meets the conditions specified in paragraph (a), and in paragraph (b), (c), or (d), of this section. Receipts

and disposition of filled milk shall be excluded in determining whether a plant has met these conditions. For the purposes of this section, milk received at a plant from a cooperative association in its capacity as a handler under § 1001.9(d) shall be considered as received at that plant from dairy farmers' farms.

8. Section 1001.58 is revised to read as follows:

§ 1001.58 Additional assignment to Class II milk.

Assign to Class II milk the quantities received in fluid milk products not previously assigned to classes under §§ 1001.54 through 1001.57.

9. In § 1001.64 subparagraphs (2) and (3) are revised and a new subparagraph (4) is added to paragraph (b), paragraph (d) is revised, and subparagraphs (1) and (2) are revised and a new subparagraph (3) is added to paragraph (e), to read as follows:

§ 1001.64 Computation of value of fluid milk products at class prices.

(b) * * *

(2) Product assigned to Class I milk under § 1001.55(d), except that for any cooperative association in its capacity as a handler under § 1001.9(d), the quantity shall be reduced by the quantity of any excess of milk moved to pool plants during the month over the quantity of producer milk, to the limit of the quantity assigned to Class I milk under § 1001.55(d);

(3) Product assigned to Class I milk under §§ 1001.55 (e) and (f), and 1001.58; and

(4) Filled milk, not proved to have been made from other fresh fluid milk products assigned to Class I milk under § 1001.55 (g) and (h).

(d) Multiply by the applicable Class I price the quantities of:

(1) Pool milk distributed as route disposition in the marketing area from the handler's nonpool plant; and

(2) Filled milk distributed as route disposition in the marketing area from the handler's nonpool plant which is excluded from pool milk only because it is not proved to have been made from other fresh fluid milk products.

(e) * * *

(1) Product assigned to Class I milk under § 1001.55 (a) through (c);

(2) Product assigned to Class I milk under §§ 1001.55 (e) and (f), and 1001.58; and

(3) Product for which a value is determined under subparagraphs (b) (4) and (d) (2) of this section.

10. In § 1001.87 paragraph (c) is revised to read as follows:

§ 1001.87 Payment of administration expense.

(c) The quantity distributed as route disposition in the marketing area from

a handler's nonpool plant for which a value is determined under § 1001.64(d).

11. In § 1001.94 paragraphs (a) and (d) are revised to read as follows:

§ 1001.94 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part, except as provided in paragraphs (b) and (c) of this section, shall terminate 2 years after the last day of the month during which the market administrator received the handler's utilization report on the skim milk and butterfat involved in the obligation, unless within the 2-year period the market administrator notifies the handler in writing that the money is due and payable. Service of the 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 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 a cooperative association, the name of the producer or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which the handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on the payment is claimed, unless the handler, within the applicable period of time, files a petition under section 8c(15) (A) of the Act, claiming the money.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. Section 1002.15 is revised to read as follows:

§ 1002.15 Fluid milk product.

"Fluid milk product" means all skim milk and butterfat in the form of milk, fluid skim milk, filled milk, cultured or flavored milk drinks (except eggnog, and yogurt), concentrated fluid milk disposed of in consumer packages, cream (except storage, plastic or sour), half and half (except sour) and any other mixture of cream, milk or skim milk containing less than 18 percent butterfat (other than frozen desserts, frozen dessert mixes, whipped topping mixtures, evaporated milk, plain or sweetened condensed milk or skim milk, sterilized milk or milk products in hermetically sealed containers, and any product which contains 6 per-

cent or more nonmilk fat (or oil)): *Provided*, That when any fluid milk product is fortified with nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

2. A new § 1002.17 is added to read as follows:

§ 1002.17 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 milkfat, 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).

3. In § 1002.28 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1002.28 Temporary pool plants.

Except for plants which, pursuant to paragraph (f) of this section, are not eligible for designation, any plant not designated pursuant to § 1002.24 shall automatically be designated a pool plant in accordance with provisions of paragraphs (a) through (e) of this section: *Provided*, That no plant shall be a pool plant pursuant to this section if, in the absence of this provision, milk received from dairy farmers and units at the plant would be classified and priced under an other order with a provision for marketwide equalization, and if the percentage of the milk received from dairy farmers and units at the plant which is classified in Class I-A and disposed of in the marketing area defined in such other order is greater than the percentage of such milk so classified and disposed of in this marketing area: *Provided further*, That for purposes of the computations of percentages set forth in this section, skim milk and butterfat in filled milk shall be excluded from skim milk and butterfat classified in Class I-A and Class I-B.

4. In § 1002.44(e) (3) a new subdivision (vi) is added to read as follows:

§ 1002.44 Transfers.

(e) * * *

(3) * * *

(vi) Any remaining Class I-A route disposition in the marketing area shall be subject to the pricing specified in § 1002.70(d) (2).

5. Section 1002.70(d) (2) is revised to read as follows:

§ 1002.70 Net pool obligation of handlers.

(d) * * *

(2) Multiply the difference between the applicable Class I-A and Class II prices, both adjusted by the applicable differential pursuant to § 1002.51, by the pounds of skim milk and butterfat in

other source milk subtracted from Class I-A pursuant to § 1002.45(a) (4) and the corresponding step of § 1002.45(b) and by the pounds of skim milk and butterfat specified in § 1002.44(e) (3) (vi).

6. Section 1002.90 is revised to read as follows:

§ 1002.90 Payment by handlers.

As his pro rata share of the expense of administration of this part, each handler shall, on or before the 18th day of each month, pay to the market administrator a sum not exceeding 4 cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d) (2), the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of the State of New York, or the Director of the New Jersey Office of Milk Industry, with respect to the marketing area. Whenever verification by the market administrator discloses an error in the payment made by any handler, such error shall be adjusted not later than the date next following such disclosure on which payments are due pursuant to this section.

7. In § 1002.91 paragraph (a) and (d) are revised to read as follows:

§ 1002.91 Termination of obligations.

(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 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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable periods of time, files pursuant to section 8e(15) (A) of the Act, a petition claiming such money.

PART 1003—MILK IN THE WASHINGTON, D.C., MARKETING AREA

1. Section 1003.7 is revised to read as follows:

§ 1003.7 Plant.

"Plant" means the land, buildings, surroundings, facilities and equipment whether owned and operated by one or more persons constituting a single operating unit or establishment for the receiving and processing, or packaging of milk or milk products (including filled milk).

1a. In § 1003.8, paragraph (b) is revised to read as follows:

§ 1003.8 Approved plant.

(b) Any plant from which milk or filled milk is moved during the month to a plant specified in paragraph (a) of this section.

2. Section 1003.9 is revised to read as follows:

§ 1003.9 Pool plants and nonpool plants.

A "pool plant" means any plant described in this section pursuant to paragraph (a) or (b) of this section; a "non-pool plant" means any plant described pursuant to paragraph (c) of this section;

(a) An approved plant that is neither a producer-handler plant nor a plant of a handler pursuant to § 1003.10(e);

(1) During any month within which a volume of milk not less than 10 percent of its receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1003.10(c)) approved by a duly constituted health authority for fluid disposition, is disposed of on routes as Class I milk, except filled milk, in the marketing area: *Provided*, That the total quantity of Class I milk, except filled milk, disposed of from such plant (inside and outside the marketing area) is equal to not less than 50 percent of such plant's total receipts from such dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1003.10(c)); or

(2) During any month of October through February in which at least 50 percent, and during any month of March through September in which at least 40 percent of its receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1003.10(c)) approved by a duly constituted health authority for fluid disposition is shipped in the form of milk, skim milk, or cream

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to a plant which disposes of not less than 10 percent of its approved milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1003.10(c)), and from other approved plants, on routes as Class I milk, except filled milk, in the marketing area, and not less than 50 percent of such receipts are disposed of as Class I milk, except filled milk, inside and outside the marketing area: *Provided*, That any such plant which was a pool plant in each of the preceding months of October through February shall be a pool plant for the months of March through September, unless the handler gives written notice to the market administrator on or before the first day of such month that the plant is a nonpool plant: *And provided further*, That any such plant which was a nonpool plant during any of the months of October through February shall not be a pool plant in any of the immediately following months of March through September in which it was owned by the same handler or affiliate of the handler or by any person who controls, or is controlled by, the handler.

(b) Any manufacturing plant which is operated by a cooperative association 70 percent or more of whose members are qualified producers whose milk is regularly received during the month at other plants which are pool plants pursuant to paragraph (a) of this section (including the milk of such producers which is delivered to such other plants by a cooperative association in its capacity as a handler pursuant to § 1003.10(c)).

(c) 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:

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

(2) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(3) "Partially regulated distributing plant" means a nonpool plant that is neither a producer-handler plant, an other order plant nor a plant of a handler pursuant to § 1003.10(e) and from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(4) "Unregulated supply plant" means a nonpool plant that is neither a producer-handler plant, an other order plant nor a plant of a handler pursuant to § 1003.10(e) and from which fluid milk products are shipped to a pool plant.

3. Section 1003.12 is revised to read as follows:

§ 1003.12 **Producer-handler.**

"Producer-handler" means any person who, during the month:

(a) Operates a dairy farm and an approved plant from which Class I milk is disposed of on routes in the marketing area; and

(b) Whose sole source of supply for Class I milk is his own farm production and transfers of fluid milk products from pool plants.

4. In § 1003.16, paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 1003.16 **Definitions of milk and milk products.**

(a) "Fluid milk product" means milk and skim milk, concentrated milk (including frozen concentrated milk), reconstituted or fortified milk and skim milk, flavored milk and skim milk, cultured skim milk, buttermilk, filled milk, cream and any mixture of cream and milk or skim milk. "Fluid milk product" shall not include aerated cream, sour cream, yogurt, eggnog, products which are packaged in hermetically sealed containers, and any product which contains 6 percent or more nonmilk fat (or oil).

(f) "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 milkfat, 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).

5. In § 1003.30, subparagraph (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1003.30 **Reports of receipts and utilization.**

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area:

(b) Each handler specified in § 1003.10 (a) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

6. In § 1003.31(a), subparagraph (2) is revised to read as follows:

§ 1003.31 **Other reports.**

(2) On or before the first day other source milk is received in the form of milk, filled milk, fluid skim milk or cream at his pool plant(s) his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

6a. In § 1003.32, paragraph (b) is revised to read as follows:

§ 1003.32 **Records and facilities.**

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

7. In § 1003.44, the introductory text of paragraph (e) is revised and paragraphs (d) and (f) (5) are revised to read as follows:

§ 1003.44 **Transfers.**

(d) As Class I milk, if transferred in bulk in the form of milk, filled milk, skim milk or cream, or diverted to a nonpool plant that is neither an approved plant, an other order plant, a producer-handler plant nor a plant of a handler pursuant to § 1003.10(e), located 300 miles or more by the shortest hard-surfaced highway distance as determined by the market administrator, from the zero milestone in Washington, D.C., except that cream so transferred may be classified as Class II if the transferor claims such classification, gives sufficient notice so that the market administrator may verify conditions of shipment, establishes such cream was transferred without approval of a duly constituted health authority for fluid disposition, labels each container to show that the contents are for manufacturing only, and such shipment is so invoiced;

(e) As Class I milk, if transferred in bulk in the form of milk, filled milk, skim milk, or cream, or diverted in bulk to a nonpool plant that is neither an approved plant, an other order plant, a producer-handler plant nor a plant of a handler pursuant to § 1003.10(e), located less than 300 miles, by the shortest hard-surfaced highway distance as determined by the market administrator, from the zero milestone in Washington, D.C., 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:

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1003.46, subparagraphs (2), (3), (4), (7) and the introductory text of subparagraph (8) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1003.46 **Allocation of skim milk and butterfat classified.**

(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) (vi) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two 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 approval by a duly constituted health authority for fluid disposition 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; and

(iv) Receipts of fluid milk products from a handler pursuant to § 1003.10(e);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(vi) 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:

(i) The pounds of skim milk in receipts of fluid milk products for which the handler requests Class II utilization which were received from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to the order regulating the plant, and from dairy farmers who are not producers, that were not subtracted pursuant to subparagraph (3) of this paragraph, but not in any case to exceed the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of other source milk in the form of fluid milk products from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, that were not subtracted pursuant to subparagraphs (3) and (4) (i) of this paragraph, to the extent that the total of such receipts are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, receipts from pool plants of other handlers, from a cooperative association in its capacity as a handler pursuant to § 1003.10(c) and in receipts in bulk from other order plants classified and priced pursuant to the applicable order that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph; and

(c) (i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in other source milk in the

form of fluid milk products from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph; and

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made; and

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph, in excess of similar transfers to such plant if classified and priced pursuant to the other order and if Class II utilization was requested by the operator of such plant and the transferee handler, but not in excess of the pounds of skim milk remaining in Class II milk;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants, from other order plant(s) if not classified or priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, that were not subtracted pursuant to subparagraphs (3) (v), (3) (vi), (4) (i) or (4) (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from other order plants (except receipts from other order plant(s) not classified and priced pursuant to the order regulating such plant), in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3) (vi) and (4) (iii) of this par-

agraph, pursuant to the following procedure:

9. Section 1003.61 is revised to read as follows:

§ 1003.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempted from all provisions of this part except as specified in paragraphs (c) and (d) of this section:

(a) Any plant qualified pursuant to § 1003.9(a) (1) which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant on routes in the Washington marketing area than in a marketing area regulated pursuant to such other order.

(b) Any plant qualified pursuant to § 1003.9(a) (2) or (b) which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant has qualified as a pool plant pursuant to the first proviso of § 1003.9(a) (2) for each month during the preceding October through February.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such a manner as the market administrator may require (in lieu of reports pursuant to §§ 1003.30 and 1003.31) and allow verification of such reports by the market administrator.

(d) 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.

10. Section 1003.62 is revised to read as follows:

§ 1003.62 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 §§ 1003.30(b) and 1003.31(e) 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 § 1003.70 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 § 1003.70(e) and a credit in the amount specified in § 1003.84(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.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1003.30(b) and 1003.31(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 § 1003.9, 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 nonpool 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 milk (approved by a duly constituted health authority for fluid disposition) 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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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.

10a. In § 1003.70, paragraph (d) is revised to read as follows:

§ 1003.70 Computation of the net pool obligation of each pool handler.

(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 § 1003.46(a)(3) and the corresponding step of § 1003.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1003.46(a)(3)(v) and (vi) and the corresponding step of § 1003.46(b) the Class I price shall be adjusted to the location of the transferor plant:

11. Section 1003.83 is revised to read as follows:

§ 1003.83 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 §§ 1003.61, 1003.62, 1003.84, and 1003.86 and out of which he shall make all payments pursuant to §§ 1003.85 and 1003.86: *Provided*, That the market administrator shall offset any such payment due to any handler against payment due from such handler.

12. In § 1003.89 paragraphs (a) and (d) are revised to read as follows:

§ 1003.89 Termination of obligations.

(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 two years after the last day of the 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 two-year period the market administrator notifies the handler 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;

(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 month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff 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.

PART 1004—MILK IN THE DELAWARE VALLEY MARKETING AREA

1. In § 1004.7, paragraph (a) is revised to read as follows:

§ 1004.7 Plants.

(a) "Plant" means the land and buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received from dairy farmers or processed or packaged. However, a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk products in transit for route disposition shall not be a plant under this definition.

1a. In § 1004.8, paragraphs (a) and (b) are revised to read as follows:

§ 1004.8 Pool plant.

(a) A distributing plant from which during any of the months of September through February not less than 50 percent, and during any of the months of March through August not less than 45 percent, of the milk received at such plant directly from dairy farmers (including milk diverted as producer milk pursuant to § 1004.15 by either the plant operator or by a cooperative association, but excluding the milk of dairy farmers

for other markets) or from a cooperative association in its capacity as a handler pursuant to § 1004.10(c), is disposed of as route disposition, except filled milk, and the volume disposed of as route disposition, except filled milk, in the marketing area during the month is not less than 10 percent of such receipts.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, a supply plant from which during any of the months of September through February not less than 50 percent, and during any of the months of March through August not less than 40 percent, of the milk received from dairy farmers (including milk diverted as producer milk pursuant to § 1004.15 by either the plant operator or by a cooperative association), or from a cooperative association in its capacity as a handler pursuant to § 1004.10(c) is moved during the month to a distributing plant from which a volume of fluid milk products, except filled milk, which is not less than 50 percent during any month of September through February, or 45 percent during any month of March through August, of its receipts of milk from dairy farmers, cooperative associations, and from other plants is disposed of as route disposition during the month, and the volume disposed of as route disposition in the marketing area during the month is not less than 10 percent of such receipts. However, a supply plant shall not be qualified pursuant to this paragraph in any month in which a greater proportion of its qualifying shipments are made to a plant(s) regulated under another Federal order than to plants regulated under this order.

2. In § 1004.16, paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 1004.16 Milk and milk products.

(a) "Fluid milk product" means all skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, cultured buttermilk, flavored milk, milk drinks (plain or flavored), filled milk, concentrated milk, and any other mixture of cream and milk or skim milk containing less than 18 percent butterfat (other than ice cream, ice cream mixes, ice milk mixes, eggnog, yogurt, sour half and half, sterilized products in hermetically sealed containers, and any product which contains 6 percent or more nonmilk fat (or oil): *Provided*, That when the product is modified by the addition of nonfat milk solids, the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content;

(f) "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 milkfat, 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).

3. In § 1004.30, subparagraph (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1004.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area;

(b) Each handler who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of milk from dairy farmers shall be reported in lieu of producer milk, such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

3a. In § 1004.32, paragraph (b) is revised to read as follows:

§ 1004.32 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

3b. In § 1004.41, subparagraph (8) of paragraph (b) is revised to read as follows:

§ 1004.41 Classes of utilization.

(b) * * *

(8) In the skim milk represented by the nonfat milk solids added to a fluid milk product which is in excess of the weight of an equivalent volume of the fluid milk product prior to such addition.

4. In § 1004.44 subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1004.44 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

5. In § 1004.46 subparagraphs (3) through (9) and the introductory text of subparagraph (10) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1004.46 Allocation of skim milk and butterfat classified.

(a) * * *

(3) 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 (5) (v) of this paragraph as follows, if the fluid products so received are classified and priced as Class I milk under such order or the equivalent thereof if assigned to Class I milk under this order:

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

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

(4) Subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month;

(5) 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 from dairy farmers for other markets pursuant to § 1004.14(a) and 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; 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;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II;

(i) The pounds of skim milk in receipts of fluid milk products, for which the handler requests Class II utilization, which were received from unregulated supply plants, from other order plants if not classified and priced pursuant to the order regulating the plant and from dairy farmers for other markets pursuant to § 1004.14(b), that were not subtracted pursuant to subparagraph (5) of this paragraph, but not in any case to exceed the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of other source milk in the form of fluid milk products from unregulated supply plants, from other order plants if not classified and priced pursuant to the order regulating such plant, and from dairy farmers for other markets pursuant to § 1004.14(b), if not assigned pursuant to subparagraphs (3), (5), and (6) (i) of this paragraph, to the extent that the total of such receipts is in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (exclusive of transfers between pool plants of the same handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, receipts from pool plants of other handlers, from a co-

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operative association in its capacity as a handler pursuant to § 1004.10(c), in receipts from Order 2 pool bulk tank units and in receipts in bulk from other order plants which are classified and priced pursuant to the applicable order, that were not subtracted pursuant to subparagraph (5)(v); and

(c) (f) Multiply any resulting plus quantity by the percentage that receipts of skim milk in other source milk in the form of fluid milk products from unregulated supply plants, from other order plants if not classified and priced pursuant to the order regulating such plant, and from dairy farmers for other markets pursuant to § 1004.14(b), remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II, shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (5)(v) of this paragraph in excess of similar transfers to such plant if classified and priced pursuant to the other order and if Class II utilization was requested by the operator of such plant and the transferee handler, but not in excess of the pounds of skim milk remaining in Class II milk;

(7) 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 in bulk on hand at the beginning of the month;

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

(9) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants, from other order plants if not classified or priced pursuant to the order regulating such plant and from dairy farmers for other markets pursuant to § 1004.14(b), that were not subtracted pursuant to subparagraphs (5)(iv), (5)(v), (6)(i), or (6)(ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class

shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(10) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk in receipts of fluid milk products from Order 2 pool bulk tank units and in bulk from other order plants (except receipts from other order plants not classified and priced pursuant to the order regulating such plant), in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (5)(v) or (6)(iii) of this paragraph, pursuant to the following procedure:

6. Section 1004.61 is revised to read as follows:

§ 1004.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempted from all provisions of this part except as specified in this section:

(a) Any plant qualified pursuant to § 1004.8(a) which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant on routes in the Delaware Valley marketing area than in a marketing area regulated pursuant to such other order;

(b) Any plant subject to the classification and pricing provisions of another order issued pursuant to the Act, notwithstanding its status under this order pursuant to § 1004.8(a) or (b).

(c) Each handler operating a plant described in paragraph (a) or (b) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1004.30 and 1004.31) and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), 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 the 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.

7. In § 1004.62 paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1004.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1)(i) The obligation that would have been computed pursuant to § 1004.70 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 § 1004.70(e) and a credit in the amount specified in § 1004.84(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

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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.

7a. In § 1004.70, paragraph (d) is revised to read as follows:

§ 1004.70 Computation of the net pool obligation of each pool handler.

(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 § 1004.46(a)(5) and the corresponding step of § 1004.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1004(a)(5) (iv) and (v) and the corresponding step of § 1004.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

8. In § 1004.88 paragraphs (a) and (d) are revised to read as follows:

§ 1004.88 Termination of obligations.

(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 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 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;

(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 month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler, unless such handler, within the applicable period of time files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1005—MILK IN THE TRI-STATE MARKETING AREA

1. Sections 1005.7, 1005.10, 1005.11, 1005.12 and 1005.14 are revised to read as follows:

§ 1005.7 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, flavored milk, milk drinks (plain or flavored), reconstituted or fortified milk or skim milk (including "dietary" products), concentrated milk, eggnog, cream (not frozen), cultured sour cream, or any mixture in fluid form of milk or skim milk and cream: *Provided*, That such fluid milk products shall not include ice cream mix, frozen dessert mix, evaporated and condensed milk or skim milk, aerated cream products, dips (mixtures with sour cream or cheese base containing nondairy ingredients) not labeled Grade A, a product which contains 6 percent or more nonmilk fat (or oil), nor products which are sterilized or packaged in hermetically sealed containers.

§ 1005.10 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product or filled milk is shipped during the month to a pool plant.

§ 1005.11 Pool plant.

"Pool plant" means a plant (except an other order plant or the plant of a producer-handler) specified in paragraph (a) or (b) of this section.

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, physically received at such plant or diverted as producer milk from such plant pursuant to § 1005.16 is disposed of during the month on routes and not less than 10 percent of such receipts is disposed of in the marketing area on routes.

(b) A supply plant from which during the months of September, October, and November not less than 50 percent, and during all other months not less than 40 percent, of the Grade A milk physically received at such plant from dairy farmers, reload points and handlers pursuant to § 1005.13(d) or diverted as producer milk from such plant pursuant to § 1005.16 is shipped to and physically received in the form of fluid milk products, except filled milk, at pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of September through March shall be a pool plant for the months of April through August, unless the milk received at the plant does not continue to meet the Grade A milk requirements for use in fluid milk products distributed in the marketing area or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant.

§ 1005.12 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling 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, unless such plant is qualified as a pool plant pursuant to § 1005.11 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area on routes and to pool plants qualified on the basis of route distribution in this marketing area than in the marketing area regulated pursuant to such other order.

(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 and from which fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area on routes during the month.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant.

§ 1005.14 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

2. A new § 1005.20 is added and reads as follows:

§ 1005.20 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 milkfat, 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).

3. In § 1005.30, paragraph (b) is revised to read as follows:

§ 1005.30 Reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported

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pursuant to this section, including a separate statement showing:

- (1) The respective amounts of skim milk and butterfat in route disposition in the marketing area, showing separately the in-area disposition of filled milk; and
- (2) For a handler pursuant to § 1005.13(b), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area on routes; and

4. In § 1005.33, paragraphs (b) and (c) are revised to read as follows:

§ 1005.33 Records and facilities.

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

5. In § 1005.43(d), subparagraph (5) is revised to read as follows:

§ 1005.43 Transfers.

(d)

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified in a comparable classification as Class II or Class III; and

6. In § 1005.45(a), subparagraphs (2), (3), (4), and (7) and the introductory text of subparagraph (8) are revised to read as follows:

§ 1005.45 Allocation of skim milk and butterfat classified.

(a)

(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 III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III pursuant to § 1005.41(c) (2) plus 2 percent of the remainder 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 III, 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; 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 III and/or Class II (beginning with Class III) but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class III 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 other pool handlers, 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 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 III utilization was requested by the operator of such plant and the handler;

(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 (3) (iv) and (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, that were not subtracted pursuant to subparagraphs (3) (v) and (4) (ii) of this paragraph:

6a. In § 1005.60, paragraph (d) is revised to read as follows:

§ 1005.60 Computation of the net obligation of each handler.

(d) Add an amount equal to the difference between the Class I and Class III price values of the skim milk and butterfat subtracted from Class I pursuant to § 1005.45(a) (3) and the corresponding step of § 1005.45(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1005.45(a) (3) (iv) and (v) and the corresponding step of § 1005.45(b) the Class I price shall be adjusted to the location of the transferor plant; and

7. In § 1005.62, paragraphs (a) (1) and (b) are revised to read as follows:

§ 1005.62 Obligations of handler operating a partially regulated distributing plant.

(a)

(1) The obligation that would have been computed pursuant to § 1005.60 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 valued at the Class II or Class III price if allocated to such class at the pool plant or other order plant and be valued at the weighted average price (or, in its absence, the uniform 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1005.60(e) and a credit in the amount specified in § 1005.74(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 III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1005.30 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 § 1005.11(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 nonpool supply plant in the same manner and subject to the same conditions as for the 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 in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(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 pursuant to § 1005.61 at the same location or at the Class III price, whichever is higher, 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 III price.

8. A new § 1005.63 is added and reads as follows:

§ 1005.63 Obligation of handler operating an other order plant.

Each handler who operate an other order plant that is regulated under an order providing 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:

(a) 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 marketing area; and

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to Class I disposition in this marketing 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 III price.

9. Section 1005.73 is revised to read as follows:

§ 1005.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1005.62, 1005.63, and 1005.74 and out of which he shall make all payments from such fund pursuant to § 1005.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

10. In § 1005.80, paragraph (a) is revised to read as follows:

§ 1005.80 Termination of obligations.

(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 two 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 obligations, unless within such two-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, or if the obligation is payable to the market administrator, the account for which it is to be paid;

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. Sections 1006.7, 1006.8, 1006.9, and 1006.10 are revised to read as follows:

§ 1006.7 Fluid milk product.

"Fluid milk product" means milk (including frozen and concentrated milk, filled milk, flavored milk or skim milk. "Fluid milk product" shall not include sterilized products in hermetically sealed containers.

§ 1006.8 Distributing plant.

"Distributing plant" means a plant:

(a) That is approved by a duly constituted health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month in the marketing area on routes; or

(b) That processes or packages filled milk and from which filled milk is disposed of during the month in the marketing area on routes.

§ 1006.9 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority or filled milk is shipped during the month to a pool plant.

§ 1006.10 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section that is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, received at the plant during the month is disposed of on routes except as filled milk and not less than 10 percent of such receipts is disposed of in the marketing area on routes except as filled milk.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section.

2. In § 1006.11, the introductory text and paragraph (a) are revised to read as follows:

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling

plant. The following categories of non-pool 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, unless such plant is qualified as a pool plant pursuant to § 1006.10 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area on routes and to pool plants qualified on the basis of route distribution in this marketing area than in the marketing area regulated pursuant to such other order.

3. A new § 1006.19a is added and reads as follows:

§ 1006.19a 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 milkfat, 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).

4. In § 1006.30, the introductory text and paragraph (b) are revised to read as follows:

§ 1006.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler (except a handler pursuant to § 1006.13 (e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received or at which filled milk is processed or packaged, reporting in detail and on forms prescribed by the market administrator:

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes, showing separately the in-area disposition of filled milk; and

(2) For a handler pursuant to § 1006.13(b), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area on routes; and

5. In § 1006.33, paragraphs (b) and (c) are revised to read as follows:

§ 1006.33 Records and facilities.

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

5a. In § 1006.41, paragraph (c) (1) is revised to read as follows:

§ 1006.41 Classes of utilization.

(c) * * *

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, a product which contains 6 percent or more non-milk fat (or oil), and sterilized products in hermetically sealed containers:

6. In § 1006.45(a), subparagraphs (2), (3), (6), and (9) and the introductory text of subparagraph (10) are revised to read as follows:

§ 1006.45 Allocation of skim milk and butterfat classified.

(a) * * *

(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 III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III pursuant to § 1006.41 (c) (4) plus 2 percent of the remainder 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 III, 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 or a Class II 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 fluid milk products from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(vi) 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;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class III and/or Class II (beginning with Class III unless otherwise specified below) but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from unregulated supply plants that

were not subtracted pursuant to subparagraph (3) (v) of this paragraph:

(a) For which the handler requests such utilization; or

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph; and

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

(9) 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 (3) (v) and (6) (i) of this paragraph;

(10) 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 other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3) (vi) and (6) (ii) of this paragraph:

6a. In § 1006.60, paragraph (d) is revised to read as follows:

§ 1006.60 Computation of the net pool obligation of each handler.

(d) Add an amount equal to the difference between the Class I and Class III price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1006.45(a) (3) and the corresponding step of § 1006.45(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1006.45(a) (3) (v) and (vi) and the corresponding step of § 1006.45(b) the Class I price shall be adjusted to the location of the transferor plant; and

7. In § 1006.62, paragraphs (a) (1) and (b) are revised to read as follows:

§ 1006.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) The obligation that would have been computed pursuant to § 1006.60 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 or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1006.60(e) and a credit in the amount specified in § 1006.74(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 III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1006.30 a similar report for each 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 § 1006.10(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 nonpool supply plant in the same manner and subject to the same conditions as for the 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 in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(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 uniform price applicable at such location or at the Class III price, whichever is higher, 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 III price.

8. A new § 1006.63 is added and reads as follows:

§ 1006.63 Obligation of handler operating an other order plant.

Each handler who operates an other order plant that is regulated under an order providing 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:

(a) 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 marketing area; and

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to Class I disposition in this marketing 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 III price.

9. Section 1006.73 is revised to read as follows:

§ 1006.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1006.62, 1006.63, and 1006.74 and out of which he shall make all payments from such fund pursuant to § 1006.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

10. In § 1006.80, paragraphs (a) and (d) are revised to read as follows:

§ 1006.80 Termination of obligations.

(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 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;

(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 month during which the skim milk and butterfat involved in the claims were received if an underpayment is claimed, or 2 years after the end of the

month during which the payment (including deduction or setoff 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.

PART 1011—MILK IN THE APPALACHIAN MARKETING AREA

1. Sections 1011.7, 1011.8, 1011.9, 1011.18, and 1011.19 are revised to read as follows:

§ 1011.7 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor or sale from a plant or plant store) of any milk or milk products (including filled milk) classified as Class I milk pursuant to § 1011.41(a) other than a delivery to a plant.

§ 1011.8 Plant.

"Plant" means the land, buildings, surroundings, facilities and equipment whether owned and operated by one or more persons constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and processed or packaged: *Provided*, That this definition shall not be deemed to include any separate building, premises or facilities the primary function of which is to hold or store packaged milk or milk products (including filled milk) in finished form in transit on routes.

§ 1011.9 Pool plant.

"Pool plant" means any plant except the plant of a producer-handler or a plant described in § 1011.61:

(a) From which during the month:

(1) Total disposition of Class I milk, except filled milk, is equal to not less than 50 percent of the milk approved or recognized by a duly constituted health authority for distribution within the marketing area which is received from dairy farmers and from cooperative associations who deliver such milk to such plant in the manner described in § 1011.10(d); and

(2) Disposition of Class I milk, except filled milk, on routes in the marketing area is equal to not less than 10 percent of its total Class I milk disposition, except filled milk, on routes both inside and outside the marketing area;

(b) From which milk or milk products, except filled milk, approved or recognized by a duly constituted health authority for distribution within the marketing area in an amount equal to not less than 50 percent of its receipts of such milk or milk products from dairy farmers and from cooperative associations who deliver such milk to such plant in the manner described in § 1011.10(d) are shipped as milk, skim milk or cream in fluid form to plants specified in paragraph (a) of this section: *Provided*, That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through March shall be a pool plant for the following months of April

through July unless the operator of such plant files with the market administrator prior to the first day of any month of April through July a written request for nonpool status for such month; or

(c) Which is operated by a cooperative association, if the total pounds of milk, skim milk or cream approved or recognized by a duly constituted health authority for distribution within the marketing area which are transferred from such plant to pool plants qualified pursuant to paragraph (a) or (b) of this section and which are received at similarly qualified pool plants from producers who are members of the association are equal to not less than 70 percent of the pounds of Class I utilization, except filled milk, at such other pool plants.

§ 1011.18 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 other than a producer-handler plant or an other order plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1011.19 Fluid milk product.

"Fluid milk product" means all milk, skim milk (including concentrated and reconstituted skim milk), filled milk, buttermilk, milk drinks (plain or flavored), cream (except frozen cream) and any mixture in fluid form of skim milk and cream (except sterilized products in hermetically sealed containers, ice cream mix, a product which contains 6 percent or more nonmilk fat (or oil), and eggnog).

2. A new § 1011.19a is added and reads as follows:

§ 1011.19a 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 milkfat, 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).

3. In § 1011.30, paragraphs (a) (5) and (b) are revised to read as follows:

§ 1011.30 Reports of receipts and utilization.

(a) . . .

(5) The utilization of all skim milk and butterfat required to be reported by this part, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

(b) Each handler specified in § 1011.10 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and the quantity of reconstituted skim milk in such disposition.

4. In § 1011.31, paragraph (b) is revised to read as follows:

§ 1011.31 Other reports.

(b) Each handler operating a pool plant shall report to the market administrator on or before the first day other source milk is received in the form of milk, filled milk, fluid skim milk or cream at his pool plant, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product.

5. In § 1011.33, paragraphs (b) and (c) are revised to read as follows:

§ 1011.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and other milk products (including filled milk) handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and other milk products (including filled milk) on hand at the beginning and end of each month; and

6. Section 1011.35 is revised to read as follows:

§ 1011.35 Accounting periods.

A handler may account for the receipts, utilization and classification of milk and filled milk at any of his pool plants for two periods within a month, either period not to be less than seven days, in the same manner as for a month, if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

7. In § 1011.44, paragraphs (c) and (f) (5) and the introductory text of paragraph (d) are revised to read as follows:

§ 1011.44 Transfers.

(c) As Class I milk, if transferred in bulk as fluid milk, skim milk, filled milk, or diverted to a nonpool plant that

is neither an other order plant nor a producer-handler plant, located more than 200 miles, by the shortest highway distance as determined by the market administrator, from the nearer of the City Hall of Bluefield, West Virginia, or the city limits of Kingsport, Tennessee;

(d) As Class I milk, if transferred in bulk as fluid milk, skim milk, filled milk, or diverted to a nonpool plant that is neither an other order plant nor a producer-handler plant, located not more than 200 miles, by the shortest highway distance as determined by the market administrator, from the nearer of the City Hall of Bluefield, West Virginia, or from the city limits of Kingsport, Tennessee, 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:

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1011.46(a), subparagraphs (2), (3), (4), and (7) and the introductory text of subparagraph (8) are revised to read as follows:

§ 1011.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 two 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; 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 subparagraph (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 or from a cooperative association in its capacity as a handler pursuant to § 1011.10(d), and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(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;

(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 which were not subtracted pursuant to subparagraphs (3) (iv) and (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 subparagraphs (3) (v) and (4) (ii) of this paragraph:

9. Section 1011.61 is revised to read as follows:

§ 1011.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempt from regulation under this order except as specified in paragraphs (c) and (d) of this section.

(a) Any plant qualified pursuant to § 1011.9(a) which would be fully regulated under the provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant on routes in the Appalachian marketing area than in the marketing area regulated pursuant to such other order.

(b) Any plant qualified pursuant to § 1011.9 (b) or (c) which would be fully regulated under the provisions of another order issued pursuant to the Act unless such plant was a pool plant pursuant to § 1011.9 (b) or (c) for each month during the preceding August through March period.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1011.30), and allow verification of such reports by the market administrator.

(d) Each handler operating a plant described 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.

10. In § 1011.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1011.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1011.70 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 § 1011.70(e) and a credit in the amount specified in § 1011.94(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.

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 location of the nonpool plant less the value of such skim milk at the Class II price.

10a. In § 1011.70, paragraph (d) is revised to read as follows:

§ 1011.70 Computation of the net pool obligation of each pool handler.

(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 § 1011.46(a) (3) and the corresponding step of § 1011.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1011.46(a) (3) (iv) and (v) and the corresponding step of § 1011.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

11. Section 1011.93 is revised to read as follows:

§ 1011.93 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 §§ 1011.61, 1011.62, 1011.94, and 1011.96 and out of which he shall make all payments pursuant to §§ 1011.95 and 1011.96: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

12. In § 1011.99, paragraphs (a) and (d) are revised to read as follows:

§ 1011.99 Termination of obligations.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. Sections 1012.7, 1012.9, and 1012.10 are revised to read as follows:

§ 1012.7 Fluid milk product.

"Fluid milk product" means milk (including frozen and concentrated milk), filled milk, flavored milk, or skim milk. "Fluid milk product" shall not include sterilized products in hermetically sealed containers or a product which contains six percent or more nonmilk fat (or oil).

§ 1012.9 Supply plant.

"Supply plant" means a plant from which a fluid milk product that is acceptable to the appropriate health authority for distribution in the marketing area as Grade A or filled milk is shipped during the month to a pool plant.

§ 1012.10 Pool plant.

"Pool plant" means a plant (except an other order plant or the plant of a producer-handler) specified in paragraph (a) or (b) of this section:

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, received at the plant during the month is disposed of on routes except as filled milk and not less than 10 percent of such receipts is disposed of in the marketing area on routes except as filled milk.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section.

2. Section 1012.11 is revised to read as follows:

§ 1012.11 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling 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, unless such plant is qualified as a pool plant pursuant to § 1012.10 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area on routes and to pool plants qualified on the basis of route distribution in this marketing area than in the marketing area regulated pursuant to such other order.

(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 and from which fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area on routes during the month.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant.

3. A new § 1012.19a is added and reads as follows:

§ 1012.19a 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 milkfat, 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).

4. In § 1012.30, the introductory text and paragraph (b) are revised to read as follows:

§ 1012.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler (except a handler pursuant to § 1012.13 (d) or (e)) shall report to the market administrator for such month with respect to each plant at which milk is received or at which filled milk is processed or packaged, reporting in detail and on forms prescribed by the market administrator:

(b) The utilization of all skim milk and butterfat required to be reported

pursuant to this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes, showing separately the in-area disposition of filled milk; and

(2) For a handler pursuant to § 1012.13(b), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area on routes; and

5. In § 1012.33, paragraphs (b) and (c) are revised to read as follows:

§ 1012.33 Records and facilities.

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

6. In § 1012.45(a), subparagraphs (2), (3), (6), and (9) and the introductory text of subparagraph (10) are revised to read as follows:

§ 1012.45 Allocation of skim milk and butterfat classified.

(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 III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III pursuant to § 1012.41 (c) (4) plus 2 percent of the remainder 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 III, 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 or a Class II 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; 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;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class III and/or Class II (beginning with Class III unless otherwise specified below) but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests such utilization; or

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(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 III or Class II utilization was requested by the operator of such plant and the handler;

(9) 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 (3) (iv) and (6) (i) of this paragraph;

(10) 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 other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3) (v) and (6) (ii) of this paragraph:

6a. In § 1012.60, paragraph (d) is revised to read as follows:

§ 1012.60 Computation of the net pool obligation of each handler.

(d) Add an amount equal to the difference between the Class I and Class III price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1012.45(a) (3) and the corresponding step of § 1012.45(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1012.45(a) (3) (iv) and (v) and the corresponding step of § 1012.45(b) the Class I price shall be adjusted to the location of the transferor plant; and

7. In § 1012.62, paragraphs (a) (1) and (b) are revised to read as follows:

§ 1012.62 Obligations of handler operating a partially regulated distributing plant.

(a) (1) The obligation that would have been computed pursuant to § 1012.60 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 or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1012.60(e) and a credit in the amount specified in § 1012.74(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 III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1012.30 a similar report for each 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 § 1012.10(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 nonpool supply plant in the same manner and subject to the same conditions as for the 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 in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(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 uniform price applicable at such location or at the Class III price, whichever is higher, 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 III price.

8. A new § 1012.63 is added and reads as follows:

§ 1012.63 Obligation of handler operating an other order plant.

Each handler who operates an other order plant that is regulated under an order providing 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:

(a) 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 marketing area; and

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to Class I disposition in this marketing 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 III price.

9. Section 1012.73 is revised to read as follows:

§ 1012.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1012.62, 1012.63, and 1012.74 and out of which he shall make all payments from such fund pursuant to § 1012.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

10. In § 1012.80, paragraph (a) is revised to read as follows:

§ 1012.80 Termination of obligations.

(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 two years after the last day of the 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 two-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;

PART 1013—MILK IN THE SOUTH-EASTERN FLORIDA MARKETING AREA

1. Sections 1013.7 and 1013.10 are revised to read as follows:

§ 1013.7 Fluid milk product.

"Fluid milk product" means milk (including frozen and concentrated milk), filled milk, flavored milk or skim milk. "Fluid milk product" shall not include sterilized products in hermetically sealed containers, a product which contains 6 percent or more nonmilk fat (or oil), or milkshake mix.

§ 1013.10 Pool plant.

"Pool plant" means a plant (except an other order plant or the plant of a producer-handler) that is specified in paragraph (a) or (b) of this section and which is not a facility described in paragraph (c) of this section:

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, received at the plant during the month is disposed of on routes except as filled milk and not less than 10 percent of such receipts is disposed of in the marketing area on routes except as filled milk.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section.

(c) Pool plant as defined in this section shall not be deemed to include any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

2. In § 1013.11, the introductory text is revised to read as follows:

§ 1013.11 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:

3. Section 1013.12 is revised to read as follows:

§ 1013.12 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor, or a sale from or through a plant store, or by vending machine) of any product in a form designated as Class I milk pursuant to § 1013.41(a), but does not include delivery to a milk or filled milk receiving or processing plant.

4. Section 1013.14 is revised to read as follows:

§ 1013.14 Producer-handler.

"Producer-handler" means any person who, during the month:

- (a) Produces milk;
- (b) Distributes Class I milk on routes in the marketing area;
- (c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and
- (d) Receives no milk except from his own dairy farm, and receives no products designated as Class I milk pursuant to § 1013.41(a) from pool plants or other sources.

5. A new § 1013.21 is added and reads as follows:

§ 1013.21 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 milkfat, 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).

6. In § 1013.30, the introductory text and paragraph (b) are revised to read as follows:

§ 1013.30 Report of sources and utilization.

On or before the 7th day after the end of each month, each handler, except a handler pursuant to § 1013.13 (e) or (f), shall report to the market administrator for such month, and for each accounting period in each month, with respect to each plant at which milk is received or at which filled milk is processed or packaged in detail and on forms prescribed by the market administrator, as follows:

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including a separate statement showing:

- (1) The respective amounts of skim milk and butterfat disposed of as Class I milk on routes entirely outside the marketing area, showing separately the in-area and outside area route disposition of filled milk; and
- (2) For a handler pursuant to § 1013.13 (b), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area on routes;

7. In § 1013.32, paragraph (b) is revised to read as follows:

§ 1013.32 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

8. In § 1013.46, subparagraphs (4) and (7) and the introductory texts of sub-

paragraphs (2) and (11) in paragraph (a), and paragraph (d) are revised to read as follows:

§ 1013.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 (4) (iv) of this paragraph, as follows:

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in each of the following:

- (i) 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;
- (ii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;
- (iii) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and
- (iv) 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;

(7) Subtract, in the order specified below, from the pounds of skim milk remaining in Class IV, Class III and/or Class II (beginning with Class IV unless otherwise specified) but not in excess of such quantity or quantities:

- (i) Receipts of fluid milk products from unregulated supply plants and in other source milk from dairy farmers (except that subtracted pursuant to subparagraph (4) of this paragraph):
 - (a) For which the handler requests such utilization; or
 - (b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph; and
- (ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, in excess of similar transfers to such plant, if Class III or Class II utilization was requested by the operator of such plant and the handler;

(11) 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 other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (4) (iv) and (7) (ii) of this paragraph:

(d) A handler may account for the receipts, utilization and classification of milk and filled milk, at his plant, for periods within a month if he notifies the market administrator in writing of his intention to use such accounting period not later than the end of every accounting period.

9. In § 1013.61, paragraph (c) is revised and a new paragraph (d) is added to read as follows:

§ 1013.61 Plants where other Federal orders may apply.

(c) Any plant which does not dispose of a greater volume of Class I milk, except filled milk, on routes in the Southeastern Florida marketing area than in the marketing area regulated pursuant to such other order.

(d) Each handler operating a plant specified in paragraph (c) 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 III price.

10. In § 1013.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1013.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1013.70 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 or Class III 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1013.70(e) and a credit in the amount specified in § 1013.82(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 III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the location of the nonpool plant less the value of such skim milk at the Class III price.

10a. In § 1013.70, paragraph (d) is revised to read as follows:

§ 1013.70 Computation of the net pool obligation of each pool handler.

(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 III price with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1013.46(a) (3) and (4) and the corresponding steps of § 1013.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1013.46(a) (4) (iii) and (iv) and the corresponding step of § 1013.46(b) the Class I price shall be adjusted to the location of the transfer plant; and

11. Section 1013.81 is revised to read as follows:

§ 1013.81 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 §§ 1013.61,

1013.62, 1013.82, and 1013.84 and out of which he shall make all payments pursuant to §§ 1013.83 and 1013.84: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

12. In § 1013.87, paragraph (a) is revised to read as follows:

§ 1013.87 Termination of obligations.

(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 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 months 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 names of such producers or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

PART 1015—MILK IN THE CONNECTICUT MARKETING AREA

1. In § 1015.10, paragraph (a) is revised to read as follows:

§ 1015.10 Producer-handler.

(a) His sole source of supply for fluid milk products (exclusive of that portion thereof which is represented by nonfat solids used in fortification) is his own production and fluid milk products transferred from pool plants. For the purpose of this paragraph, any fluid milk products which were acquired or purchased from a nonpool plant by him, his agent, partner or other associate and which he or such other person caused to be delivered at retail or wholesale outlets (including vending machines) in any Federal marketing area without being first received at his plant shall be included in such person's nonpool source of fluid milk products.

2. In § 1015.15 the introductory text preceding paragraph (a) of the section is revised to read as follows:

§ 1015.15 Plant.

"Plant" means the land and buildings, whether owned or operated by one or more persons, at which are maintained facilities and equipment for the receiving, handling or processing of milk or

milk products (including filled milk), constituting a single operating unit or establishment. The term "plant" does not include:

3. In § 1015.16 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1015.16 Pool plant.

"Pool plant" means any plant specified in paragraph (a) or (b) of this section: *Provided*, That receipts and disposition of filled milk shall be excluded in determining whether a plant has met the conditions for pool plant status.

4. Section 1015.17 is revised to read as follows:

§ 1015.17 Exempt distributing plant.

"Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order, which meets all the requirements for status as a pool distributing plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

5. Section 1015.22 is revised to read as follows:

§ 1015.22 Fluid milk products.

"Fluid milk products" means milk, skimmed milk, flavored milk or skimmed milk, cultured skimmed milk, buttermilk, filled milk, concentrated milk, any mixture of milk or skimmed milk and cream containing less than 10 percent butterfat, and 50 percent of the quantity by weight of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 12 percent butterfat. The term includes these products in fluid, frozen, fortified, or reconstituted form but does not include sterilized products in hermetically sealed containers and such products as eggnog, yogurt, whey, ice cream mix, ice milk mix, milk shake base mix, evaporated or condensed milk or skimmed milk in either plain or sweetened form, and any product which contains 6 percent or more nonmilk fat (or oil). Fluid milk products which have been placed in containers for disposition to retail or wholesale outlets are referred to in this part as packaged fluid milk products.

6. In § 1015.25 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1015.25 Pool milk.

"Pool milk" means fluid milk products (other than exempt milk) received or disposed of as specified in this section, except that with respect to filled milk the term shall include only the quantity proved to have been made from other fresh fluid milk products.

7. Section 1015.29 is added to read as follows:

§ 1015.29 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skimmed

milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, 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).

8. In § 1015.55 paragraph (b) (3) is revised to read as follows:

§ 1015.55 Assignment to classes of skim milk and butterfat received.

(b) * * *

(3) Filled milk from any source (exclusive of receipts from other pool plants and regulated plants under other Federal orders with marketwide pools) which is not proved to have been made from other fresh fluid milk products and any other fluid milk products from producer-handlers under any Federal order, from exempt governmental agencies, or from exempt distributing plants under any New England Federal order in sequence beginning with the source most distant from Hartford according to its zone location;

9. In § 1015.63 paragraphs (e) and (f) are revised to read as follows:

§ 1015.63 Value of each handler's fluid milk products.

(e) Multiply by the applicable Class I price the quantities of:

(1) Pool milk under § 1015.25 (e) and (f) distributed as route disposition in the marketing area from the handler's nonpool plant; and

(2) Filled milk distributed as route disposition in the marketing area from the handler's nonpool plant which is excluded from pool milk only because it is not proved to have been made from other fresh fluid milk products.

(f) Multiply by the applicable Class II price the quantities of:

(1) Other source milk assigned to Class I milk under § 1015.55(b) (1) and (2);

(2) Other source milk assigned to Class I milk under § 1015.55(b) (3) and (4) and (d); and

(3) Product for which a value is determined under subparagraph (e) (2) of this section.

10. In § 1015.87 subparagraph (b) is revised to read as follows:

§ 1015.87 Payment of administration expense.

(b) The payment shall also apply to the quantity distributed as route disposition in the marketing area from a handler's nonpool plant for which a value is determined under § 1015.63(e), to the quantity of producer milk for which a cooperative association is the handler under § 1015.9(c), and to the quantity of producer milk for which the cooperative association is the handler under § 1015.9(d), except that disposed of to pool plants or in ending inventory for the month.

11. In § 1015.94 paragraphs (a) and (d) are revised to read as follows:

§ 1015.94 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part, except as provided in paragraphs (b) and (c) of this section, shall terminate two years after the last day of the month during which the market administrator received the handler's utilization report on the skim milk and butterfat involved in the obligation, unless within the two-year period the market administrator notifies the handler in writing that the money is due and payable. Service of the 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 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 a cooperative association, the name of the producer or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which the handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on the payment is claimed, unless the handler, within the applicable period of time, files a petition under section 8c(15) (A) of the Act, claiming the money.

PART 1016—MILK IN THE UPPER CHESAPEAKE BAY MARKETING AREA

1. Section 1016.3 is revised to read as follows:

§ 1016.3 Definitions of plants.

(a) "Plant" means the land, buildings, surroundings, facilities and equipment operated by one or more persons, constituting a single operating unit or establishment for the receiving (other than transfer from one vehicle to another), processing or packaging of milk or milk products (including filled milk).

(b) "Pool plant" means a plant specified in subparagraph (1), (2), (3), or (4) of this paragraph that is neither a producer-handler plant nor a plant of a handler pursuant to § 1016.2(g) (5): *Provided*, That any plant qualified as a pool plant pursuant to subparagraph (2) of this paragraph in each of the months of October through February shall be a pool plant for the immediately following

months of March through September unless the handler gives written notice to the market administrator on or before the first day of any such month(s) (March through September) that the plant is a nonpool plant for the remaining months through September: *And provided further*, That any such plant specified in subparagraph (2) of this paragraph which was a nonpool plant during any month of October through February shall not be a pool plant in any of the immediately following months of March through September in which it is operated by the same handler, an affiliate of the handler or by any person who controls or is controlled by the handler.

(1) A plant which during the month disposes of as Class I milk, except filled milk, on routes in the marketing area a quantity equal to not less than 10 percent of its total receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1016.2(g) (4)) and which disposes of as Class I milk, except filled milk, a quantity equal to not less than 50 percent of such receipts.

(2) A plant in any month of October through February in which a quantity of milk equal to not less than 50 percent, and in any month of March through September in which a quantity of milk equal to not less than 40 percent, of its receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1016.2(g) (4)) is moved to a plant(s) which disposes of as Class I milk, except filled milk, on routes in the marketing area a quantity equal to not less than 10 percent of its receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1016.2(g) (4)) and from other plants and which disposes of as Class I milk, except filled milk, a quantity equal to not less than 50 percent of such receipts: *Provided*, That in the case of a handler operating a pool plant qualified pursuant to subparagraph (1) of this paragraph and two or more plants approved by the appropriate health authority in the marketing area as a source of supply for such plant, such supply plants shall be considered as a unit (system) for purposes of plant qualification under this paragraph upon written notice to the market administrator by the handler designating the plants to be included and the period during which such designation shall apply. Such notice or notice of changes in designation shall be given on or before the first day of the first month to which such notice applies.

(3) A manufacturing plant, located in the marketing area, from which any fluid milk product, except filled milk, is moved to a plant which is a pool plant pursuant to subparagraphs (1) and (4) of this paragraph if during the month not less than 90 percent of its receipts from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1016.2(g) (4)) are from Baltimore City

permit holders who are members of a cooperative association of which 70 percent or more of the members are producers whose milk is received at other pool plants.

(4) A plant which disposes of as Class I milk, except filled milk, on routes in the marketing area a quantity equal to not less than 5 percent of its total receipts from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1016.2(g)(4)) and disposes of a quantity of milk equal to not less than 10 percent of such receipts either in such route disposition in the marketing area, or in quantities of skim milk and butterfat in the form of fluid milk products transferred or diverted to nonpool plants which dispose of such skim milk and butterfat on routes in the marketing area as Class I milk (considering such route disposition by each nonpool plant to be supplied out of such fluid milk products transferred or diverted to the nonpool plant to the extent that the skim milk and butterfat in the route disposition could have been so derived): *Provided*, That the plant herein qualified as a pool plant disposes of as Class I milk, except filled milk, a quantity equal to not less than 50 percent of its receipts of milk from dairy farmers: *And provided further*, That all plants as described in this subparagraph are operated by the same handler.

(c) "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:

(1) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(2) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(3) "Partially regulated distributing plant" means a nonpool plant that is neither a producer-handler plant, an other order plant nor a plant of a handler pursuant to § 1016.2(g)(5) and from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month; and

(4) "Unregulated supply plant" means a nonpool plant that is neither a producer-handler plant, an other order plant nor a plant of a handler pursuant to § 1016.2(g)(5) and from which fluid milk products are shipped to a pool plant.

2. In § 1016.4, paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 1016.4 Definitions of milk and milk products.

(a) "Fluid milk product" means milk, skim milk (including concentrated, reconstituted and fortified milk and skim milk) buttermilk, filled milk, milk drinks (plain or flavored) and (except eggnog, milk shake mix, ice cream mix, evaporated and plain or sweetened condensed milk or skim milk, sterilized products in hermetically sealed containers, and any product which contains 6 percent or more nonmilk fat (or oil)) any mixture in fluid form of cream and milk or skim milk containing less than 12 percent butterfat, and 50 percent of the quantity by weight of any such mixture containing at least 12 percent but less than 18 percent butterfat.

(f) "Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of non-fat milk solids), with or without milkfat, 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).

3. In § 1016.30, subparagraph (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1016.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area.

(b) Each handler specified in § 1016.2(g)(2) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that milk approved for fluid consumption by the appropriate health authority received from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

3a. In § 1016.32, paragraph (b) is revised to read as follows:

§ 1016.32 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled:

4. In § 1016.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1016.44 Transfers.

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

5. In § 1016.46, subparagraphs (2), (3), (4), (7), and the introductory text

of subparagraph (8) preceding subdivision (i) of paragraph (a) are revised to read as follows:

§ 1016.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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)(vi) of this paragraph, as follows:

(1) From Class II milk, the lesser of the pounds remaining or two 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:

(1) 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 approval by a duly constituted health authority for fluid disposition 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 fluid milk products from a handler pursuant to § 1016.2(g)(5);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(vi) 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:

(i) The pounds of skim milk in receipts of fluid milk products for which the handler requests Class II utilization which were received from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to the order regulating the plant, and from dairy farmers who are not producers that were not subtracted pursuant to subparagraph (3) of this paragraph, but not in any case to exceed the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of other source milk in the form of fluid milk products from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, that were not subtracted pursuant to subparagraph (3) and (4)(i) of this paragraph, to the extent that the total of such receipts are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk

remaining in Class I milk at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, receipts from pool plants of other handlers, from a cooperative association in its capacity as a handler pursuant to § 1016.2(g) (4) and in receipts in bulk from other order plants classified and priced pursuant to the applicable order that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in other source milk in the form of fluid milk products from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph;

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph, in excess of similar transfers to such plant if classified and priced pursuant to the other order and if Class II utilization was requested by the operator of such plant and the transferee handler, but not in excess of the pounds of skim milk remaining in Class II milk;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants, from other order plant(s) if not classified or priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, that were not subtracted pursuant to subparagraphs (3) (v), (3) (vi), (4) (1), or (4) (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utiliza-

tion of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from other order plants (except receipts from other order plant(s) not classified and priced pursuant to the order regulating such plant), in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3) (vi) or (4) (iii) of this paragraph pursuant to the following procedure:

6. Section 1016.61 is revised to read as follows:

§ 1016.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempted from all provisions of this part except as specified in paragraphs (c) and (d) of this section.

(a) Any plant qualified pursuant to § 1016.3(b) (1) or (4) which would otherwise 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 from such plant on routes in this marketing area than in a marketing area pursuant to such other order.

(b) Any plant qualified pursuant to § 1016.3(b) (2) which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the first proviso in § 1016.3(b) for each month during the preceding October through February.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1016.30 and 1016.31) and allow verification of such reports by the market administrator.

(d) 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.

7. In § 1016.62, paragraph (a) (1) (i) and (b) are revised to read as follows:

§ 1016.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1016.70 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 § 1016.70(e) and a credit in the amount specified in § 1016.84(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

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class II price, whichever is higher 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.

7a. In § 1016.70, paragraph (d) is revised to read as follows:

§ 1016.70 Computation of the net pool obligation of each pool handler.

(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 § 1016.46(a) (3) and the corresponding step of § 1016.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1016.46(a) (3) (v) and (vi) and the corresponding step of § 1016.46(b) the Class I price shall be adjusted to the location of the transferor plant;

8. Section 1016.83 is revised to read as follows:

§ 1016.83 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 §§ 1016.61, 1016.62, 1016.84, and 1016.86 and out of which he shall make all payments pursuant to §§ 1016.85 and 1016.86; *Provided*, That the market administrator shall offset any such payment due to any handler against payment due from such handler.

9. In § 1016.89, paragraphs (a) and (d) are revised to read as follows:

§ 1016.89 Termination of obligations.

(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), terminate two years after the last day of the 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 two-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;

(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 month during which the skim

milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the 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.

PART 1030—MILK IN CHICAGO REGIONAL MARKETING AREA

1. Section 1030.7 is revised as follows:

§ 1030.7 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, sweet cream, and any mixture in fluid form of such products, including filled milk. It also includes sour cream and sour cream products which are labeled Grade A. Eggnog, including custards and puddings, ice cream mix, frozen dessert mix, yogurt, aerated cream products, evaporated and condensed milk or skim milk and sterilized products in hermetically sealed containers shall not be fluid milk products pursuant to this section. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

2. Section 1030.11 is revised as follows:

§ 1030.11 Pool plant.

"Pool plant" means a plant at which milk is received from dairy farmers, a facility at which milk received from farms in a tank truck is commingled with other milk for further shipment, or a plant at which milk is processed and packaged or manufactured, which plant or facility is described in paragraph (a), (b), or (c) of this section (except an other order plant or the plant of a producer-handler or an exempt distributing plant). If a portion of the plant is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition and is physically separated from the Grade A portion, such unapproved portion shall not be considered a part of the pool plant.

(a) A distributing plant from which there is disposed of during the month not less than the percentages set forth in subparagraphs (2) and (3) of this paragraph of the receipts specified in subparagraph (1). Two or more distributing plants of a handler shall be considered a unit for the purpose of subparagraph (3) of this paragraph in any month if the handler operating such plants has filed a written request with the market administrator prior to such month requesting that they be considered a unit.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted under § 1030.16, but excluding receipts of fluid milk products from other pool distributing plants and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.46(a) (4) (i)

(a) and (ii) and the corresponding step of § 1030.46(b).

(2) Not less than 10 percent of such receipts is disposed of from such plant in the marketing area in the form of packaged fluid milk products, except filled milk, either on routes or moved to other plants from which it is disposed of in the marketing area on routes. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Not less than 45 percent of such receipts is disposed of in the form of packaged fluid milk products, except filled milk, either on routes or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(b) A supply plant, or a facility at which milk received from farms in a tank truck is commingled with other milk for further shipment, from which the quantity of fluid milk products, except filled milk, moved during the month in accordance with subparagraphs (1), (2), and (3) of this paragraph is not less than the percentages specified in subparagraph (4) of this paragraph subject to subparagraphs (6), (7), and (8) of this paragraph, of the volume of Grade A milk received from dairy farmers at such plant or facility, including producer milk diverted under § 1030.16.

(1) To pool plants pursuant to paragraph (a) of this section;

(2) To plants of producer-handlers;

(3) To partially regulated distributing plants and assigned to Class I milk disposed of in the marketing area from such plants pursuant to § 1030.44(d) (3) (1);

(4) Such percentages shall be not less than 40 percent in each of the months of September, October, and November and 30 percent in all other months, except that a plant which is a pool plant pursuant to this paragraph during each of the months of August through December shall be a pool plant for each of the following months of January through July unless:

(i) The milk received at the plant does not continue to meet the Grade A milk requirements for use in fluid milk products distributed in the marketing area; or

(ii) Written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting the plant be designated a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

(5) [Reserved]

(6) The percentages specified in subparagraph (4) of this paragraph applicable during the months August-December shall be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if he finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision either on his own initiative or at the request of interested persons and if

his investigation shows that a revision might be appropriate he shall issue a notice stating that revision is being considered and inviting data, views, and arguments with respect to the proposed revision: *Provided*, That if a plant which would not otherwise qualify as a pool plant during the month pursuant to subparagraph (4) of this paragraph would qualify as a pool plant as a result of this subparagraph, such plant shall be a nonpool plant for such month upon filing by the operator of such plant a written request for nonpool status with the market administrator.

(7) Two or more plants shall be considered a unit for the purpose of this paragraph if the following conditions are met:

(i) The plants included in a unit are owned or fully leased and operated by the handler establishing the unit. In the case of plants operated by cooperative associations two or more cooperative associations may establish a unit of designated plants by filing with the market administrator a written contractual agreement obligating each plant of the unit to ship milk as directed by such cooperatives;

(ii) The handler or cooperatives establishing a unit notify the market administrator in writing of the plants to be included therein prior to August 1 of each year and no additional plants shall be added to the unit prior to August 1 of the following year; and

(iii) The notification pursuant to subdivision (ii) of this subparagraph shall list the plants in the order in which they shall be excluded from the unit if the minimum shipping requirements are not met, such exclusion to be in sequence beginning with the first plant on the list and continuing until the remaining plants as a unit have met the minimum requirements.

(8) If, during August through December a handler notifies the market administrator in writing that a plant is unable to meet the requirements set forth herein because of a work stoppage due to a labor dispute between employer and employees, the market administrator, upon verification of the handler's claim, shall not include the receipts and utilization of skim milk and butterfat at such plant for those days from the date of notification through the last day of the work stoppage in determining the percentage of skim milk and butterfat shipped pursuant to this paragraph. When the work stoppage includes an entire month, the plant shall be considered to have met the minimum percentage shipping requirements in that month for pool plant status pursuant to this paragraph, but such relief shall not be granted for more than two consecutive months.

(c) A plant which is operated by a cooperative association and which is not a pool plant pursuant to paragraph (a) or (b) of this section shall be a pool plant if at least 50 percent of the Grade A milk of producers of such cooperative association is received at pool distributing plants of other handlers during the month and written application for pool

plant status is filed with the market administrator on or before the first day of such month.

3. Section 1030.12 is revised as follows:

§ 1030.12 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling 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, unless such plant is qualified as a pool plant pursuant to § 1030.11 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area on routes and to pool plants qualified on the basis of route distribution in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order.

(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 not an other order plant, a producer-handler plant, or an exempt distributing plant and from which fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area on routes during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant from which fluid milk products are shipped during the month to a pool plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

4. A new § 1030.19 is added as follows:

§ 1030.19 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 milkfat, 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).

5. In § 1030.30, paragraph (b) is revised as follows:

§ 1030.30 Reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing the respective amounts of skim milk and butterfat disposed of as Class I milk inside and outside marketing area on routes, and a statement showing separately in-area and outside area route disposition of filled milk; and

6. In § 1030.31, paragraphs (a) and (c) are revised as follows:

§ 1030.31 Other reports.

(a) Each producer-handler shall report the receipts and disposition of skim milk and butterfat at such plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

(c) Each handler operating a partially regulated distributing plant shall report for each such plant the information required of pool plant operators pursuant to § 1030.30 substituting receipts from dairy farmers for producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

7. In § 1030.32, paragraphs (b) and (c) are revised as follows:

§ 1030.32 Records and facilities.

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

8. In § 1030.44, paragraph (e)(5) is revised as follows:

§ 1030.44 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk and skim milk and butterfat allocated to the other classes shall be classified as Class II; and

9. Section 1030.46 is revised as follows:

§ 1030.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1030.45, the market administrator shall determine the classification of producer milk for each handler (or pool plant, if applicable) as follows:

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

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk classified as Class II milk pursuant to § 1030.41(b) (7) and (9);

(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 an other order plant in excess in each case of similar transfers to the same plant, 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 milk, 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 which are from unidentified sources;

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

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; 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 milk but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph;

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

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in the 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 (or other pool plants, if applicable), and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

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

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk, 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) 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 which

were not subtracted pursuant to subparagraphs (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 subparagraphs (3)(v) or (4)(ii) of this paragraph;

(i) In series beginning with Class II milk, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II milk utilization of skim milk announced for the month by the market administrator pursuant to § 1030.22(k) or the percentage that Class II milk utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I milk, 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 (or other pool plants, if applicable) according to the classification assigned pursuant to § 1030.44(a); and

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

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

10. Section 1030.60 is revised as follows:

§ 1030.60 Obligation 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 § 1030.31 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) The obligation that would have been computed pursuant to § 1030.70 (a) through (e) 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

uniform 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 § 1030.70(e) and a credit in the amount specified in § 1030.84(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. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1030.31 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 § 1030.11(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 nonpool 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 in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products or in filled milk 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 milk price (after deducting the location adjustment rate for the zone in which the nonpool plant is located) subtract its value at the uniform price at the same location or at the Class II price, whichever is higher 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.

11. A new § 1030.61 is added as follows:
 § 1030.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to an other order plant as defined in § 1030.12(a) except as specified in paragraphs (a) and (b) of this section.

(a) Each handler operating a plant described in § 1030.12(a) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1030.30 and 1030.31) and allow verification of such reports by the market administrator.

(b) Each handler operating a plant 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 marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(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.

11a. Section 1030.70 is revised as follows:

§ 1030.70 Computation of the net pool obligation of each handler.

(d) Add an amount equal to the difference between the value at the Class I milk price applicable at the pool plant where received and the value at the Class II milk price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1030.46(a)(3) and the corresponding step of § 1030.46(b) except that for receipts of fluid milk products assigned to Class I pursuant to § 1030.46(a)(3)(iv) and (v) and the corresponding step of § 1030.46(b) the Class I price shall be adjusted to the location of the transferor plant;

12. Section 1030.83 is revised as follows:

§ 1030.83 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund and out of which he shall make all payments from such fund pursuant to §§ 1030.60, 1030.61, 1030.84, 1030.85, and 1030.86: *Provided*, That the market ad-

ministrator shall offset the payment due to a handler against payments due from such handler.

13. In § 1030.89, paragraphs (a) and (d) are revised as follows:

§ 1030.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraph (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:

- (1) The amount of the obligation;
- (2) The months 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 producers or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. In § 1032.12, paragraphs (a) and (b) are revised to read as follows:

§ 1032.12 Pool plant.

(a) A distributing plant, other than that of a producer-handler or one described in § 1032.61, from which during the month:

- (1) Disposition of fluid milk products, except filled milk, in the marketing area on routes is equal to 10 percent or more of its Grade A receipts from dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1032.9(d), or from which an average of not less than 7,000 pounds per day of fluid milk products, except filled milk, is distributed on routes in the marketing area; and

(2) Total disposition of fluid milk products, except filled milk, on routes is equal to 50 percent or more of its Grade A receipts from dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1032.9(d) during the months of August through February and 40 percent during all other months;

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from dairy farmers and from cooperative associations in their capacity as handlers pursuant to § 1032.9(d) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 50 percent Class I use (not including filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months;

2. Section 1032.13 is revised to read as follows:

§ 1032.13 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 that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

3. Section 1032.16 is revised to read as follows:

§ 1032.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, plain or flavored milk and milk drinks (unmodified or fortified), including "dietary milk products" and reconstituted milk or skim milk, filled milk, concentrated milk not in hermetically sealed containers, cream (sweet or sour), and mixtures of cream and milk or skim milk, but not including the following: Aerated cream products, frozen storage cream, sour cream and sour cream mixtures not labeled Grade A, egg-nog, yogurt, frozen dessert mixes, evaporated or condensed milk, and sterilized fluid milk products in hermetically sealed containers. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1032.19a is added to read as follows:

§ 1032.19a 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 milkfat, 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).

5. In § 1032.30, subparagraphs (3) and (5) of paragraph (a) and (c) are revised to read as follows:

§ 1032.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization of all skim milk and butterfat required to be reported by this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(5) Such other information with respect to the receipts and utilization of milk and milk products (including filled milk) as the market administrator may require;

(c) Each handler specified in § 1032.9 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk shall be reported in lieu of those in producer 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; and

6. In § 1032.43, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1032.43 Transfers and diversions.

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II;

7. In § 1032.45, subparagraphs (2), (3), (4), (5), (6), (7), (8), and the introductory text of subparagraph (9) preceding subdivision (i) of paragraph (a) are revised to read as follows:

§ 1032.45 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk prod-

ucts received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (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 from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) 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; and

(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; 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.

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II, if Class II utilization was requested by the transferee handler and

the operator of the transferor plant requests such utilization;

(6) 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 bulk fluid milk products on hand at the beginning of the month;

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

(8) 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 (4) (iv) or (5) (i) and (ii) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (4) (v) or (5) (iii) of this paragraph pursuant to the following procedure:

8. Section 1032.61 is revised to read as follows:

§ 1032.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as operator of a plant specified in paragraphs (a), (b), and (c) of this section the provisions of this part shall not apply except as specified in paragraphs (d) and (e).

(a) A distributing plant qualified pursuant to § 1032.12(a) which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as Class I route disposition in the marketing area regulated by the other order than as Class I route disposition in the Southern Illinois marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such Class I route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this paragraph;

(b) A distributing plant qualified pursuant to § 1032.12(a), which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Southern Illinois marketing area as Class I route disposition than as Class I route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regula-

tion even though such plant has greater such Class I route disposition in the marketing area of the Southern Illinois order; and

(c) Any plant qualified pursuant to § 1032.12(c) for any portion of the period of February through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

(d) The operator of a plant specified in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a) or (b) 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.

(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.

9. In § 1032.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1032.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1032.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts of 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 § 1032.70(f) and a credit in the amount specified in § 1032.84(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

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim 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 or the Class II price, whichever is higher; 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.

9a. In § 1032.70, paragraph (e) is revised to read as follows:

§ 1032.70 Computation of the net pool obligation of each pool handler.

(e) 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 § 1032.45(a) (4) and the corresponding step of § 1032.45(b) except that for receipts of fluid milk products assigned to Class I pursuant to § 1032.45(a) (4) (iv) and (v) and the corresponding steps of § 1032.45(b) the Class I price shall be adjusted to the location of the transferor plant; and

10. Section 1032.83 is revised to read as follows:

§ 1032.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows: (a) All payments made by handlers pursuant to §§ 1032.61, 1032.62 (a) and (b), 1032.84, and 1032.86 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1032.85 and 1032.86; *Provided*, That any payments due to any handler shall be offset by any payments due from such handler; and (b) all amounts subtracted pursuant to

§ 1032.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1032.80 in accordance with the requirements of § 1032.71(d).

11. In § 1032.90, paragraphs (a) and (d) are revised to read as follows:

§ 1032.90 Termination of obligations.

(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 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 completed 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;

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

PART 1033—MILK IN THE GREATER CINCINNATI MARKETING AREA

1. Section 1033.9 is revised to read as follows:

§ 1033.9 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and a handler, but who receives no fluid milk products from other dairy farmers or from sources other than pool plants and no milk products other than fluid milk products for reconstitution into fluid milk products; *Provided*, That such person provides proof satisfactory to the market administrator that (a) the maintenance, care and management of all the dairy animals and other resources necessary to produce the entire amount of milk

handled is the personal enterprise of and at the personal risk of such person in his capacity as a dairy farmer, and (b) the operation of a distributing plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

2. Section 1033.10 is revised to read as follows:

§ 1033.10 Plant.

"Plant" means the land and buildings together with their surroundings, facilities and equipment, constituting a single operating unit or establishment which contains stationary milk holding facilities and is operated exclusively for the bulk handling or processing of milk or milk products (including filled milk). The term "plant" does not include distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants).

3. In § 1033.13, paragraphs (a) and (b) are revised to read as follows:

§ 1033.13 Pool plant.

(a) A distributing plant with:
(1) Route disposition, except filled milk, within the marketing area during the month of at least 15 percent of its total route disposition, except filled milk, such percentage to be exclusive of receipts from other plants of packaged fluid milk products priced as Class I milk under this or any other Federal order; and

(2) Total route disposition, except filled milk, amounting to not less than 50 percent of its total receipts of Grade A milk from dairy farmers, other plants (excluding receipts of bulk fluid milk products transferred or diverted to it as Class II milk from other plants), and cooperatives as handlers pursuant to § 1033.8 (but excluding any such milk diverted from such plant to a nonpool plant by the cooperative pursuant to § 1033.15(c)). Any plant which complies with such percentage requirement during the immediately preceding month shall continue to be a pool plant during the current month even if the minimum percentage requirement under this subparagraph is not met for the current month.

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, shipped directly to and received at plants qualified pursuant to paragraph (a) of this section and route disposition, except filled milk, from such plant within the marketing area, if any, is not less than 50 percent of the volume of Grade A milk received from dairy farmers at such plant (excluding receipts from other plants or as a diversion pursuant to § 1033.15). Any a supply plant which meets the required percentage of this paragraph during each of the months of September through February shall continue to be so qualified for the following months of March through August, unless such operator in writing requests nonpool plant status for such plant. Such nonpool plant status

shall be effective the first month following such notice and thereafter until the plant requalifies under this section on the basis of shipments.

4. Section 1033.14 is revised to read as follows:

§ 1033.14 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 there is route disposition in the marketing area during the month of fluid milk products in consumer-type packages or dispenser units.

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

5. Section 1033.16 is revised to read as follows:

§ 1033.16 Fluid milk product.

Except as provided in paragraph (c) of this section, "fluid milk product" means the fluid form of:

(a) Milk, skim milk, buttermilk, flavored milk, milk drink, whipped cream, cream (sweet or sour), eggnog, concentrated milk, filled milk; and

(b) Any mixture of milk, skim milk or cream including fluid, frozen, or semi-frozen malted milk and milk shake mixtures containing less than 15 percent total milk solids.

(c) Excluded from this definition are: Frozen storage cream, aerated cream in dispensers, ice cream and frozen dessert mixes, pancake mix, evaporated and condensed milk, and any sour mixture of skim milk and butterfat in nonfluid form to which cheese or any food substance other than a milk product has been added and which is disposed of as other than sour cream. Also excluded is any product which contains 6 percent or more nonmilk fat (or oil).

6. A new § 1033.19a is added to read as follows:

§ 1033.19a 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 milkfat, 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).

7. In § 1033.30, paragraph (a) is revised to read as follows:

§ 1033.30 Monthly reports of receipts and utilization.

(a) The total pounds of skim milk and butterfat contained in or represented by:

(1) Producer milk, including own farm production and quantities diverted to nonpool plants;

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

(3) Other source milk, with the identity of each source;

(4) Inventories of fluid milk products on hand at the beginning and end of the month in bulk and in packaged form, separately;

(5) Route disposition (except filled milk) inside the marketing area; and

(6) Route disposition of filled milk inside the marketing area;

8. In § 1033.31, paragraph (b) is revised to read as follows:

§ 1033.31 Other reports.

(b) Each handler specified in § 1033.8 (d) who operates a partially regulated distributing plant shall report as required of handlers operating pool plants pursuant to § 1033.30 (a) through (c), except dairy farmer receipts of Grade A milk shall be reported in lieu of producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area; and

9. Section 1033.33 is revised to read as follows:

§ 1033.33 Records and facilities.

Each handler required to make reports to the market administrator 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 reports, or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat received, including all milk products and filled milk received and disposed of in the same form; (b) the weights and tests for butterfat, and for other content, of all milk and milk products (including filled milk) handled; and (c) payments to producers and cooperative associations.

9a. In § 1033.41(b) (1), a new subdivision (vii) is added and reads as follows:

§ 1033.41 Classes of utilization.

(vii) Any product which contains 6 percent or more nonmilk fat (or oil);

10. In § 1033.43(d), subparagraph (5) is revised to read as follows:

§ 1033.43 Transfers.

(d) . . .

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

11. In § 1033.46(a), subparagraphs (2), (4), (5), (8), and (9) are revised to read as follows:

§ 1033.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 (4)(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;

(4) 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; 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;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4)(iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4)(v) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4)(v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk if Class II utilization was requested by the operator of such plant and the handler;

(8) (1) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (4)(iv) and (5)(i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (4)(v) and (5)(iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subpara-

graph, such subtraction shall be prorata to whichever of the following represents the higher proportion of all Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1033.22(k); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

11a. In § 1033.60, paragraph (e) is revised to read as follows:

§ 1033.60 Computation of the net pool obligation of each pool handler.

(e) Add an amount equal to the difference between the value at the Class I price 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 § 1033.46(a)(4) and the corresponding step of § 1033.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1033.46(a)(4)(iv) and (v) and the corresponding step of § 1033.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

12. In § 1033.61, paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1033.61 Obligations of a handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1033.60 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 § 1033.60(e) and a credit in the amount specified in § 1033.72(b) 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.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition 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.

13. In § 1033.71, paragraph (a) is revised to read as follows:

§ 1033.71 **Producer-settlement fund.**

(a) All payments made by handlers pursuant to §§ 1033.61 (a) and (b), 1033.72, and 1033.92 shall be deposited in this fund, and all payments made pursuant to § 1033.73 shall be made out of this fund;

14. In § 1033.78, paragraphs (a) and (d) are revised to read as follows:

§ 1033.78 **Termination of obligation.**

(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 a cooperative association, the name of such producers or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

15. Section 1033.92 is revised to read as follows:

§ 1033.92 **Plants subject to other Federal orders.**

(a) The provisions of this part shall not apply, except as specified in paragraphs (b) and (c) of this section, to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 1033.13 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area on routes and to pool plants qualified on the basis of route distribution in this marketing area than in the marketing area and to pool plants regulated pursuant to such other order during the current month and each of the 3 months immediately preceding.

(b) The operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler operating a distributing plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provi-

sions 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 as route disposition 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 as route disposition in marketing areas regulated by two or more marketwide 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.

PART 1034—MILK IN THE MIAMI VALLEY, OHIO, MARKETING AREA

1. Section 1034.10 is revised to read as follows:

§ 1034.10 **Plant.**

"Plant" means the land and buildings together with their surroundings, facilities, and equipment constituting a single operating unit or establishment which is operated exclusively by one or more persons and used for the bulk handling or processing of milk or milk products (including filled milk).

2. In § 1034.13, paragraphs (a) and (b) are revised to read as follows:

§ 1034.13 **Pool plant.**

(a) A distributing plant from which during the month:

(1) Route disposition (except filled milk) made within the marketing area is at least 15 percent of its total route disposition (except filled milk); and

(2) At least 50 percent of the total receipts of Grade A milk at such plant from dairy farmers, other plants (excluding receipts of bulk fluid milk products from other plants which are assigned as Class II milk pursuant to § 1034.45(a) (5) (i) and (ii) and (10)), and cooperatives as handlers pursuant to § 1034.8, including any such milk diverted to other plants pursuant to § 1034.15 by the handler operating such plant, is route disposition (except filled milk) during each of the months of August through January, at least 45 percent February and March, and at least 40 percent during other months, except that a plant which qualifies as a pool plant by complying with the preceding requirements of this subparagraph during the immediately preceding month shall continue to be a pool plant during the current month even if the minimum percentage requirement for the current month is not met.

(b) A supply plant from which during the month the volume of fluid milk products (except filled milk) shipped to and

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received at plants qualified pursuant to paragraph (a) of this section and route disposition (except filled milk) from such plant within the marketing area, if any, is not less than 50 percent of the volume of Grade A milk received from dairy farmers at such plant (including receipts from a handler pursuant to § 1034.8(c) but not receipts of other milk on diversion pursuant to § 1034.15). Any supply plant which is qualified by reason of meeting the required percentage of this paragraph during the months of August through March shall continue to be so qualified for the following months of April through July even if the required percentage pursuant to this paragraph is not met in the latter months, unless such operator requests the market administrator in writing that such plant should not be so qualified, such revised status to be effective the first month following such notice and thereafter until the plant requalifies under this section on the basis of shipments.

3. In § 1034.14, the introductory text immediately preceding paragraph (a) is revised to read as follows:

§ 1034.14 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:

4. Section 1034.16 is revised to read as follows:

§ 1034.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored or cultured milk or skim milk, filled milk, buttermilk, concentrated milk, sweet or sour cream, and any fluid mixture of cream and milk or skim milk, including prepared milk shake mixes containing less than 15 percent total milk solids. The term includes these products in fluid, frozen (except cream), fortified or reconstituted form, but does not include sterilized cream in hermetically sealed metal or glass containers, eggnog, ice cream mix, or other frozen dessert mixes, aerated cream products, storage cream, cultured sour mixtures disposed of as other than sour cream unless labeled as a Grade A product, evaporated or condensed milk or skim milk in either plain or sweetened form, and a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1034.19 is added to read as follows:

§ 1034.19 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 milkfat, 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).

6. In § 1034.30, paragraphs (a)(3) and (c) are revised to read as follows:

§ 1034.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization or disposition of all receipts required to be reported, including separate data relative to:

(i) Bulk fluid milk products on hand at the end of the month;

(ii) Packaged fluid milk products on hand at the end of the month;

(iii) Route disposition (except filled milk), inside and outside the marketing area; and

(iv) Route disposition of filled milk inside and outside the marketing area; and

(c) Each handler who operates a partially regulated distributing plant shall report for such plant the information required by paragraph (a) of this section, except that receipts of milk approved by any duly constituted health authority for fluid consumption in the marketing area shall be reported as if producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

7. Section 1034.33 is revised to read as follows:

§ 1034.33 Records and facilities.

Each handler, including any partially regulated handler, shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) Receipts of producer milk and other source milk and the utilization of such receipts at each of his plants;

(b) Weights and tests for butterfat and other content of all milk, skim milk, cream, and other milk products (including filled milk) handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month at each plant; and

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

8. In § 1034.43(d), subparagraph (5) is revised to read as follows:

§ 1034.43 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. In § 1034.45(a), subparagraphs (2), (4), (5), (8), and (9) are revised to read as follows:

§ 1034.45 Allocation of skim milk and butterfat classified.

(a) * * *

(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 (4)(vi) of this paragraph, as follows:

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

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

(4) Subtract successively 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, provided that any such milk received as cottage cheese curd shall be subtracted directly from the handler's cottage cheese utilization;

(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 fluid milk products from a plant exempt pursuant to § 1034.60(b);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(vi) 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;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4)(v) of this paragraph, for which the handler requests Class II utilization (other than cottage cheese manufacture) but not in excess of the pounds of skim milk remaining in such Class II uses;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4)(v) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such pool plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4)(vi) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph;

(2) Should such computation result in a quantity to be subtracted from Class II, which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4)(vi) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(8) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (4)(v) and (5)(i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(9) 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 subparagraphs (4)(vi) and (5)(iii) of this paragraph;

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subpara-

graph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of all Class II milk.

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1034.22(I); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

10. Section 1034.61 is revised to read as follows:

§ 1034.61 Plants subject to other Federal orders.

The provisions of this part shall not apply except as specified in paragraphs (c) and (d) of this section:

(a) A distributing plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant pursuant to § 1034.13(a) and a greater volume of fluid milk products (except filled milk) is disposed of from such plant to retail or wholesale outlets in the Miami Valley, Ohio, marketing area and to pool plants under this part than in the marketing area and to pool plants regulated by such other order during the current month and each of the 3 months immediately preceding.

(b) A supply plant meeting the requirements of § 1034.13(b) which also continues to have pool plant status under another Federal order.

(c) The operator of a plant specified in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) 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 as route disposition 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 as route disposition in marketing areas regulated by two or more marketwide 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.

11. In § 1034.62, paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1034.62 Obligation of a handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1034.70 had such plant been 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, 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 is 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 § 1034.70(f) and a credit in the amount specified in § 1034.84 (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 in subdivision (ii) of this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition 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.

11a. In § 1034.70, paragraph (e) is revised to read as follows:

§ 1034.70 Computation of the net pool obligation of each pool handler.

(e) 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 § 1034.45(a)(4) and the corresponding step of § 1034.45(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1034.45(a)(4) (v) and (vi) and the corresponding step of § 1034.45(b) the Class I price shall be adjusted to the location of the transferor plant.

12. Section 1034.83 is revised to read as follows:

§ 1034.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1034.61, 1034.62, 1034.84, and 1034.86 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1034.85 and 1034.86, except that any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1034.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1034.80 in accordance with the requirements of § 1034.71(i).

13. In § 1034.100, paragraphs (a) and (d) are revised to read as follows:

§ 1034.100 Termination of obligations.

(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 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 han-

dler 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.

(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 month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the 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.

PART 1035—MILK IN THE COLUMBUS, OHIO, MARKETING AREA

1. Section 1035.7 is revised to read as follows:

§ 1035.7 Fluid milk product.

"Fluid milk products" means the fluid form of milk, skim milk, filled milk, buttermilk, concentrated milk, milk drinks (plain or flavored including dietary milk, prepared milk shake mixes containing 15 percent or less of total milk solids and egg nog), sweet or sour cream, or any mixture in fluid form of milk, skim milk or cream (except storage cream, aerated cream products, ice cream mix, cultured sour mixtures which are not labeled "Grade A", evaporated or condensed milk and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

2. Section 1035.8 is revised to read as follows:

§ 1035.8 Route.

"Route" means a delivery (including a sale from a plant store) of a fluid milk product(s) to a wholesale or retail stop(s) other than to a milk or filled milk plant(s) or to a food processing plant(s) for use other than for fluid consumption.

3. Section 1035.9 is revised to read as follows:

§ 1035.9 Fluid milk plant.

"Fluid milk plant" means a plant or other facilities which are used in the

receipt, preparation, or processing of milk which is approved by a duly constituted health authority for fluid disposition as Grade A milk of filled milk and all or a portion of such milk of filled milk is:

(a) Disposed of during the month in the form of a fluid milk product(s) in the marketing area on a route(s); or

(b) Moved to a plant described in paragraph (a) of this section in the form of a fluid milk product(s).

4. In § 1035.10, paragraphs (a) and (b) are revised to read as follows:

§ 1035.10 Pool plant.

(a) Any fluid milk plant from which the volume of Class I milk, except filled milk, disposed of on a route(s) is equal to not less than 50 percent of the Grade A milk described in § 1035.12(a) received at such plant from dairy farmers and from other plants during the month and more than 15 percent of such receipts are disposed of as Class I milk, except filled milk, on routes in the marketing area: *Provided*, That the 50 percent requirement of this paragraph shall apply only during the months of January, February, October and November to a fluid milk plant which operates routes all of which service only the Campus of Ohio State University, Columbus, Ohio; or

(b) Any fluid milk plant which receives milk from dairy farmers described in § 1035.12(a) and from which fluid milk products, except filled milk, equal to not less than 50 percent of the milk received at such plant from such dairy farmers during the month is moved to a plant(s) described in paragraph (a) of this section: *Provided*, That if such shipments are not less than 50 percent of the receipts of milk from such dairy farmers at such plant during the immediately preceding period of August through November, such plant shall, unless written application for nonpool plant status is received by the market administrator from the operator of such plant on or before March 1 of any year, be designated as a pool plant for the months of March through July of such year.

5. In § 1035.11, the introductory text immediately preceding paragraph (a), and paragraphs (c) and (d) are revised to read as follows:

§ 1035.11 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:

(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 that is neither an other order plant nor a producer-handler

plant, from which milk, skim milk, filled milk, or cream is shipped to a pool plant.

6. Section 1035.15 is revised as follows:

§ 1035.15 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, who distributes any portion of such milk on a route in the marketing area and who receives no fluid milk products from other dairy farmers or nonpool plants and no milk products other than fluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

7. A new § 1035.19 is added to read as follows:

§ 1035.19 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 milkfat, 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).

8. In § 1035.30, paragraph (b) is revised to read as follows:

§ 1035.30 Reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported by each handler pursuant to this section, including separate statements of his disposition of fluid milk products (except filled milk) and filled milk on routes in the marketing area.

9. In § 1035.31, paragraph (b) is revised to read as follows:

§ 1035.31 Other reports.

(b) Each handler specified in § 1035.14 (c) who operates a partially regulated distributing plant shall report as required pursuant to § 1035.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include separate statements showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and the amount of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area: *Provided*, That a handler making payments pursuant to § 1035.63(b) need not report payments pursuant to § 1035.30(d) to dairy farmers.

10. Section 1035.32 is revised to read as follows:

§ 1035.32 Records and facilities.

Each handler and producer-handler shall maintain and make available to the market administrator, his agent, or such other person as the Secretary may designate, during the usual hours of business, such accounts and records of his operations and such facilities, as, in the opinion of the market administrator, are necessary to verify reports or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat handled, including all milk products and filled milk received and disposed of in the same form; (b) the weights and tests for butterfat and for other contents, of all milk and milk products (including filled milk) handled; and (c) payments to producers and cooperative associations.

11. In § 1035.43(e), subparagraph (5) is revised to read as follows:

§ 1035.43 Transfers.

(e) * * * * *
(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

12. In § 1035.46(a), subparagraphs (2), (3), (4), (7), and (8) are revised to read as follows:

§ 1035.46 Allocation of skim milk and butterfat classified.

(a) * * * * *

(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 two 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; 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 subparagraph (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 other pool handlers, 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 another 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;

(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 which were not subtracted pursuant to subparagraphs (3) (iv) and (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 another order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3) (v) and (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 § 1035.22(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;

12a. In § 1035.60, paragraph (d) is revised to read as follows:

§ 1035.60 Computation of the net pool obligation of each pool handler.

(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 § 1035.46(a) (3) and the corresponding step of § 1035.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1035.46(a) (3) (iv) and (v) and the corresponding step of § 1035.46(b) the Class I price

shall be adjusted to the location of the transferor plant; and

13. In § 1035.63, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1035.63 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:
 (1) (i) The obligation that would have been computed pursuant to § 1035.60 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 § 1035.60(e) and a credit in the amount specified in § 1035.71(c) 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.

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class II price, whichever is higher, 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.

14. Section 1035.64 is revised to read as follows:

§ 1035.64 Plants subject to other Federal orders.

(a) The provisions of this part, except paragraph (b) of this section, shall not

apply to a milk plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 1035.10 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Columbus, Ohio, marketing area to retail or wholesale outlets and other pool plants than in the marketing area regulated pursuant to such other order during the current month and each of the three months, immediately preceding: *Provided*, That the operator of a plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(b) 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 marketwide 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.

15. Section 1035.70 is revised to read as follows:

§ 1035.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1035.64 and 1035.71 shall be deposited in this fund, and all payments made pursuant to § 1035.72 (a) and (b) shall be made out of this fund; and

(b) All amounts subtracted pursuant to § 1035.61(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1035.72 in accordance with the requirements of § 1035.61(i).

16. In § 1035.92, paragraphs (a) and (d) are revised to read as follows:

§ 1035.92 Termination of obligations.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.7 is revised to read as follows:

§ 1036.7 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, concentrated milk, cream, and mixtures of such cream or milk and skim milk.

2. Sections 1036.9 and 1036.10 are revised to read as follows:

§ 1036.9 Distributing plant.

"Distributing plant" means a plant in which:

(a) Milk approved by a duly constituted health authority for fluid consumption is processed or packaged and which has route disposition in the marketing area during the month; or

(b) Filled milk is processed or packaged and which has route disposition in the marketing area during the month.

§ 1036.10 Supply plant.

"Supply plant" means a plant from which:

(a) A fluid milk product acceptable to a duly constituted health authority is transferred or diverted during the month to a pool plant; or

(b) Filled milk is transferred during the month to a pool plant.

3. Section 1036.11 is revised to read as follows:

§ 1036.11 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section that is not an other order plant or a producer-handler plant.

(a) A distributing plant that has route disposition, except filled milk, during the month of not less than 50 percent (40 percent for each month of April through August) of the total receipts of fluid milk products, except filled milk, that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1036.16 and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of such receipts.

(b) A supply plant from which during the months of September, October, and November not less than 50 percent, and in all other months not less than 40 percent, of the total quantity of milk approved by a duly constituted health authority for fluid consumption physically received (including that diverted from other plants) at such plant from dairy farmers and handlers pursuant to § 1036.13(d) or diverted as producer milk pursuant to § 1036.16 to pool plants and nonpool plants is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant.

4. In § 1036.12, the introductory text and paragraph (a) are revised to read as follows:

§ 1036.12 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) Except as provided in paragraphs (c) (2) and (d) (2) of this section, "other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant

to the Act, unless such plant is qualified as a pool plant pursuant to § 1036.11 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of from such plant in the marketing area regulated pursuant to such other order.

5. Section 1036.14 is revised to read as follows:

§ 1036.14 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

6. A new § 1036.22 is added to read as follows:

§ 1036.22 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 milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk products, and contains less than 6 percent nonmilk fat (or oil).

7. In § 1036.30, the introductory text and paragraph (b) are revised to read as follows:

§ 1036.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler (except a handler pursuant to § 1036.13 (e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received or at which filled milk is processed or packaged, reporting in detail and on forms prescribed by the market administrator:

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat in route disposition in the marketing area, showing separately the in-area route disposition of filled milk; and

(2) For a handler pursuant to § 1036.13(b), the amount of reconstituted skim milk in route disposition in the marketing area; and

8. In § 1036.33, paragraphs (b) and (c) are revised to read as follows:

§ 1036.33 Records and facilities.

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

8a. In § 1036.41(b), subparagraphs (1) and (2) are revised to read as follows:

§ 1036.41 Classes of utilization.

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, a product which contains six percent or more nonmilk fat (or oil), milk shake mix containing not less than 12 percent total milk solids, and sterilized products in hermetically sealed glass or metal containers;

(2) Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk or filled milk plant) in the manufacture of packaged food products (other than milk products and filled milk) for consumption off the premises;

9. In § 1036.43(d), subparagraph (5) is revised to read as follows:

§ 1036.43 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1036.45(a), subparagraphs (2), (3), (4) and (7), and the introductory text of subparagraph (8) are revised to read as follows:

§ 1036.45 Allocation of skim milk and butterfat classified.

(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:

(1) From Class II milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class II pursuant to § 1036.41(b)(6) plus 2 percent of the remainder 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 appropriate health approval 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; 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 subparagraph (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 other pool handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(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;

(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 (3)(iv) and (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 that are in excess of similar transfers to the same plant and that were not subtracted pur-

suant to subparagraphs (3)(v) and (4)(ii) of this paragraph:

10a. In § 1036.60, paragraph (d) is revised to read as follows:

§ 1036.60 Computation of the net pool obligation of each handler.

(d) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a)(3) and the corresponding step of § 1036.45(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1036.45(a)(3)(iv) and (v) and the corresponding step of § 1036.45(b) the Class I price shall be adjusted to the location of the transferor plant; and

11. In § 1036.62, paragraphs (a)(1) and (b) are revised to read as follows:

§ 1036.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) The obligation that would have been computed pursuant to § 1036.60 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 uniform 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 § 1036.60(e) and a credit in the amount specified in § 1036.74(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. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1036.30 a similar report for each 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 § 1036.11(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 nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat in the plant's route disposition in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition 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 uniform price applicable at such location or at the Class II price, whichever is higher, 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.

12. A new § 1036.64 is added and reads as follows:

§ 1036.64 Obligation of handler operating an other order plant.

Each handler who operates an other order plant that is regulated under an order providing 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:

(a) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition 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 as route disposition in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to the route disposition in each marketing area; and

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to route disposition in this marketing 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.

13. Section 1036.73 is revised to read as follows:

§ 1036.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments pursuant to §§ 1036.62, 1036.64, and 1036.74 and out of which he shall make all payments pursuant to § 1036.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

14. In § 1036.79, paragraphs (a) and (d) are revised to read as follows:

§ 1036.79 Termination of obligations.

(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 handlers' 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.

(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 skim milk and butterfat involved in the claim were received if an underpayment claim was received, or 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.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. Section 1040.9 is revised to read as follows:

§ 1040.9 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a dairy farm and a milk plant from which fluid milk products are distributed in the marketing area and who received fluid milk products only from his own production or by transfer from a pool plant and no milk products other than fluid milk products for reconstitution into fluid milk products; and

(b) Provides proof that (1) the care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts by transfer from a pool plant); and (2) the operation of the processing business is

the personal enterprise and risk of such person.

2. Section 1040.12 is revised to read as follows:

§ 1040.12 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored milk, buttermilk, yogurt, filled milk, cream (exclusive of frozen and sour cream), and any mixture in fluid form of cream and milk or skim milk (except storage cream, aerated cream products, ice cream mix, evaporated or condensed milk and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

3. Section 1040.13 is revised to read as follows:

§ 1040.13 Route.

"Route" means a delivery (including a delivery by a vendor or sale from a plant or plant store) of any fluid milk product (except bulk cream) classified as Class I to a wholesale or retail outlet other than a delivery to any milk or filled milk plant.

4. In § 1040.16, paragraph (a) is revised to read as follows:

§ 1040.16 Pool plant.

(a) A distributing plant, other than a producer-handler plant or plants exempt pursuant to § 1040.90 and § 1040.91, from which total distribution of fluid milk products, except filled milk, on routes during the month or during either of the 2 months immediately preceding is not less than 50 percent of receipts of producer milk and fluid milk products, except filled milk, from supply plants and cooperative associations pursuant to § 1040.7(c).

5. In § 1040.17, paragraphs (a) and (c) are revised to read as follows:

§ 1040.17 Call percentage.

(a) Estimate the aggregate pounds of Class I milk utilization, except filled milk, for the month including an additional 15 percent thereof as an operating margin, at pool distributing plants;

(c) Divide any plus balance of estimated Class I milk, except filled milk remaining by the estimated receipts of producer milk for the month at the supply plants.

6. In § 1040.18, the introductory text immediately preceding paragraph (a) and paragraph (d) are revised to read as follows:

§ 1040.18 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:

(d) "Unregulated supply plant" means a nonpool plant that is neither an other

order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a pool plant.

7. A new § 1040.21 is added to read as follows:

§ 1040.21 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 milkfat, 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).

8. In § 1040.30, a new paragraph (d) is added and paragraph (b) is revised to read as follows:

§ 1040.30 Monthly reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section. Such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and a statement showing separately in-area route disposition of filled milk; and

(d) The quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area by each handler specified in § 1040.7(b) who operates a partially regulated distributing plant.

9. Section 1040.32 is revised to read as follows:

§ 1040.32 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 all of his operations and such facilities as are necessary to verify reports, or to ascertain the correct information with respect to (a) the receipts and utilization or disposition of all skim milk and butterfat received, including all milk products and filled milk received and disposed of in the same form; (b) the weights and tests for butterfat, skim milk, and other contents of all milk, and milk products (including filled milk) handled; and (c) payments to producers and cooperative associations.

10. In § 1040.43(e), subparagraph (5) is revised to read as follows:

§ 1040.43 Transfers.

(e) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products, shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class III; and

11. In § 1040.46(a), subparagraphs (2), (4), (5), (8), and (9) are revised to read as follows:

§ 1040.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 (4)(v) of this paragraph, as follows:

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

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

(4) Subtract in the order specified below, from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than a fluid milk product, provided that any such milk received as cottage cheese or cottage cheese curd shall be subtracted directly from the handler's cottage cheese utilization (Class II);

(ii) Receipts of fluid milk products (except filled milk) that are not approved by a duly constituted health authority for fluid consumption in the marketing area 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; 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;

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

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (4)(iv) of this paragraph;

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

(b) In series beginning with Class III, which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk the sum of the pounds of skim milk in producer milk, receipts from a cooperative association pursuant to § 1040.7(c), receipts from pool plants of other handlers, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4)(v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4)(v) of this paragraph, in

excess of similar transfers to such plant, if Class III utilization was requested by the operator of such plant and the handler;

(8) 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 which were not subtracted pursuant to subparagraphs (4)(iv) and (5)(i) of this paragraph;

(9) 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, that were not subtracted pursuant to subparagraphs (4)(v) and (5)(ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated combined Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1040.27(i) or the percentage that combined Class II and Class III 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;

11a. In § 1040.60, paragraph (d) is revised to read as follows:

§ 1040.60 Computation of the net pool obligation of each pool handler.

(d) Add an amount equal to the difference between the Class I and Class III price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1040.46(a)(4) and the corresponding step of § 1040.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1040.46(a)(4)(iv) and (v) and the corresponding step of § 1040.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

12. In § 1040.66, paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1040.66 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1040.60 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 III milk (or Class II) if allocated to such class at the pool plant or other order plant and be valued at the uniform 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1040.60(e) and a credit in the amount specified in § 1040.84(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 III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(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 (except that deducted under a similar provision of another order issued pursuant to the act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(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 uniform price pursuant to § 1040.62 at the same location or at the Class III price, whichever is higher, 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 III price.

13. Section 1040.83 is revised to read as follows:

§ 1040.83 Producer-equalization fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-equalization fund" into which he shall deposit all payments received pursuant to §§ 1040.66, 1040.84, and 1040.91, and out of which he shall make all payments pursuant to § 1040.85.

14. Section 1040.91 is revised to read as follows:

§ 1040.91 Handlers subject to other Federal orders.

(a) A handler who operates a plant at which during the month milk is fully subject to the classification, pricing, and payment provisions of another marketing agreement or order issued pursuant to the Act and the disposition of fluid milk products, except filled milk, in the other Federal marketing area exceeds that in the Southern Michigan marketing area shall be exempt for such month from all provisions of this part except §§ 1040.31, 1040.32, and 1040.33 and paragraph (b) of this section.

(b) Each handler operating a pool distributing plant described in § 1040.16(a) that is exempt pursuant to 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 III price.

15. In § 1040.100, paragraphs (a) and (d) are revised to read as follows:

§ 1040.100 Termination of obligations.

(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 month during which the market administrator receives the handler's report of utilization of 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 a cooperative association, the name of such producers or association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(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 month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff 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.

PART 1041—MILK IN THE NORTH-WESTERN OHIO MARKETING AREA

1. Section 1041.9 is revised to read as follows:

§ 1041.9 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives only milk of his own production or fluid milk products which are priced as Class I milk under an order issued pursuant to the Act and no milk products other than fluid milk products for reconstitution into fluid milk products; and

(c) Provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and packaging facilities for fluid milk products are conducted as his personal enterprise and at his own risk.

2. In § 1041.10, the introductory text immediately preceding paragraph (a) is revised to read as follows:

§ 1041.10 Plant.

"Plant" means the land and buildings, together with their surroundings, facilities and equipment constituting a single operating unit or establishment which is operated exclusively by one or more persons engaged in the business of handling fluid milk products for resale or manufacture into milk products, and which is used for the handling or processing of milk or milk products (including filled milk). The term "plant" does not include:

3. Section 1041.12 is revised to read as follows:

§ 1041.12 Supply plant.

"Supply plant" means a plant from which milk, skim milk, filled milk or cream is shipped during the month to a plant qualified as a pool plant under § 1041.13(a).

4. In § 1041.13, paragraphs (a) and (b) are revised to read as follows:

§ 1041.13 Pool plant.

(a) A distributing plant with route disposition, except filled milk, during the month, or in 5 of the immediately preceding 6 months, of not less than 50 percent of the total Grade A milk received at such plant from dairy farmers (excluding any such milk received by diversion from a plant at which such milk is fully subject to pricing and pooling under the terms and provisions of another order issued pursuant to the Act), pool supply plants and through reload points, and with at least 15 percent of such route disposition made within the marketing area during the month.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is represented in shipments of fluid milk products, except filled milk, to a plant described under para-

graph (a) of this section. If a plant meets the above requirement in this paragraph in each of the months of September through December, such plant shall qualify under this paragraph until the end of the following August, unless the plant operator requests nonpool status for such plant; in the latter event nonpool plant status shall be effective the first month following the filing of a request in writing to the market administrator and shall continue until the plant qualifies under this section on the basis of actual shipments.

5. Section 1041.14 is revised to read as follows:

§ 1041.14 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 there is route disposition in the marketing area during the month of fluid milk products in consumer-type packages or dispenser units.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products are shipped to a pool plant.

6. Section 1041.16 is revised to read as follows:

§ 1041.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored or cultured milk or skim milk, buttermilk, concentrated milk, egg-nog, sweet or sour cream, filled milk, and any mixture of fluid cream and milk or skim milk. Cultured sour mixtures disposed of as other than sour cream and yogurt shall be considered as fluid milk products only if disposed of under a Grade A label. The term includes these products in fluid, frozen (except cream), fortified or reconstituted form, but does not include sterilized products in hermetically sealed containers, and such products as milkshake mix, ice cream mix, and other frozen dessert mixes, aerated cream products, frozen cream, cultured sour mixtures (disposed of as other than sour cream and not disposed of under a Grade A label), pancake mixes, evaporated or sweetened condensed milk, or skim milk in either plain or sweetened form, and a product which contains 6 percent or more nonmilk fat (or oil).

7. A new § 1041.21 is added to read as follows:

§ 1041.21 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 milkfat, 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).

8. In § 1041.30, paragraph (f) is revised to read as follows:

§ 1041.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including separate statements of the route disposition of fluid milk products (except filled milk) and filled milk in the marketing area; and

9. In § 1041.31, paragraph (b) is revised to read as follows:

§ 1041.31 Other reports.

(b) On or before the 7th day after the end of each month, each handler who operates a partially regulated distributing plant shall report the information required of handlers operating pool plants pursuant to § 1041.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the amount of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

10. Section 1041.33 is revised to read as follows:

§ 1041.33 Records and facilities.

(a) Each handler shall maintain detailed and summary records showing all receipts, movements and disposition of milk and milk products (including filled milk) during each month, and the quantities of milk and milk products (including filled milk) in the inventories at the beginning and end of each month.

(b) For the purpose of ascertaining the correctness of any report made to the market administrator as required by this part or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(1) Verify the information contained in the reports submitted in accordance with this part;

(2) Weigh, sample and test milk and milk products (including filled milk); and

(3) Make such examination of records, operations, equipment and facilities as the market administrator deems necessary for the purpose specified in this paragraph.

11. In § 1041.44(d), subparagraph (5) is revised to read as follows:

§ 1041.44 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

12. In § 1041.46(a), subparagraphs (2), (3), (4), (7), and (8) are revised to read as follows:

§ 1041.46 Allocation of skim milk and butterfat classified.

(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 two 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; 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:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum

of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(c)(i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in 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 plants, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7)(i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3)(iv) and (4)(i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

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

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata

to whichever of the following represents the higher proportion of Class II milk.

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1041.27(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(i) Should proration pursuant to subdivision (1) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(ii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (1) or (i) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

13. Section 1041.61 is revised to read as follows:

§ 1041.61 Plants subject to other Federal orders.

(a) The provisions of this part except §§ 1041.30, 1041.31, 1041.32, and 1041.33 and paragraph (b) of this section, shall not apply to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant pursuant to § 1041.13 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Northwestern Ohio marketing area to retail or wholesale outlets and to other pool plants than in the marketing area regulated pursuant to such other order during the current month and each of the three months immediately preceding, unless the Secretary determines that the applicable order should more appropriately be determined on some other basis. The operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may request and permit his verification of such reports; and

(b) Each handler operating a distributing 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 as route disposition 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 as route disposition in marketing areas regulated by two or more marketwide 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.

14. In § 1041.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1041.62 Obligations of a handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1041.70 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 uniform 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 § 1041.70(e) and a credit in the amount specified in § 1041.82(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 in subdivision (ii) of this subparagraph.

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted

under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition 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 uniform 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.

14a. In § 1041.70, paragraph (d) is revised to read as follows:

§ 1041.70 Computation of the net pool obligation of each pool handler.

(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 § 1041.46(a) (3) and the corresponding step of § 1041.46(b), except for receipts of fluid milk products assigned to Class I pursuant to § 1041.46(a) (3) (iv) and (v) and the corresponding step of § 1041.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

15. In § 1041.91, paragraphs (a) and (d) are revised to read as follows:

§ 1041.91 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part, except as provided in paragraphs (b) and (c) of this section, shall terminate 2 years after the last day of the month during which the market administrator received 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 the money is due and payable. Service of the 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:

(1) The amount of the obligation;

(2) The month 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 a cooperative association, the name of such producer or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(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 month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff 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.

PART 1043—MILK IN THE UPSTATE MICHIGAN MARKETING AREA

1. In § 1043.8, paragraph (a) is revised to read as follows:

§ 1043.8 Pool plant.

(a) A distributing plant other than that of a producer-handler, or one described in § 1043.82 or § 1043.83, from which during the month:

(1) Disposition of fluid milk products, except filled milk, on routes in the marketing area equals or exceeds the smaller of:

(i) Twenty percent of such plant's receipts from qualified dairy farmers, or (ii) 150,000 pounds; and

(2) Total disposition of fluid milk products, except filled milk, on routes during the month equals or exceeds 50 percent of receipts of fluid milk products, except filled milk, from qualified dairy farmers and supply plants.

2. Section 1043.12 is revised to read as follows:

§ 1043.12 Producer-handler.

"Producer-handler" means a person who operates a dairy farm and a distributing plant and who received no fluid milk products except from his own production or by transfer from a pool plant, and receives no milk products other than fluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof that the care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts by transfer from a pool plant) and the operation of the processing business is the personal enterprise and risk of such person.

3. Section 1043.16 is revised to read as follows:

§ 1043.16 Fluid milk product.

"Fluid milk product" means milk, flavored milk, skim milk, buttermilk, filled milk, half-and-half, or other mixtures of cream and milk containing less than 18 percent butterfat.

4. Section 1043.17 is revised to read as follows:

§ 1043.17 Route.

"Route" means a delivery (including delivery by a vendor, or sale from a plant

or plant store) of any fluid milk product, other than a delivery in bulk form to any milk or filled milk processing plant.

5. In § 1043.18, the introductory text immediately preceding paragraph (a) and paragraph (d) are revised to read as follows:

§ 1043.18 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:

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a pool plant.

6. A new § 1043.19 is added to read as follows:

§ 1043.19 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 milkfat, 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).

7. In § 1043.30(c), subparagraph (2) is revised to read as follows:

§ 1043.30 Monthly reports of receipts and utilization.

(c) * * *

(2) The utilization or disposition of such receipts. Each handler shall report separately the respective amounts of skim milk and butterfat disposed of on routes (other than to pool plants) in the marketing area as Class I milk, except filled milk, and as filled milk. The report for each handler pursuant to § 1043.9(b) shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

8. Section 1043.33 is revised to read as follows:

§ 1043.33 Exempt handler reports.

Each handler exempt pursuant to § 1043.82 or § 1043.83 shall report to the market administrator his disposition of fluid milk products on routes in the marketing area and a report showing separately in-area route sales of filled milk at such time and in such manner as the market administrator shall prescribe.

9. Section 1043.34 is revised to read as follows:

§ 1043.34 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 all of his operations and such facilities as are necessary to verify reports or to ascertain the correct information with respect to (a) the

receipts and utilization or disposition of all skim milk and butterfat received, including all milk products or filled milk received and disposed of in the same form, (b) the weights and tests for butterfat, skim milk and other contents of all milk and milk products (including filled milk) handled, (c) inventories of all milk and milk products (including filled milk) on hand at the beginning and end of each month, and (d) payments to producers and cooperative associations.

9a. In § 1043.41(b), subparagraph (2) is revised to read as follows:

§ 1043.41 Classes of utilization.

(b) * * *
(2) Skim milk and butterfat disposed of as fluid cream or in any product which contains 6 percent or more nonmilk fat (or oil);

10. In § 1043.43(d), subparagraph (5) is revised to read as follows:

§ 1043.43 Transfers.

(d) * * *
(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II or Class III; and

11. In § 1043.46(a), subparagraphs (2), (3), (4), (7), and (8) are revised to read as follows:

§ 1043.46 Allocation of skim milk and butterfat classified.

(a) * * *
(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products and cream 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 two 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 III, 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 or cream;

(ii) Receipts of fluid milk products (except filled milk) and cream that are not approved by a duly constituted health authority for fluid consumption, and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products and cream 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; 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 or Class III but not in excess of such quantity:

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

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

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(ii) Receipts of fluid milk products and cream 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 or Class III utilization was requested by the operator of such plant and the handler;

(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 and cream from unregulated supply plants which were not subtracted pursuant to subparagraphs (3) (iv) and (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 and cream 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 subparagraphs (3) (v) and (4) (ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1043.22(j) or the percentage that Class II and Class III 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;

11a. In § 1043.60, paragraph (d) is revised to read as follows:

§ 1043.60 Computation of the net pool obligation of each pool handler.

(d) Add an amount equal to the difference between the Class I and Class II

price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1043.46(a) (3) and the corresponding step of § 1043.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1043.46(a) (3) (iv) and (v) and the corresponding step of § 1043.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

12. Section 1043.71 is revised to read as follows:

§ 1043.71 Producer-equalization fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-equalization fund" into which he shall deposit all payments received pursuant to §§ 1043.72, 1043.83, and 1043.84 (including any adjustments thereto pursuant to § 1043.76) and out of which he shall make all payments pursuant to § 1043.73 (including any adjustments thereto pursuant to § 1043.76).

13. In § 1043.78, paragraphs (a) and (d) are revised to read as follows:

§ 1043.78 Termination of obligations.

(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 two years after the last day of the month during which the market administrator receives the handler's report of utilization of the skim milk and butterfat involved in such obligation, unless, within such two-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 a cooperative association, the name of such producers or association, or, if the obligation is payable to the market administrator, the account for which it is to be paid.

(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 two years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed or two years after the end of the month during which the payment (including deduction or setoff 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.

14. Section 1043.83 is revised to read as follows:

§ 1043.83 Milk subject to other Federal orders.

(a) Milk received at the plant of a handler at which the handling of milk is fully subject during the month to the pricing and payment provisions of another marketing agreement or order issued pursuant to the act and from which the disposition of Class I milk (excluding filled milk) in the other Federal marketing area, either during the month or during the average of the 12 preceding months, exceeds that in the Upstate Michigan marketing area shall be exempted for such month from all the provisions hereof except as specified in paragraphs (b) and (c) of this section, unless the Secretary determines that such plant is more appropriately regulated under this part.

(b) Each handler operating a plant specified in paragraph (a) of this section shall with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler operating a plant specified in § 1043.8(a), 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 marketwide 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 III price.

15. In § 1043.84, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1043.84 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1043.61 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 or Class III milk if allocated to such class at the pool plant

or other order plant and be valued at the uniform 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1043.60(e) and a credit in the amount specified in § 1043.72(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 III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

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

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(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 uniform price pursuant to § 1043.61 at the same location or at the Class II price, whichever is higher 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 III price.

PART 1044—MILK IN MICHIGAN UPPER PENINSULA MARKETING AREA

1. Section 1044.6 is revised as follows:

§ 1044.6 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored milk, flavored milk drinks, buttermilk, filled milk, half and half and cream (sweet or sour).

2. Section 1044.7 is revised as follows:

§ 1044.7 Route.

"Route" means a delivery (including delivery by a vendor or sale from a plant or plant store) of any fluid milk product, other than a delivery to any milk or filled milk processing plant.

3. Section 1044.8 is revised as follows:

§ 1044.8 Fluid milk plant.

"Fluid milk plant" means the premises, buildings and facilities of any milk receiving, processing or packaging plant handling milk eligible for distribution in the marketing area as Grade A milk or conforming to the requirements of

Michigan Act No. 169, Public Acts 1929, as amended:

(a) From which any fluid milk product, except filled milk, is disposed of during the month in the marketing area on routes except as provided in § 1044.81; or

(b) From which any milk or skim milk, except skim milk in filled milk, is delivered to plants described in paragraph (a) of this section on ten or more days in any of the months of July through December or on three or more days in any of the months of January through June.

4. Section 1044.9 is revised as follows:

§ 1044.9 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk receiving, manufacturing or processing plant other than a fluid milk plant. The following categories of nonfluid milk 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 nonfluid milk plant that is neither an other order plant nor a producer-handler plant and 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 nonfluid milk plant that is neither an other order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a fluid milk plant.

5. Section 1044.19 is added as follows:

§ 1044.19 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).

6. In § 1044.30, paragraph (a)(2) is revised as follows:

§ 1044.30 Monthly reports of receipts and utilization.

(a) * * *

(2) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing in-area and outside area route disposition of filled milk; and

7. Section 1044.34 is revised as follows:

§ 1044.34 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 all his opera-

tions and such facilities as are necessary to verify reports or to ascertain the correct information with respect to:

(a) The receipts and utilization or disposition of all skim milk and butterfat received, including all milk products (including filled milk) received and disposed of in the same form;

(b) The weights and tests for butterfat, skim milk and other content of all milk and milk products (including filled milk) handled;

(c) Inventories of all dairy products (including filled milk) on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations.

8. In § 1044.43, paragraph (d)(5) is revised as follows:

§ 1044.43 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. In § 1044.46, subparagraphs (3), (4) and (7)(i) of paragraph (a) are revised as follows:

§ 1044.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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) that are not approved by a duly constituted health authority, 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; and

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk at all fluid milk plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other fluid milk plant handlers and in receipts in bulk from other order plants; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, remaining at this plant is of all such receipts remaining at all fluid milk plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other fluid milk plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other fluid milk plant of such handler at which such adjustment can be made;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7) * * *

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv), (4) (i) or (ii) of this paragraph; and

10. In § 1044.75, paragraphs (a) and (d) are revised as follows:

§ 1044.75 Termination of obligations.

(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 month during which the market administrator receives the handler's report of utilization of 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 a cooperative association, the name of such producer(s) or association or, if the obligation is payable to the market administrator, the account for which it is to be paid.

(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 two years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or two years after the end of the 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 8e(15) (A) of the Act, a petition claiming such money.

11. Section 1044.82 is revised as follows:

§ 1044.82 Handlers subject to other Federal orders.

The provisions of this part shall not apply to a handler with respect to the operation of a fluid milk plant during any month in which the milk at such plant would be subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the Act and the disposition of fluid milk products, except filled milk, in the other Federal marketing area exceeds that in the Michigan Upper Peninsula marketing area: *Provided*, That the operator of a fluid milk plant which is exempted from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. Section 1046.9 is revised to read as follows:

§ 1046.9 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, distributes any portion of such milk in the marketing area on a route and receives no fluid milk products from other dairy farmers or nonpool plants and no milk products other than fluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the care and management of all of the dairy animals and other resources necessary to produce the entire amount of fluid milk han-

dled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person, and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

3. In § 1046.12, paragraph (a) is revised to read as follows:

§ 1046.12 Pool plant.

(a) A city plant, other than a plant operated by a producer-handler, which meets the following requirements:

(1) For each of the months of May through October not less than 30 percent and for each of the months of November through April not less than 50 percent of the fluid milk products, except filled milk, received during the 2 months immediately preceding from persons described in § 1046.7(a), from a cooperative association in its capacity as a handler pursuant to § 1046.8(c), from country plants and from pool plants in containers not larger than a gallon are disposed of as Class I milk, except filled milk, from such plant during such 2-month period to all outlets except such disposition to pool plants in containers larger than a gallon: *Provided*, That, if such utilization percentage for the 2 preceding months cannot be ascertained by the market administrator, the respective percentages shall apply to receipts and sales during the current month; and

(2) An amount of Class I milk, except filled milk, equal to not less than an average of 13,500 pounds per day or not less than 10 percent of the fluid milk products, except filled milk, received during the current month from persons described in § 1046.7(a), from a cooperative association in its capacity as a handler pursuant to § 1046.8(c), and from country plants is distributed on routes in the marketing area;

3. In § 1046.13, the introductory text immediately preceding paragraph (a) and paragraphs (c) and (d) are revised as follows:

§ 1046.13 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:

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order 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 other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

4. Amend § 1046.15 to read as follows:

§ 1046.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, fla-

vored milk, milk drinks (plain or flavored), reconstituted milk or skim milk, fortified milk or skim milk (including "diet" foods), cream (sweet or sour), half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mix, pancake mix, evaporated milk, condensed milk, aerated cream products, eggnog, and cultured sour mixtures not labeled as Grade A) which are neither sterilized nor packaged in hermetically sealed containers. This definition shall not include a product which contains 6 percent or more non-milk fat (or oil).

5. Section 1046.17 is revised to read as follows:

§ 1046.17 Route.

"Route" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor) of a fluid milk product(s) to a wholesale or retail outlet(s) other than to a milk or filled milk plant(s). A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets without intermediate movement to another milk or filled milk plant.

6. A new § 1046.19a is added to read as follows:

§ 1046.19a 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 milkfat, 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).

7. In § 1046.30, paragraphs (a) (5) and (b) are revised to read as follows:

§ 1046.30 Reports of receipts and utilization.

(a) * * *

(5) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including separate statements of the disposition of fluid milk products, except filled milk, and filled milk on routes in the marketing area.

(b) Each handler specified in § 1046.8 (d) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

8. Section 1046.33 is revised to read as follows:

§ 1046.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual

hours of business such accounts, records, and reports of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of producer milk and other source milk;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products (including filled milk) handled;

(c) Payments to producers, including supporting records of all deductions and written authorization from each producer of the rate per hundredweight or other method for computing hauling charges on such producer milk; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and other milk products (including filled milk) on hand at the beginning and end of each month.

9. In § 1046.44, paragraphs (d), (e), and (f) (5) are revised to read as follows:

§ 1046.44 Transfers.

(d) As Class I milk, if transferred in bulk (in the form of milk, skim milk, filled milk or cream) or diverted to a nonpool plant that is neither an other order plant nor a producer-handler plant, located 250 airline miles or more as determined by the market administrator, from the nearer of the City Halls in either Louisville, Ky., or Evansville, Ind.

(e) As Class I milk, if transferred in bulk (in the form of milk, skim milk, filled milk or cream) or diverted to a nonpool plant that is neither an other order plant nor a producer-handler plant located less than 250 airline miles as determined by the market administrator, from the nearer of the City Halls in either Louisville, Ky., or Evansville, Ind., 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:

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1046.46(a), subparagraphs (2), (3), (4), (7), and (8) are revised to read as follows:

§ 1046.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two 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; 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:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from pool plants of other handlers, from a cooperative association as a handler pursuant to § 1046.8(c), and in bulk receipts from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted

and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in 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 but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7)(i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3)(iv) and (4)(i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

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

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1046.22(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

11. Section 1046.61 revised to read as follows:

§ 1046.61 Plants subject to other Federal orders.

(a) Unless determined otherwise by the Secretary, the provisions, except paragraph (b) of this section, of this part shall not apply to a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 1046.12 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets than in the marketing area regulated pursuant to such other order during the current month: *Provided*, That the operator of a plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(b) Each handler operating a plant specified in § 1046.12(a), 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.

12. In § 1046.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1046.62 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:
 (1)(i) The obligation that would have been computed pursuant to § 1046.70 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 § 1046.70(e) and a credit in the amount specified in § 1046.84 (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.

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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.

12a. In § 1046.70, paragraph (d) is revised to read as follows:

§ 1046.70 Computation of the net pool obligation of each pool handler.

(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 § 1046.46(a)(3) and the corresponding step of § 1046.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1046.46(a)(3)(iv) and (v) and the corresponding step of § 1046.46(b) the Class I price shall be adjusted to the location of the transferor plant;

13. Section 1046.83 is revised to read as follows:

§ 1046.83 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 §§ 1046.61, 1046.62, 1046.84, and 1046.88 and out of which he shall make all payments pursuant to §§ 1046.85 and 1046.86: *Provided*, That payments due any handler shall be offset by payments due from such handler.

14. In § 1046.89, paragraphs (a) and (d) are revised to read as follows:

§ 1046.89 Termination of obligations.

(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 two years after the last day of the calendar month during which the market administrator receives the handler's utilization report of the skim milk and butterfat involved in such obligation, unless within such two-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 a cooperative association, the name of such producer(s) or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deductions of 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.

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.9 is revised to read as follows:

§ 1049.9 Producer-handler.

"Producer-handler" means a person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool plants, and no milk products other than fluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and distributing business are at the personal enterprise and risk of such person.

2. In § 1049.12, paragraph (a) is revised to read as follows:

§ 1049.12 Pool plant.

(a) A distributing plant with:

(1) Total route sales, exclusive of packaged fluid milk products received from other plants and filled milk, in an amount not less than 50 percent of Grade A milk received at such plant during the month from dairy farmers (excluding receipts of producer milk by diversion pursuant to § 1049.14) and supply plants, except that a plant meeting such percentage requirement for the preceding month may remain qualified under this subparagraph in the current month; and

(2) Route sales within the marketing area during the month of at least 10 percent of such receipts, such route sales to be exclusive of packaged fluid milk products received from other plants and filled milk: *Provided*, That any plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June, July, and August, immediately following if fluid milk products, except filled milk, are disposed of from the plant in the marketing area on routes during such month.

3. In § 1049.13, the introductory text immediately preceding paragraph (a) is revised to read as follows:

§ 1049.13 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:

4. Section 1049.15 is revised to read as follows:

§ 1049.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, filled milk, buttermilk, milk drinks (plain or flavored), "fortified" products, "dietary" milk products, concentrated milk or skim milk, reconstituted milk, skim milk, or milk drinks (plain or flavored), and cream or any mixture in fluid form of cream, milk or skim milk (except eggnog, yogurt, milk shake mix, frozen dessert mix, sour cream, aerated cream products, evaporated and plain or sweetened condensed milk or skim milk, and sterilized products packaged in hermetically sealed metal or glass containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. Section 1049.17 is revised to read as follows:

§ 1049.17 Route.

"Route" means a delivery (including that custom-packaged for another person, disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I pursuant to § 1049.41(a)(1) other than a delivery in bulk form to any milk or filled milk processing plant.

6. A new § 1049.19 is added to read as follows:

§ 1049.19 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 milkfat, 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).

7. In § 1049.30, paragraph (b) is revised to read as follows:

§ 1049.30 Reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including separate statements of the disposition of Class I milk, except filled milk, and filled milk on routes inside the marketing area; and

8. Section 1049.31 is revised to read as follows:

§ 1049.31 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 specified in § 1049.8 (c) who operates a partially regulated distributing plant shall report as required of handlers operating pool plants pursuant to § 1049.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

9. Section 1049.33 is revised to read as follows:

§ 1049.33 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, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

(d) Payments to producers or dairy farmers, as the case may be, and cooperative associations, including the amount and nature of any deductions and the disbursement of moneys so deducted.

10. In § 1049.44(d), subparagraph (5) is revised to read as follows:

§ 1049.44 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

11. In § 1049.46(a) paragraphs (2), (3), (4), (7), and (8) are revised to read as follows:

§ 1049.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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; 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:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) (i) Multiple any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk if Class II utilization was requested by the operator of such plant and the handler;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk, in receipts of fluid milk prod-

ucts from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv) and (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

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

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk;

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1049.27(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (1) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

12. Section 1049.61 is revised to read as follows:

§ 1049.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as the operator of a plant specified in paragraph (a), (b), or (c) of this section the provisions of this part shall not apply, except as specified in paragraphs (d) and (e) of this section:

(a) A distributing plant from which the Secretary determines a greater proportion of fluid milk products (except filled milk) is disposed of on routes in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided*, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition (except filled milk) on routes is made in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated by such other order;

(b) A distributing plant which meets the requirements set forth in § 1049.12 (a) which also meets the requirements of another order on the basis of its distribution in such other marketing area and from which the Secretary determines a greater quantity of milk (except filled milk) is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is nevertheless fully regulated under such other order;

(c) A supply plant which during the month is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1049.12(b) and a greater volume of fluid milk products (except filled milk) is moved to pool distributing plants qualified on the basis of route sales in this marketing area;

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section, shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator; and

(e) 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-wide 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.

13. In § 1049.62, paragraphs (a) and (b) (1) (i) are revised to read as follows:

§ 1049.62 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:
(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class II price, whichever is greater, 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;

(b) Except as a handler may elect the option pursuant to paragraph (a) of this section, an amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1049.70 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 § 1049.70(e) and a credit in the amount specified in § 1049.82(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.

13a. In § 1049.70, paragraph (d) is revised to read as follows:

§ 1049.70 Computation of the net pool obligation of each pool handler.

(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 § 1049.46(a) (3) and the corresponding step of § 1049.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1049.46(a) (3) (iv) and (v) and the corresponding step of § 1049.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

14. Section 1049.81 is revised to read as follows:

§ 1049.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1049.61, 1049.62, 1049.82, 1049.84, and 1049.88 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1049.83, 1049.84, and 1049.88, except that any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1049.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1049.80 in accordance with the requirements of § 1049.71(i).

15. In § 1049.87, paragraphs (a) and (d) are revised to read as follows:

§ 1049.87 Termination of obligations.

(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 two 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:

- (1) The amount of the obligation;
- (2) The months 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

or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. In § 1050.12 paragraphs (a) and (b) are revised to read as follows:

§ 1050.12 Pool plant.

(a) A distributing plant, other than that of a producer-handler or one described in § 1050.61, from which during the month:

(1) Disposition of fluid milk products, except filled milk, in the marketing area on routes is equal to 10 percent or more of its Grade A receipts from dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1050.9(d), or from which an average of not less than 7,000 pounds per day of fluid milk products, except filled milk, is distributed on routes in the marketing area; and

(2) Total disposition of fluid milk products, except filled milk, on routes is equal to 50 percent or more of its Grade A receipts from dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1050.9(d) during the months of August through February and 40 percent during all other months;

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from dairy farmers and from cooperative associations in their capacity as handlers pursuant to § 1050.9(d) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 50 percent Class I use (not including filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months;

2. Section 1050.13 is revised to read as follows:

§ 1050.13 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 that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

3. Section 1050.16 is revised to read as follows:

§ 1050.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, plain or flavored milk and milk drinks (unmodified or fortified), including "dietary milk products" and reconstituted milk or skim milk; filled milk; concentrated milk not in hermetically sealed containers, cream (sweet or sour), and mixtures of cream and milk or skim milk, but not including the following: Aerated cream products, frozen storage cream, sour cream and sour cream mixtures not labeled Grade A, eggnog, yogurt, frozen dessert mixes, evaporated or condensed milk, and sterilized fluid milk products in hermetically sealed containers. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1050.19a is added to read as follows:

§ 1050.19a 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 milkfat, 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).

5. In § 1050.30 subparagraphs (3) and (5) of paragraph (a) and paragraph (c) are revised to read as follows:

§ 1050.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization of all skim milk and butterfat required to be reported by this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(5) Such other information with respect to the receipts and utilization of

milk and milk products (including filled milk) as the market administrator may require;

(c) Each handler specified in § 1050.9 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer 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; and

6. In § 1050.43, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1050.43 Transfers and diversions.

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II;

7. In § 1050.45, subparagraphs (2), (3), (4), (5), (6), (7), (8), and the introductory text of subparagraph (9) preceding subdivision (i) of paragraph (a) are revised to read as follows:

§ 1050.45 Allocation of skim milk and butterfat classified.

(a) * * *

(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 (4) (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 from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) 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; 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;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II, if Class II utilization was requested by the transferee handler and the operator of the transferor plant requests such utilization;

(6) 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 bulk fluid milk products on hand at the beginning of the month;

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

(8) 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 (4) (iv) or (5) (i) and (ii) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (4) (v) or (5) (iii) of this para-

graph pursuant to the following procedure:

8. Section 1050.61 is revised to read as follows:

§ 1050.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as operator of a plant specified in paragraphs (a), (b), and (c) of this section the provisions of this part shall not apply except as specified in paragraphs (d) and (e):

(a) A distributing plant qualified pursuant to § 1050.12(a) which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as Class I route disposition in the marketing area regulated by the other order than as Class I route disposition in the Central Illinois marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such Class I route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this paragraph;

(b) A distributing plant qualified pursuant to § 1050.12(a) which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Central Illinois marketing area as Class I route disposition than as Class I route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation even though such plant has greater Class I route disposition in the marketing area of the Central Illinois order;

(c) Any plant qualified pursuant to § 1050.12(c) for any portion of the period of February through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act;

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1050.30 through 1050.32) and allow verification of such reports by the market administrator; and

(e) Each handler operating a plant specified in paragraph (a) or (b) 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.

9. In § 1050.62 paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1050.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1050.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts of 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 § 1050.70(f) and a credit in the amount specified in § 1050.84 (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

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class II price, whichever is higher 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.

9a. In § 1050.70, paragraph (e) is revised to read as follows:

§ 1050.70 Computation of the net pool obligation of each pool handler.

(e) 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 § 1050.45(a)(4) and the corresponding step of § 1050.45(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1050.45(a)(4)(iv) and (v) and the corresponding steps of § 1050.45(b) the Class I price shall be adjusted to the location of the transferor plant; and

10. Section 1050.83 is revised to read as follows:

§ 1050.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows: (a) All payments made by handlers pursuant to §§ 1050.61, 1050.62, 1050.84, and 1050.86 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1050.85 and 1050.86: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler; and (b) all amounts subtracted pursuant to § 1050.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1050.80 in accordance with the requirements of § 1050.71(d).

11. In § 1050.90 paragraphs (a) and (d) are revised to read as follows:

§ 1050.90 Termination of obligations.

(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 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 com-

plete 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;

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

PART 1060—MILK IN THE MINNESOTA-NORTH DAKOTA MARKETING AREA

1. Section 1060.11 is revised to read as follows:

§ 1060.11 Producer-handler.

Producer-handler means any person who meets all of the following conditions:

- (a) Operates a dairy farm and a distributing plant;
- (b) Receives no milk during the month from other dairy farmers or fluid milk products from sources other than pool plants and not more than 3,000 pounds of milk and fluid milk products (including the milk equivalent of milk products other than fluid milk products) which are reconstituted into fluid milk products during the month from any source;
- (c) Receives no milk products other than fluid milk products from any source for reconstitution into fluid milk products except that received within the limitations set forth in paragraph (b) of this section;
- (d) Such person must provide proof satisfactory to the market administrator that (1) the care and management of all the dairy animals and other resources necessary to produce the milk are the personal enterprise of and at the personal risk of such person, and (2) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

2. Section 1060.18 is revised to read as follows:

§ 1060.18 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored milk, filled milk, concen-

trated milk, buttermilk, milk drinks (plain or flavored), sour cream and sour cream products labeled Grade A, cream or any mixture in fluid form of cream and milk or skim milk. The term includes these products in fluid, frozen, fortified (including "dietary" milk products) or reconstituted form but does not include sterilized products in hermetically sealed containers and such products as yogurt, eggnog, aerated cream in dispensers, ice cream mix, frozen dessert mix and evaporated or condensed milk or skim milk. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

3. A new § 1060.19 is added, to read as follows:

§ 1060.19 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 milkfat, 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).

4. Section 1060.20 is revised to read as follows:

§ 1060.20 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk or filled milk from one tank truck to another shall not be a plant under this definition. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

5. In § 1060.23, paragraphs (a) and (b) are revised to read as follows:

§ 1060.23 Pool plant.

(a) A distributing plant from which during the month there is disposed:

(1) As Class I milk, except filled milk, on routes in the marketing area not less than 15 percent of Grade A milk receipts at such plant; and

(2) As Class I milk, except filled milk, on routes or by transfer to another plant and classified as Class I pursuant to § 1060.44 not less than the applicable percentage of such plant's receipts of Grade A milk:

- (i) March through June, 20 percent;
- (ii) July through February, 25 percent: *Provided*, That all distributing plants operated by a handler may be considered as one plant for the purpose of meeting the applicable percentage requirement of this subparagraph if the handler submits a written request to the market administrator prior to the delivery period for which such consideration is requested; and

(b) A supply plant from which not less than 25 percent of its producer receipts at such plant during the month is shipped as fluid milk products, except

filled milk, to pool plants qualified pursuant to paragraph (a) of this section: *Provided*, That a supply plant which qualified pursuant to this paragraph in each of the immediately preceding months of August through November shall be a pool plant for the months of March through June unless the plant operator requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

6. In § 1060.24, the introductory text preceding paragraph (a), and paragraphs (c) and (d) are revised to read as follows:

§ 1060.24 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:

(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 shipped during the month to a distributing plant, and is neither an other order plant nor a producer-handler plant.

7. In § 1060.35, paragraphs (e) and (h) are revised to read as follows:

§ 1060.35 Reports of receipts and utilization.

(e) A separate statement showing the disposition of fluid milk products on routes in the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(h) Each handler specified in § 1060.10(d) who operates a partially regulated distributing plant shall report as required in this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

7a. In § 1060.38, paragraphs (b) and (c) are revised to read as follows:

§ 1060.38 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk)

in inventory at the beginning and end of each month; and

8. In § 1060.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1060.44 Transfers.

(f)
(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. Section 1060.46 is revised to read as follows:

§ 1060.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1060.45, 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 in Class II the pounds of skim milk classified as Class II pursuant to § 1060.41(b)(5);

(2) Subtract from the 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 (4)(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 from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month;

(4) 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, and from exempt institutions as defined in § 1060.60(b);

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; 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;

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

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (4)(iv) of this paragraph;

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

(b) The pounds of skim milk in receipts which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk (exclusive of transfers between pool plants of the same handler) the sum of the pounds of skim milk in producer milk, receipts of fluid milk products from pool plants of other handlers, and receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (4)(v) of this paragraph; and

(ii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (4)(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 transferee handler but not in excess of the pounds of skim milk remaining in Class II milk;

(6) 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 in bulk on hand at the beginning of the month;

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

(8) 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 which were not subtracted pursuant to subparagraphs (4)(iv) or (5)(i) of this paragraph;

(9) 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 other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (4)(v) or (5)(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 § 1060.32(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 milk, the remaining pounds of such receipts;

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk prod-

ucts from pool plants of other handlers according to the classification assigned pursuant to § 1060.44(a); 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 amount 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.

10. The introductory text of § 1060.61 which precedes paragraph (a) is revised to read as follows:

§ 1060.61 Plants subject to other Federal orders.

The provisions of this order shall not apply with respect to a plant of a handler specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

§ 1060.61 [Amended]

10a. In paragraph (a) of § 1060.61, the phrase "fluid milk products" as it appears in the text preceding the proviso is changed to read "fluid milk products, except filled milk,"; and the phrase "Class I disposition" as it appears in the proviso is changed to read "Class I disposition, except filled milk".

10b. In § 1060.61, paragraphs (b) and (c) are revised and new paragraphs (d) and (e) are added to read as follows:

§ 1060.61 Plants subject to other Federal orders.

(b) A distributing plant which meets the requirements set forth in § 1060.23(a) which also meets the requirements of another marketing order on the basis of its distribution in such other marketing area and from which the Secretary determines a greater quantity of fluid milk products, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is nevertheless fully regulated under such other marketing order;

(c) A supply plant from which the Secretary determines a greater proportion of its Grade A receipts, except filled milk, is shipped during the month to plants which are regulated by another order pursuant to the Act if such shipments qualify it as a pool plant under such other order;

(d) Each handler operating a plant described in paragraph (a), (b) or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1060.35

through 1060.37) and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), (b) or (c) 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.

11. In § 1060.62, subdivision (i) of paragraph (a) (1), and paragraph (b) are revised to read as follows:

§ 1060.62 Obligations of handler operating a partially regulated distributing plant.

(a) (1) The obligation that would have been computed pursuant to § 1060.70 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 uniform 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 § 1060.70(f) and a credit in the amount specified in § 1060.84(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 in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

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

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(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 uniform 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.

11a. In § 1060.70, paragraph (e) is revised as follows:

§ 1060.70 Computation of the net pool obligation of each pool handler.

(e) Add the 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 from other source milk subtracted from Class I pursuant to § 1060.46(a) (4) and the corresponding step of § 1060.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1060.46(a) (4) (iv) and (v) and the corresponding step of § 1060.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

12. In § 1060.83, paragraph (a) is revised to read as follows:

§ 1060.83 Producer-settlement fund.

(a) Payments made by handlers pursuant to §§ 1060.61, 1060.62, 1060.84 and 1060.86.

13. In § 1060.89, paragraphs (a) and (d) are revised to read as follows:

§ 1060.89 Termination of obligations.

(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 months 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 producers or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

PART 1062—MILK IN THE ST. LOUIS-OZARKS MARKETING AREA

1. Section 1062.12 is revised to read as follows:

§ 1062.12 Pool plant.

"Pool plant" means:

(a) Any distributing plant, other than that of a producer-handler or one described in § 1062.61, which:

(1) Has disposition during the month of fluid milk products, except filled milk, on routes and in packaged form to pool distributing plants, which, after subtraction of the quantity of packaged fluid milk products, except filled milk, received from other pool plants, is equal to at least 50 percent of such plant's total receipts of Grade A fluid milk products from dairy farmers (including milk diverted by the plant operator), supply plants and cooperative associations as handlers pursuant to § 1062.8(d), exclusive of packaged fluid milk products, except filled milk, received from other pool plants, and has route disposition in the marketing area in an amount equal to 10 percent or more of such receipts or an average of not less than 7,000 pounds per day, whichever is less; or

(2) Qualified as a pool plant in the immediately preceding month on the basis of the performance standards described in subparagraph (1) of this paragraph;

(b) Any supply plant from which during the month 50 percent or more of the Grade A milk received from dairy farmers and cooperative associations in their capacity as a handler pursuant to § 1062.8(d) is shipped to a plant(s) described in paragraph (a) of this section. Any supply plant which has shipped to

a plant(s) described in paragraph (a) of this section the required percentages of its receipts during each of the months of September through February shall be designated a pool plant in each of the following months of March through August unless the plant operator requests the market administrator in writing that such plant not be a pool plant. Such nonpool plant status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments;

(c) Any plant which is operated by or under contract to a cooperative association, or a federation of cooperatives, if:

(1) The operator of such plant(s) requests pool status, and 50 percent or more of all the Grade A milk from farms of the member producers of such cooperative or federation including milk delivered by the cooperative as a handler pursuant to § 1062.8(d) has been shipped to and physically received at pool distributing plants during the current month or the previous 12-month period ending with the current month, either directly from producer member farms or by transfer from such association plant(s); and

(2) Such a plant does not qualify during the month as a "pool plant" under another market pool order issued pursuant to the Act by making shipments of milk to plants which qualify as "pool plants" under such other order; or

(3) Such plant meets the requirements of subparagraph (2) of this paragraph and met the requirements of subparagraph (1) of this paragraph in the preceding month.

2. Section 1062.13 is revised to read as follows:

§ 1062.13 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 which has route disposition of fluid milk products in consumer-type packages or dispenser units in the marketing area during the month; and

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

3. Section 1062.16 is revised to read as follows:

§ 1062.16 Fluid milk products.

"Fluid milk product" means milk, skim milk, concentrated milk, buttermilk, flavored milk, milk drinks (plain or flavored), fortified milk or skim milk

(including "dietary milk products"), filled milk, reconstituted milk or skim milk, sour cream and sour cream mixtures labeled Grade A, cream or any mixture in fluid form of milk or skim milk and cream (except frozen or aerated cream, ice cream or frozen dessert mixes, eggnog, sour cream or sour cream mixtures not labeled Grade A, dips not labeled Grade A, and sterilized milk and milk products hermetically sealed in metal or glass containers and so processed either before or after sealing so as to prevent microbial spoilage). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. Section 1062.17 is revised to read as follows:

§ 1062.17 Route disposition.

"Route disposition" or "disposed of on routes" means any delivery of a fluid milk product to a retail or wholesale outlet (including any delivery through a vendor, or a sale in packaged form from a plant or plant store) except a delivery to another plant or to commercial food establishments pursuant to § 1062.41(b)(4).

5. A new § 1062.19 is added to read as follows:

§ 1062.19 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 milkfat, 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).

6. In § 1062.30, paragraphs (a) (3), (4) and (b) are revised to read as follows:

§ 1062.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization or disposition of all quantities required to be reported, including separate statements of quantities;

(i) Of fluid milk products on hand at the end of the month;

(ii) Of route disposition of fluid milk products in the marketing area, and route disposition of filled milk in and outside the marketing area; and

(4) Such other information with respect to receipts and utilization as the market administrator may request;

(b) Each handler described in § 1062.8 (b) shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk and such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

7. In § 1062.33, paragraph (b) is revised to read as follows:

§ 1062.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

8. In § 1062.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1062.44 Transfers.

(e) * * *
(5) For purposes of this paragraph (e), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid products shall be classified as Class I milk, and skim milk and butterfat allocated to another class shall be classified as Class II milk; and

9. In § 1062.46(a), subparagraphs (2), (3), (4), (5), (6), (7), and the introductory text of subparagraph (8) preceding subdivision (1) are revised to read as follows:

§ 1062.46 Allocation of skim milk and butterfat classified.

- (a) * * *
- (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 milk, 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 or from a plant exempt pursuant to § 1062.60(b);
- (iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; 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 milk but not in excess of such quantity:
- (i) The pounds of skim milk in receipts of fluid milk products from an un-

regulated supply plant that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II milk 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 other pool plants and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(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 milk utilization was requested by the operator of such plant and the handler;

(iii) The pounds of skim milk in 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, but not in excess of the pounds of skim milk remaining in Class II milk;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk, 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) 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 which were not subtracted pursuant to subparagraphs (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 subparagraphs (3) (v) or (4) (ii) of this paragraph:

10. Section 1062.61 is revised to read as follows:

§ 1062.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in such other Federal order marketing area is greater than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding

month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(b) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in this marketing area is greater than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(c) A supply plant meeting the requirements of § 1062.12(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of March through August if such plant retains automatic pooling status under this part;

(d) The operator of a plant specified in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1062.30 through 1062.32) and allow verification of such reports by the market administrator; and

(e) Each handler operating a plant specified in paragraph (a) or (b) 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 the 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.

(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.

11. In § 1062.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1062.62 Obligations of handlers operating a partially regulated distributing plant.

(a) * * *
(1) (i) The obligation that would have been computed pursuant to § 1062.70 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 any 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 uniform 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 § 1062.70(e) and a credit in the amount specified in § 1062.84(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 in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of route disposition (other than to pool plants) of skim milk and butterfat disposed of in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 milk price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class II milk 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.

11a. In § 1062.70, paragraph (d) is revised to read as follows:

§ 1062.70 Computation of the net pool obligation of each pool handler.

(d) Add an amount equal to the difference between the value at the Class I milk price applicable at the pool plant and the value at the Class II milk price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1062.46(a)(3) and the corresponding step of § 1062.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1062.46(a)(3)(iv) and (v) and the corresponding step of § 1062.46(b) the

Class I price shall be adjusted to the location of the transferor plant;

12. Section 1062.83 is revised to read as follows:

§ 1062.83 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 §§ 1062.61, 1062.62, 1062.84, and 1062.86, and out of which he shall make all payments to handlers pursuant to §§ 1062.85 and 1062.86. The market administrator shall offset the payment due to a handler against payments due from such handler.

13. In § 1062.89, paragraphs (a) and (d) are revised to read as follows:

§ 1062.89 Termination of obligation.

(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 two 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 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;

(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 month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset 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.

PART 1063—MILK IN QUAD CITIES-DUBUQUE MARKETING AREA

1. In § 1063.10, paragraphs (a) and (b) are revised as follows:

§ 1063.10 Pool plant.

(a) A distributing plant from which:

(1) The volume of Class I packaged fluid milk products, except filled milk, disposed of during the month either on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets or moved to other plants, less receipts of packaged fluid milk products other than filled milk from other pool distributing plants, is not less than 45 percent of the total Grade A fluid milk products, except filled milk, received at such plant, exclusive of receipts of packaged fluid milk products from other pool distributing plants and receipts from other order plants which are assigned pursuant to § 1063.46(a)(4)(ii) and the corresponding step of § 1063.46(b); and

(2) Not less than 15 percent of such receipts during the month are so disposed of in the marketing area on routes.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of December through August, unless written application is filed with the market administrator on or before the 1st day of any of the months of December through August to be designated a nonpool plant for such month and for each subsequent month through August.

2. Section 1063.11 is revised as follows:

§ 1063.11 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 that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

3. Section 1063.15 is revised as follows:

§ 1063.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), filled milk, cream or any mixture in fluid form of skim milk and butterfat (except aerated cream products,

products containing cheese and labeled as such, yogurt, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1063.18 is added as follows:

§ 1063.18 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 milkfat, 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).

5. In § 1063.30, paragraph (f) is revised as follows:

§ 1063.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

6. In § 1063.31, paragraph (c) (1) is revised as follows:

§ 1063.31 Other reports.

(c) * * *

(1) As required pursuant to § 1063.30, except that receipts in Grade A milk shall be reported in lieu of those in producer 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.

7. In § 1063.44, paragraph (e) (5) is revised as follows:

§ 1063.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1063.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised as follows:

§ 1063.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk prod-

ucts 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; 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 subparagraph (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 other pool handlers, 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, including diversions, 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;

(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 which were not subtracted pursuant to subparagraphs (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 subparagraphs (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 § 1063.22(m) 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. Section 1063.61 is revised as follows:

§ 1063.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a handler who operates a plant specified in paragraph (a) of this section except as specified in paragraphs (b) and (c):

(a) A distributing plant, a supply plant or a plant otherwise qualified as a pool plant pursuant to § 1063.10(c) during any month in which such plant would be subject to the classification and pricing provision of another order issued pursuant to the act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under § 1063.10 and to retail and wholesale outlets in the Quad Cities-Dubunque marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order;

(b) Each handler operating a plant described in paragraph (a) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1063.30) and allow verification of such reports by the market administrator.

(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.

10. In § 1063.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1063.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1063.70 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 § 1063.70(e) and a credit in the amount specified in § 1063.84(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

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(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.

10a. Section 1063.70 is revised as follows:

§ 1063.70 Computation of the net pool obligation of each pool handler.

(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 § 1063.46(a) (3) and the corresponding step of § 1063.46(b) except that for receipts of fluid milk products assigned to Class I pursuant to § 1063.46(a) (3) (iv) and (v) and the corresponding step of § 1063.46(b) the Class I price shall be adjusted to the location of the transferor plant;

11. Section 1063.83 is revised as follows:

§ 1063.83 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 §§ 1063.61, 1063.62, 1063.84, and 1063.86 and out of which he shall make all payments to handlers pursuant to §§ 1063.85 and 1063.86.

12. In § 1063.89, paragraphs (a) and (d) are revised as follows:

§ 1063.89 Termination of obligations.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1064—MILK IN GREATER KANSAS CITY MARKETING AREA

1. Section 1064.12 is revised as follows:

§ 1064.12 Pool plant.

"Pool plant" means a plant (except a plant exempt pursuant to § 1064.60 or § 1064.62) specified in paragraph (a), (b), or (c) of this section:

(a) A distributing plant from which during the month or the immediately preceding month:

(1) Not less than 15 percent of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to § 1064.15 by the handler operating such plant is disposed of in the marketing area on routes in the form of fluid milk products, except filled milk, and

(2) Not less than the following percentage of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to § 1064.15 by the handler operating such plant is disposed of on routes in the form of fluid milk products, except filled milk: *Provided*, That the combined receipts and disposition of each handler who operates more than one distributing plant, each of which meets the performance requirement of subparagraph (1) of this paragraph, shall be used in determining the percentages specified in this subparagraph:

(i) April through June, 35 percent;

(ii) September and October, 50 percent; and

(iii) All other months, 45 percent.

(b) A supply plant from which during the month the volume of Grade A fluid milk products, except filled milk, shipped to and received at pool plants pursuant to paragraph (a) of this section and/or disposed of in the marketing area as Class I, except filled milk, on routes is not less than 30 percent during November, December, and January and not less than 50 percent during all other months of the volume of Grade A milk received from dairy farmers at such plant (including receipts from a handler pursuant to § 1064.7(c) except receipts of diverted milk pursuant to § 1064.15): *Provided*, That any supply plant which is a pool plant during September through January shall be pooled for the following months of February through August if the required percentages pursuant to this paragraph are not met, unless such operator requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

(c) A supply plant which is operated by a cooperative association in any month in which the member producer milk of such cooperative association received during the month at pool distributing plants either by transfer from such supply plant or directly from member producers' farms is equal to or in excess of the following percentages of such cooperatives' total member producer milk:

September, October, November, December, and January, 65 percent; all other months, 50 percent. If two or more cooperative associations desire to qualify, a supply plant operated by one of such cooperatives as a pool plant on the basis of their combined deliveries to pool distributing plants and have filed a request to this effect in writing with the market administrator on or before the first day of the month the agreement is effective, such a supply plant shall be a pool plant during the month if the above specified percentages of the total member producer milk of such cooperative associations was received during the month at pool distributing plants.

2. Section 1064.13 is revised as follows:

§ 1064.13 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 (except the plant of a handler pursuant to § 1064.7(f), an other order plant, or a producer-handler plant) from which fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area on routes during the month.

(d) "Unregulated supply plant" means a nonpool plant which is not an other order plant, a producer-handler plant, or a plant of a handler pursuant to § 1064.7(f) from which a fluid milk product is shipped during the month to a pool plant.

3. Section 1064.17 is revised as follows:

§ 1064.17 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, fortified milk or skim milk, reconstituted milk or skim milk, filled milk, sweet or sour cream and any mixture of such cream and milk or skim milk (including such mixtures containing less than the required butterfat standard for cream but not including any cultured sour mixtures to which cheese or any food substance other than a milk product has been added in an amount not less than 3 percent by weight of the finished product) and concentrated (frozen or fresh) milk, flavored milk, or flavored milk drinks which are neither sterilized nor in hermetically sealed cans. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1064.17a is added as follows:

§ 1064.17a 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 milkfat, 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).

5. In § 1064.30, paragraphs (e) and (h) are revised as follows:

§ 1064.30 Reports of receipts and utilization.

(e) The disposition of fluid milk products on routes wholly outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(d) Each handler specified in § 1064.7 (d) who operates a partially regulated distributing plant shall report as required in this section, with receipts in Grade A milk reported in lieu of those in producer 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.

6. In § 1064.33, paragraphs (b) and (d) are revised as follows:

§ 1064.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products (including filled milk) handled;

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and each milk product (including filled milk) on hand at the beginning and at the end of each month.

7. In § 1064.44, paragraph (e) (5) is revised as follows:

§ 1064.44 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I and skim milk and butterfat allocated to the other class shall be classified as Class III; and

8. Section 1064.46 is revised as follows:

§ 1064.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1064.45, 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 in Class III, the pounds of skim milk classified as Class III pursuant to § 1064.41(c) (7);

(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) (vi) of this paragraph, as follows:

(i) From Class III 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 III milk, 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 fluid milk products from a handler pursuant to § 1064.7(f);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(vi) 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 milk or Class III milk but not in excess of such quantity, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products that were not subtracted pursuant to subparagraph (3) (v) of this paragraph from an unregulated supply plant;

(a) For which the handler requests Class II or Class III in series beginning with the requested class; or

(b) In series beginning with Class III, which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, receipts from other pool plants, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph; and

(ii) Receipts of fluid milk products that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph in bulk from an other order plant in excess of similar transfers to such plant, if Class II or Class III was requested by the operators of both plants in series beginning with the requested class;

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

(6) Add to the remaining pounds of skim milk in Class III milk, the pounds

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subtracted pursuant to subparagraph (1) 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 which were not subtracted pursuant to subparagraph (3)(v) 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 another order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3)(vi) or (4)(ii) of this paragraph:

(1) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated combined Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1064.22(m) or the percentage that combined Class II and Class III utilization remaining is of the total remaining utilization 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 according to the classification assigned pursuant to § 1064.44(a); and

(10) If the pounds of skim milk remaining 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 III. Any amount 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.

9. In § 1064.61, paragraphs (a)(1)(i) and (b) are revised as follows:

§ 1064.61 Obligations of handler operating a partially regulated distributing plant.

(a)
(1) (i) The obligation that would have been computed pursuant to § 1064.70 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 or Class III 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1064.70(e) and a credit in the amount specified in § 1064.84(a)(2)(ii) with respect to receipts, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:
(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 III 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 III price.

10. Section 1064.62 is revised as follows:

§ 1064.62 Plants subject to other Federal orders.

The provisions of this part shall not apply to any plant which meets the requirements of paragraph (a), (b), or (c) of this section, except as specified in paragraphs (d) and (e) of this section.

(a) A distributing plant qualified pursuant to § 1064.12 which also meets the pooling requirements of another Federal order and a greater volume of fluid milk products, except filled milk, was disposed of during the month on routes in such other marketing area and to pool plants qualified on the basis of route distribution in such other marketing area than was so disposed of in this marketing area except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its fluid product disposition, except filled milk, is made in the above described manner in such

other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A distributing plant qualified pursuant to § 1064.12 which also meets the pooling requirements of another Federal order and a greater volume of fluid milk products, except filled milk, was disposed of during the month on routes in this marketing area and to pool plants qualified on the basis of route distribution in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A supply plant meeting the requirements of § 1064.12, which also meets the pooling requirements of another Federal order, from which greater direct marketing area route disposition in the form of fluid milk products, except filled milk, and qualifying shipments are made to plants regulated under such other order than are made in this marketing area on routes in the form of fluid milk products, except filled milk, and to plants regulated under this part, except that during the months of February through August if the operator of such plant gives written notification to the market administrator on or before the 1st day of any such month that he elects to maintain automatic pool status for such plants under this part for the month and each subsequent month through August.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1064.30 through 1064.32) and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a) or (b) 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 marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(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 III price.

10a. Section 1064.70 is revised as follows:

§ 1064.70 Computation of the net pool obligation of each pool handler.

(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 III prices, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1064.46(a) (3) and the corresponding step of § 1064.46(b) except that for receipts of fluid milk products assigned to Class I pursuant to § 1064.46(a) (3) (v) and (vi) and the corresponding step of § 1064.70(b) the Class I price shall be adjusted to the location of the transferor plant; and

11. In § 1064.83, paragraph (a) is revised as follows:

§ 1064.83 Producer-settlement fund.

(a) Payments made by handlers pursuant to § 1064.61 (a) and (b), § 1064.62 (e), and §§ 1064.84 and 1064.86.

12. In § 1064.89, paragraphs (a) and (d) are revised as follows:

§ 1064.89 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this order 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 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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING IOWA

1. Section 1065.9 is revised to read as follows:

§ 1065.9 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and fluid milk products from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products for reconstituting into fluid milk products; and

(c) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk, and the processing, packaging and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

2. In § 1065.12, paragraphs (a) and (b) are revised to read as follows:

§ 1065.12 Pool plant.

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers, supply plants (exclusive of plants qualifying as pool plants pursuant to this paragraph), and cooperative associations pursuant to § 1065.8 (d), is disposed of during the month on routes and not less than 15 percent of such receipts are so disposed of in the marketing area; and

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 50 percent of the Grade A milk received at such plant from dairy farmers and cooperative associations pursuant to § 1065.8(d) during such month. A supply plant that qualifies as a pool plant in each of the immediately preceding months of August through December shall be a pool plant for the succeeding months of January through July, unless the plant operator requests the market administrator, in writing, that such plant not be a pool plant, such nonpool plant status to be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments.

3. In § 1065.13, the introductory text preceding paragraph (a), and paragraphs (c) and (d) are revised to read as follows:

§ 1065.13 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:

(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 that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

4. Section 1065.16 is revised to read as follows:

§ 1065.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, yogurt, milk drinks (plain or flavored), filled milk, concentrated milk (frozen or fresh), cream, cultured or sour cream or any mixture in fluid form of milk or skim milk and cream (except frozen cream, a product which contains 6 percent or more nonmilk fat (or oil), aerated cream products, ice cream mix, frozen dessert mixes, eggnog, evaporated or condensed milk, sterilized products packaged in hermetically sealed metal or glass containers, and cultured sour mixtures of cream and milk or skim milk to which cheese or any other food substance other than a milk product has been added and not labeled as Grade A).

5. A new § 1065.19 is added, to read as follows:

§ 1065.19 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 milkfat, 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).

6. In § 1065.30, subparagraph (3) of paragraph (a), and paragraph (b) are revised to read as follows:

§ 1065.30 Reports of receipts and utilization.

(3) The utilization in each class of the quantities required to be reported, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler specified in § 1065.8 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include separate statements showing the respective amounts of skim milk and

butterfat disposed of on routes (other than to pool plants) in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

7. Section 1065.33 is revised to read as follows:

§ 1065.33 Records and facilities.

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

(a) The receipts and utilization in whatever form of all skim milk and butterfat required to be reported pursuant to § 1065.30;

(b) The weights and tests for butterfat and other contents of all milk and milk products (including filled milk) received or utilized; and

(c) Payments to producers or cooperative associations.

8. In § 1065.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1065.44 Transfers.

(f) For the purposes of this paragraph if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to Class II under the other order shall be classified as Class III; and

9. Section 1065.46 is revised to read as follows:

§ 1065.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1065.45, 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 in Class III the pounds of skim milk classified as Class III pursuant to § 1065.41(c) (8);

(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 III milk, the lesser of the pounds remaining or two 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 III 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; 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, in sequence beginning with Class III from the pounds of skim milk remaining in Classes II and III, but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II or Class III 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 other pool handlers, 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 a plant, if Class II or Class III utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, 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 III milk the pounds subtracted pursuant to subparagraph (1) 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 which were not subtracted pursuant to subparagraphs (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 subparagraphs (3) (v) or (4) (ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II

and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1065.22(1) or the percentage that Class II and Class III 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 according to the classification assigned pursuant to § 1065.44 (a);

(10) Subtract pro rata from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from a cooperative association in its capacity as a handler pursuant to § 1065.8(d); and

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

10. Section 1065.61 is revised to read as follows:

§ 1065.61 Plants subject to other Federal orders.

The provisions of this part, except §§ 1065.32 through 1065.34 and as specified in paragraph (c) of this section shall not apply to a handler with respect to the operation of plants described in paragraphs (a) or (b).

(a) A plant qualified pursuant to § 1065.12(a) from which a lesser volume of fluid milk products (not including filled milk) is disposed of in the Nebraska-Western Iowa marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(b) Any plant qualified pursuant to § 1065.12(b) for any portion of the period of January through July, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

(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 marketing 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 III price.

11. In § 1065.62, subdivision (1) of paragraph (a) (1), and paragraph (b) are revised to read as follows:

§ 1065.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1065.70 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 or Class III 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1065.70(e) and a credit in the amount specified in § 1065.82 (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 III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

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

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 ap-

licable at such location (not to be less than the Class III 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 III price.

11a. In § 1065.70, paragraph (d) is revised as follows:

§ 1065.70 Computation of the net pool obligation of each pool handler.

(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 III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1065.46(a) (3) and the corresponding step of § 1065.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1065.46(a) (3) (iv) and (v) and the corresponding step of § 1065.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

11b. In § 1065.74, paragraph (a) is revised as follows:

§ 1065.74 Notification of handlers.

(a) The amount and value of his milk, including filled milk, in each class computed pursuant to §§ 1065.46 and 1065.70;

12. Section 1065.81 is revised to read as follows:

§ 1065.81 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 §§ 1065.61, 1065.62 (a) and (b), 1065.82, and 1065.84 and out of which he shall make all payments to handlers pursuant to §§ 1065.83 and 1065.84.

13. In § 1065.87, paragraphs (a) and (d) are revised to read as follows:

§ 1065.87 Termination of obligation.

(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 two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on skim milk and butterfat involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service if 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 producer(s) or association of producers, the names 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;

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

PART 1069—MILK IN THE DULUTH-SUPERIOR MARKETING AREA

1. In § 1069.7, paragraphs (a) and (b) are revised to read as follows:

§ 1069.7 Pool plant.

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which fluid milk products are pasteurized or packaged and from which there is disposed of during the month as Class I milk, except filled milk, on routes an amount equal to 50 percent or more of total receipts of Grade A milk at such plant from dairy farmers, from other plants, and from cooperative associations in their capacity as handlers and from which there is disposed of as Class I milk, except filled milk, on routes in the marketing area an amount equal to 10 percent or more of such total receipts; *Provided*, That such Class I sales distribution (not including filled milk) in the marketing area averages at least 500 pounds per day;

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the month 50 percent or more of its supply of Grade A milk from dairy farmers is moved to a distributing pool plant(s); *Provided*, That any supply plant which has qualified as a pool plant in each of the months of September, October, and November shall be a pool plant for each of the following months of December through August unless written request for nonpool status is furnished in advance to the market administrator.

2. Section 1069.8 is revised to read as follows:

§ 1069.8 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 and 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 that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

3. Section 1069.14 is revised to read as follows:

§ 1069.14 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk flavored milk, flavored milk drinks, filled milk, concentrated milk or milk drinks not in hermetically sealed cans, cream, and fluid mixtures of cream and milk or skim milk, including reconstituted milk or skim milk, but not including frozen cream, aerated cream products, eggnog, or ice cream and frozen dessert mixes. This definition shall not include a product which contains six percent or more nonmilk fat (or oil).

4. A new § 1069.18 is added, to read as follows:

§ 1069.18 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 milkfat, 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).

5. In § 1069.30, subparagraph (5) of paragraph (a), and paragraph (b) are revised to read as follows:

§ 1069.30 Reports of receipts and utilization.

(a) * * *

(5) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler specified in § 1069.9 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those in producer milk. Such report shall include separate statements showing the quantity of fluid milk products disposed of on routes (other than to pool plants) in the marketing area as Class I milk, and the quantity of reconstituted skim milk in fluid milk prod-

ucts disposed of on routes in the marketing area;

6. In § 1069.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1069.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

7. Section 1069.46 is revised to read as follows:

§ 1069.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1069.45, 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 in Class II the pounds of skim milk classified as Class II pursuant to § 1069.41 (b) (5);

(2) Subtract from the remaining pound 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 two 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 drinks (plain or flavored), cream or any milk in filled milk from unregulated supply plants; 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 subparagraph (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 subtracting from 125 percent of the pounds of skim milk remaining in Class I milk the sum of the pounds of skim milk in producer milk, receipts from a handler pursuant to § 1069.9 (d), receipts from pool plants of other handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(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;

(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) 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 which were not subtracted pursuant to subparagraph (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 § 1069.22 (k) 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 other pool plants according to the classification assigned pursuant to § 1069.44 (a);

(10) 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 amount 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.

8. Section 1069.61 is revised to read as follows:

§ 1069.61 Plants subject to other Federal orders.

(a) Except as set forth in paragraph (b) of this section, the provisions of this part shall not apply to a plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless:

(1) Such plant is qualified as a pool plant pursuant to § 1069.7 and a greater volume of Class I milk, except filled milk, is disposed of from such plant in the Duluth-Superior marketing area than in the marketing area regulated pursuant to such other order, or

(2) The Secretary determines that the applicable order should more appropriately be determined on some other basis.

(b) Each handler in his capacity as an operator of a plant which, pursuant to this section, is made partially exempt from the provisions of this part shall:

(1) With respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1069.30 through 1069.32) and allow verification of such reports by the market administrator; and

(2) If such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, 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:

(i) 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

(ii) Compute the value of the quantity assigned in subparagraph (i) 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.

9. In § 1069.62, subdivision (i) of paragraph (a)(1), and paragraph (b) are revised to read as follows:

§ 1069.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * * * *

(1)(i) The obligation that would have been computed pursuant to § 1069.70 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 uniform 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 § 1069.70(e) and a credit in the amount specified in § 1069.84(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

(b) An amount computed as follows:

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

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(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 uniform price pursuant to § 1069.71 at the same location or at the Class II price, whichever is higher, 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.

9a. In § 1069.70, paragraph (d) is revised as follows:

§ 1069.70 Computation of the net pool obligation of each pool handler.

(d) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1069.46(a)(3) and the corresponding step of § 1069.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1069.46(a)(3)(iv) and (v) and the corresponding step of § 1069.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

10. Section 1069.83 is revised to read as follows:

§ 1069.83 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 §§ 1069.61, 1069.62, 1069.84, and 1069.86, and out of which he shall make payments to handlers pursuant to §§ 1069.85 and 1069.86: *Provided*, That any payments due to any handler shall be offset by any payments due such handler.

11. In § 1069.89, paragraphs (a) and (d) are revised to read as follows:

§ 1069.89 Termination of obligations.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set off 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.

PART 1070—MILK IN CEDAR RAPIDS-IOWA CITY MARKETING AREA

1. Section 1070.10 is revised as follows:

§ 1070.10 Pool plant.

"Pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by

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vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) A cooperative association with respect to Grade A milk received from dairy farmers at their farms in a tank truck owned or operated by such cooperative association and delivered in such tank truck to a pool plant: *Provided*, That such milk shall be deemed to have been received by the cooperative association at the location of the pool plant to which it is delivered by the tank truck and such location shall be deemed to be the location of such cooperative association in its capacity as the operator of a pool plant.

(d) A plant (1) which is approved by a duly constituted health authority for the handling of Grade A milk; (2) which is operated by a cooperative association; and (3) from which the milk transferred by the association to plants of other handlers specified in paragraph (a) of this section plus that delivered by such association pursuant to paragraph (c) of this section and that delivered directly from the farms of members of such association to such plants is Grade A milk delivered by producers who are members of the association. If written application is filed with the market administrator on or before the 5th day of any month, such plant may be designated a nonpool plant for such month and for any subsequent months, except such plant shall be a nonpool plant during any month in which it would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under § 1070.10 and to retail and wholesale outlets in the Cedar Rapids-Iowa City marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order.

2. Section 1070.11 is revised as follows:
§ 1070.11 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 that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

3. Section 1070.13 is revised as follows:
§ 1070.13 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers or from a cooperative association in its capacity as the operator of a pool plant pursuant to § 1070.10(c) and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk products received from a pool plant.

4. Section 1070.15 is revised as follows:
§ 1070.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), filled milk, cream or any mixture in fluid form of skim milk and cream (except aerated cream products, ice cream mix, evaporated or condensed milk and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1070.18 is added as follows:
§ 1070.18 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 milkfat, 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).

6. In § 1070.30, paragraph (f) is revised as follows:

§ 1070.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

7. In § 1070.31, paragraph (c) (1) is revised as follows:

§ 1070.31 Other reports.

(c) * * *

(1) As required pursuant to § 1070.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and shall include a statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

8. In § 1070.32, paragraphs (b) and (c) are revised as follows:

§ 1070.32 Records and facilities.

(b) The weights and butterfat and other content of all milk, skim milk cream and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

9. In § 1070.44, paragraph (e) (5) is revised as follows:

§ 1070.44 Transfers.

(e) * * *
(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1070.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised as follows:

§ 1070.46 Allocation of skim milk and butterfat classified.

(a) * * *
(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; 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, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, from an unregulated supply plant;

(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 other pool handlers, 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;

(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 which were not subtracted pursuant to subparagraphs (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 receipt 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 § 1070.22(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;

11. Section 1070.61 is revised as follows:

§ 1070.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a handler who operates a plant specified in paragraph (a) of this section except as specified in paragraphs (b) and (c):

(a) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under § 1070.10 and to retail and wholesale outlets in the Cedar Rapids-Iowa City marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order.

(b) Each handler operating a plant described in paragraph (a) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1070.30 and 1070.31) and allow verification of such reports by the market administrator.

(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.

12. In § 1070.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1070.62 Obligations of handler operating a partially regulated distributing plant.

(a)

(1) (i) The obligation that would have been computed pursuant to § 1070.70 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 obli-

gation so computed a charge in the amount specified in § 1070.70(e) and a credit in the amount specified in § 1070.84 (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

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(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.

12a. Section 1070.70 is revised as follows:

§ 1070.70 Computation of the net pool obligation of each pool handler.

(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 § 1070.46(a) (3) and the corresponding step of § 1070.46(b) except that for receipts of fluid milk products assigned to Class I pursuant to § 1070.46 (a) (3) (iv) and (v) and the corresponding step of § 1070.70(b) the Class I price shall be adjusted to the location of the transferor plant; and

13. Section 1070.83 is revised as follows:

§ 1070.83 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 §§ 1070.61, 1070.62, 1070.84, and 1070.86, and out of which he shall make all payments to handlers pursuant to §§ 1070.85 and 1070.86.

14. In § 1070.89, paragraphs (a) and (d) are revised as follows:

§ 1070.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this subpart 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.

(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 subpart shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

PART 1071—MILK IN THE NEOSHO VALLEY MARKETING AREA

1. In § 1071.7, the introductory text and paragraph (a) are revised to read as follows:

§ 1071.7 Pool plant.

"Pool plant" means any milk plant described in paragraph (a) or (b) of this section, which is approved by the appropriate health authority having jurisdiction in the marketing area, except the plant of a producer-handler or a plant exempt pursuant to § 1071.61.

(a) Any plant, hereinafter referred to as a "distributing pool plant" from which:

- (1) During the current delivery period there is distributed as Class I milk, except filled milk, on routes in the marketing area, an amount equal to 10 percent or more of such plant's Grade A receipts from dairy farmers as specified in subparagraph (2) of this paragraph; and

(1) During the current delivery period there is disposed of as Class I milk, except filled milk, an amount not less than an applicable percentage of such plant's Grade A receipts as specified in subparagraph (2) of this paragraph as follows: (a) April through August, 30 percent; and (b) September through March, 45 percent; or

(1) During five of the six immediately preceding delivery periods, such plant was a pool plant by virtue of meeting the specifications pursuant to subdivision (1) of this subparagraph; and

(2) The Grade A receipts from dairy farmers to be used in calculating the percentages specified in subparagraph (1) of this paragraph, for each plant shall include all receipts of Grade A milk from dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1071.9(c) (3) subject to the following provisions:

(1) Milk diverted to another plant for the account of the operator of the plant from which the milk was diverted shall be included in the receipts of the plant from which diverted for the purposes of this section, if the milk is claimed as diverted on the report of the diverting handler filed for the month pursuant to § 1071.30 (if such claim is made by the diverting handler, milk so diverted shall be excluded from the receipts of the plant to which diverted); and

(2) Milk received at a plant operated by a cooperative association from another cooperative association acting as a handler pursuant to § 1071.9(c) (2) shall be excluded from the cooperative association's plant receipts for the purposes of this section.

2. Section 1071.8 is revised to read as follows:

§ 1071.8 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 are distributed on routes in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1071.7 and which is neither an other order plant nor a producer-handler plant.

3. Section 1071.11 is revised to read as follows:

§ 1071.11 Producer-handler.

"Producer-handler" means any person who, with the approval of any health authority having jurisdiction in the marketing area, processes milk from his own farm production and disposes of all or a portion of such milk as Class I milk within the marketing area, who receives no milk from producers, and who disposes of no fluid milk products in excess of those (a) received from a pool plant, (b) received from an other order plant that are classified and priced as Class I milk under the other order, and (c) from milk of his own production.

4. Section 1071.16 is revised to read as follows:

§ 1071.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, filled milk, flavored milk drinks, cream, cultured sour cream, and any mixture (except bulk ice cream mix, eggnog, and aerated cream) of cream and milk or skim milk. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1071.17 is added to read as follows:

§ 1071.17 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 milkfat, 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).

6. Section 1071.30 is revised to read as follows:

§ 1071.30 Reports of receipts and utilization.

On or before the 7th day after the end of each delivery period, each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator for each plant as follows:

(a) The quantities of skim milk and butterfat contained in:

- (1) Receipts for his account of producer milk;
- (2) Milk and milk products (including filled milk) received from other pool plants and from a cooperative association which is a handler pursuant to § 1071.9(c);
- (3) Other source milk; and
- (4) Inventories on hand at the beginning and the end of the delivery period;

(b) The utilization of all skim milk and butterfat required to be reported by this section, and a statement showing separately in-area and outside area route disposition of filled milk;

(c) Such other information with respect to the receipts and utilization of milk and milk products (including filled milk) as the market administrator may require; and

(d) Each handler specified in § 1071.9 (b) who operates a partially regulated distributing plant shall report as re-

quired in this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

7. Section 1071.33 is revised to read as follows:

§ 1071.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative 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 with respect to:

(a) The receipts and utilization of all skim milk and butterfat in producer milk and all other skim milk and butterfat in milk and milk products (including filled milk) handled during the month and in inventories at the beginning and end of the month.

(b) The weights of butterfat and skim milk in all milk and milk products (including filled milk) handled; and

(c) Payments to producers and cooperative associations.

8. In § 1071.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1071.44 Transfers.

(e)

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

.

9. In § 1071.46(a), subparagraphs (2), (4), (5), (7), and (8) are revised to read as follows:

§ 1071.46 Allocation of skim milk and butterfat classified.

(a)

(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 (4) (v) of this paragraph, as follows:

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

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

.

(4) 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; 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;

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

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (4) (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 other pool plants, from cooperative handlers pursuant to § 1071.9(c), and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (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;

.

(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 which were not subtracted pursuant to subparagraphs (4) (v) or (5) (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 subparagraphs (4) (v) or (5) (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 § 1071.22(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;

.

10. Section 1071.61 is revised to read as follows:

§ 1071.61 Handlers subject to other orders.

In the case of any handler (as defined in this section) who the Secretary determines disposed of a greater portion of his milk as Class I milk, except filled milk, in another marketing area regulated by another milk marketing agreement or order issued pursuant to the Act, or who otherwise is determined pursuant to the provisions of another milk marketing agreement or order to be subject to the pricing and payment provisions of such agreement or order, the provisions of this order shall not apply except as specified in paragraphs (a) and (b) of this section:

(a) Each handler operating a plant described above shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(b) Each handler operating a plant described above, 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.

11. In § 1071.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1071.62 Obligations of handler operating a partially regulated distributing plant.

(a)

(1) (i) The obligation that would have been computed pursuant to § 1071.70 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 uniform 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 § 1071.70(d) and a credit in the amount specified in § 1071.93(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 in subdivision (ii) of this subparagraph.

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in filled 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 location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher 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.

11a. In § 1071.70, paragraph (c) is revised to read as follows:

§ 1071.70 Computation of the net pool obligation of each pool handler.

(c) 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 § 1071.46(a) (4) and the corresponding step of § 1071.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1071.46(a) (4) (iv) and (v) and the corresponding step of § 1071.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

12. Section 1071.92 is revised to read as follows:

§ 1071.92 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit payments made by handlers pursuant to §§ 1071.61,

1071.62, 1071.93, and 1071.95 and out of which he shall make payments to handlers pursuant to §§ 1071.94 and 1071.95: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

13. In § 1071.98, paragraphs (a) and (d) are revised to read as follows:

§ 1071.98 Termination of obligation.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

PART 1073—MILK IN WICHITA, KANS., MARKETING AREA

1. In § 1073.9, paragraph (a) is revised to read as follows:

§ 1073.9 Producer-handler.

(a) His disposition of fluid milk products does not exceed his own farm production, receipts of fluid milk products from pool plants and receipts of packaged fluid milk products from other order plants; and

2. In § 1073.12, subparagraph (1) of paragraph (a) is revised to read as follows:

§ 1073.12 Pool plant.

(a) * * *

(1) Disposes of through route disposition fluid milk products, except filled milk, in an amount equal to 25 percent or more during the months of March through July and 35 percent during all other months of such plant's total receipts of Grade A milk direct from dairy farmers, supply plants and cooperative associations in their capacity as a handler pursuant to § 1073.8(d) and has route disposition in the marketing area in an amount equal to 10 percent or more of such receipts. In any case in which the entire quantity of fluid milk products, except filled milk, disposed of in packages in a particular size and form is received in such packages from other plants, all such disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate disposition of the receiving plant; or

3. Section 1073.13 is revised to read as follows:

§ 1073.13 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 which has route disposition of fluid milk products in consumer-type packages or dispenser units in the marketing area during the month; and

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped to a pool plant.

4. Section 1073.16 is revised to read as follows:

§ 1073.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, filled milk, concentrated milk disposed of for fluid consumption other than in hermetically sealed metal or glass containers, buttermilk, flavored milk, yogurt, milk drinks (plain or flavored) "modified or fortified," including "dietary milk products" and reconstituted milk or skim milk, sour cream and sour cream products labeled Grade A, cream or any mixture in fluid form of milk or skim milk and cream (except frozen or aerated cream, ice cream or frozen dessert mixes, eggnog and sterilized products packaged in hermetically sealed containers). This definition shall

not include a product which contains six percent or more nonmilk fat (or oil).

5. A new § 1073.19 is added to read as follows:

§ 1073.19 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 milkfat, 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).

6. In § 1073.30, subparagraph (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1073.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization or disposition of all quantities required to be reported, including separate statements of quantities:

- (i) Of bulk fluid milk products on hand at the end of the month;
- (ii) Of packaged fluid milk products on hand at the end of the month; and
- (iii) Of route disposition of fluid milk products in the marketing area;
- (iv) Of in-area route disposition of filled milk; and
- (v) Of outside area route disposition of filled milk; and

(b) Each handler described in § 1073.8 (b) shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those of producer milk and a statement showing the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area; and

7. In § 1073.33, paragraph (b) is revised to read as follows:

§ 1073.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products (including filled milk) handled;

8. In § 1073.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1073.44 Transfers.

(e) * * *

(5) For purposes of this paragraph (e), if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk and butterfat allocated to another class shall be classified as Class III milk; and

9. In § 1073.46, subparagraphs (2), (3), (4), (5), (6), (7), (8), and the introductory text of subparagraph (9) preceding subdivision (i), of paragraph (a) are revised to read as follows:

§ 1073.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 (4) (v) of this paragraph as follows:

- (i) From Class III 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 from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;
- (4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III milk, 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; and
- (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; 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;

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

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph;

(a) For which the handler requests Class III (or Class II) milk 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 other pool plants and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph in excess of similar transfers to such plant, if Class III (or Class II) milk utilization was re-

quested by the operator of such plant and the handler;

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

(7) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) 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 which were not subtracted pursuant to subparagraphs (4) (iv) or (5) (i) of this paragraph;

(9) 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 subparagraphs (4) (v) or (5) (ii) of this paragraph:

10. Section 1073.61 is revised to read as follows:

§ 1073.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in such other Federal order marketing area is greater than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(b) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in this marketing area is greater than was so disposed of in such other Federal order marketing area but which plant is nevertheless, fully regulated under such other Federal order; and

(c) A supply plant meeting the requirements of § 1073.12(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of December through July if such plant retains automatic pooling status under this part.

PROPOSED RULE MAKING

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1073.30 through 1073.32) and allow verification of such reports by the market administrator;

(e) Each handler operating a plant specified in paragraph (a) or (b) 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 III price.

11. In § 1073.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1073.62 Obligations of handler operating a partially regulated distributing plant.

(a)

(1) (i) The obligation that would have been computed pursuant to § 1073.70 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 III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the uniform 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1073.70(g) and a credit in the amount specified in § 1073.84(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 III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 milk price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III milk 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 at the location of the nonpool plant less the value of such skim milk at the Class III price.

11a. In § 1073.70, paragraph (f) is revised to read as follows:

§ 1073.70 Computation of the net pool obligation of each pool handler.

(f) 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 III milk price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1073.46(a) (4) and the corresponding step of § 1073.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1073.46(a) (4) (iv) and (v) and the corresponding step of § 1073.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

12. Section 1073.83 is revised to read as follows:

§ 1073.83 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 §§ 1073.61, 1073.62, 1073.84, and 1073.86, and out of which he shall make all payments to handlers pursuant to §§ 1073.85 and 1073.86. Immediately after computing the uniform prices for each month, the market administrator shall compute the amount by which each handler's net pool obligation is greater or less than the sum obtained by multiplying the hundredweight of milk of producers by the appropriate prices required to be paid producers by handlers pursuant to § 1073.80 and adding together the resulting amounts, and shall enter such amount on each handler's account as such handler's pool debit or credit, as the case may be, and render such handler a transcript of his account.

13. In § 1073.89, paragraphs (a) and (d) are revised to read as follows:

§ 1073.89 Termination of obligation.

(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 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;

(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 month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset 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.

PART 1075—MILK IN THE BLACK HILLS, S. DAK., MARKETING AREA

1. Section 1075.12 is revised as follows:

§ 1075.12 Pool plant.

(a) A distributing plant that has route disposition, except filled milk, during the month of not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants, and that has route disposition, except filled milk, in the marketing area during the month of not less than 20 percent of such receipts.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant

during the immediately preceding period of September through November, such plant shall be a pool plant for the months of March through June, unless written application is filed with the market administrator on or before the 15th day of any of the months of March, April, May, or June to be designated a nonpool plant for such month and for each subsequent month through June of the same year.

2. Section 1075.13 is revised to read as follows:

§ 1075.13 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 that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

3. Section 1075.15 is revised to read as follows:

§ 1075.15 Producer-handler.

"Producer-handler" means any person who operates both a dairy farm(s) and a distributing plant at which each of the following conditions are met during the month:

(a) Milk is received from the dairy farm(s) of such person but from no other dairy farm;

(b) Fluid milk products are disposed of on routes in the marketing area; and

(c) The butterfat or skim milk disposed of in the form of fluid milk products does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm(s) of such person and in the form of fluid milk products in bulk or in packaged form from pool plants of other handlers:

Provided, That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging, and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such person in his capacity as a handler.

4. Section 1075.18 is revised to read as follows:

§ 1075.18 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, milk drinks (plain or flavored), cream or any mixture in fluid form of milk, skim milk, and cream (except ice cream mix, evaporated or condensed milk, a product which contains 6 percent or more nonmilk fat (or oil), and sterilized products packaged in hermetically sealed containers).

5. A new § 1075.23 is added to read as follows:

§ 1075.23 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 milkfat, 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).

6. In § 1075.30, paragraph (f) is revised and a new paragraph (h) is added to read as follows:

§ 1075.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including separate statements of the route disposition of Class I milk outside the marketing area and on routes in the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(h) Each handler who operates a partially regulated distributing plant shall report as required in paragraphs (a) through (g) of this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk; such report shall include separate statements showing the quantity of fluid milk products disposed of on routes in the marketing area and the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

7. Section 1075.32 is revised to read as follows:

§ 1075.32 Records and facilities.

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

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on

hand at the beginning and end of each month; and

(d) Payments to approved dairy farmers and cooperative associations.

8. In § 1075.44, subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1075.44 Transfers.

(d) * * *

(5) For purposes of this paragraph if the transferee order provides for more than two classes of utilization skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. Section 1075.46 is revised to read as follows:

§ 1075.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1075.45, the market administrator shall determine the classification of milk received at each plant each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1075.41(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; 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:

(i) The pounds of skim milk in receipts of fluid milk products from un-

regulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (exclusive of Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in 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, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(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) of this paragraph;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (3) (iv), (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

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

(1) Subject to the provisions of such divisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk;

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1075.27(k); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (1) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (1) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other pool plants according to the classification assigned pursuant to § 1075.44;

(10) 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 amount 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.

10. Section 1075.61 is revised to read as follows:

§ 1075.61 Plants subject to other Federal orders.

(a) Except as set forth in paragraphs (b) and (c) of this section, the provisions of this part shall not apply to an other order plant during any month unless such plant is qualified as a pool plant pursuant to § 1075.12 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant to retail or wholesale outlets in the Black Hills marketing area and to pool plants under this part than in the marketing area and to pool plants regulated pursuant to such other order;

(b) The operator of a plant specified in paragraph (a) of this section which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1075.30) and allow verification of such reports by the market administrator;

(c) Each handler operating a distributing 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.

(2) Compute the value of the quantity assigned in subparagraph (1) 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.

11. In § 1075.62, subdivision (1) of paragraph (a) (1), and paragraph (b) are revised to read as follows:

§ 1075.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) The obligation that would have been computed pursuant to § 1075.70 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 § 1075.70(e) and a credit in the amount specified in § 1075.84(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 in subdivision (ii) of this subparagraph; and

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products or in filled milk 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.

11a. In § 1075.70, paragraph (d) is revised as follows:

§ 1075.70 Computation of the net pool obligation of each pool handler.

(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 § 1075.46(a) (3) and the corresponding step of § 1075.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1075.46(a) (3) (iv) and (v) and the corresponding step of § 1075.46(b) the Class I price shall be adjusted to the location of the transferor plant;

11b. In § 1075.74, paragraph (a) is revised to read as follows:

§ 1075.74 Notification of handlers.

(a) The amount and value of milk or filled milk in each class pursuant to §§ 1075.46 and 1075.70 and the totals of such amounts and values;

12. Section 1075.83 is revised to read as follows:

§ 1075.83 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made to such fund and out of which he shall make all payments from such fund pursuant to §§ 1075.61, 1075.62, 1075.84, 1075.85, and 1075.86; *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

13. In § 1075.89, paragraphs (a) and (d) are revised to read as follows:

§ 1075.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this subpart 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 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, 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.

(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 subpart shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpay-

ment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrators) 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 § 8c(15) (A) of the act, a petition claiming such money.

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. Section 1076.9 is revised to read as follows:

§ 1076.9 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products from any source for use in reconstituting fluid milk products; and

(c) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

2. In § 1076.12, paragraphs (a) and (b) are revised to read as follows:

§ 1076.12 Pool plant.

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers, cooperative associations pursuant to § 1076.8(d) and from supply plants is disposed of during the month on routes and not less than 15 percent of such receipts are disposed of as Class I milk, except filled milk, on routes in the marketing area; and

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers and cooperative associations pursuant to § 1076.8(d) during such month. If such shipments are not less than 50 percent of such receipts during each of the immediately preceding months of September through November, such plant shall be a pool plant for the months of March through June, unless the operator of such plant requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and such plant shall thereafter be a nonpool plant until it again qualifies as a pool plant on the basis of the shipping requirements set forth in this paragraph.

PROPOSED RULE MAKING

3. Section 1076.13 is revised to read as follows:

§ 1076.13 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 that is neither an other order plant nor a producer-handler plant, and from which fluid milk products are shipped during the month to a pool plant.

4. Section 1076.16 is revised to read as follows:

§ 1076.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, filled milk, milk drinks (plain or flavored), cream (sweet or sour) and any mixture in fluid form of skim milk and cream (except frozen cream, aerated cream, ice cream, ice cream and frozen dessert mixes, a product which contains six percent or more nonmilk fat (or oil), and sterilized products in hermetically sealed containers).

5. Section 1076.17 is revised to read as follows:

§ 1076.17 Route.

"Route" means a delivery (including delivery by a vendor or a sale from a plant store, or distribution center) of any fluid milk product to retail or wholesale outlets, except a delivery in bulk form to a milk (including filled milk) processing plant. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing plant.

6. A new § 1076.19 is added to read as follows:

§ 1076.19 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 milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than six percent nonmilk fat (or oil).

7. In § 1076.30, subparagraph (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1076.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization in each class of the quantities required to be reported, including a separate statement of the disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler specified in § 1076.8 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include separate statements showing the respective amounts of skim milk and butterfat disposed of on routes (other than to pool plants) in the marketing area as Class I milk, and the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

8. Section 1076.33 is revised to read as follows:

§ 1076.33 Records and facilities.

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

(a) The receipts and utilization in whatever form of all skim milk and butterfat required to be reported pursuant to § 1076.30;

(b) The weight and butterfat and other content of all milk, skim milk, cream, and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

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

9. In § 1076.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1076.44 Transfers.

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. Section 1076.46 is revised to read as follows:

§ 1076.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1076.45, the market administrator shall determine the classification of producer milk received by each handler each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1076.41(b)(5);

(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 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; 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 subparagraph (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 other pool handlers, 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;

(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) 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 which were not subtracted pursuant to subparagraphs (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 subparagraphs (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 § 1076.27(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 according to the classification assigned pursuant to § 1076.44 (a);

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from a cooperative association in its capacity as a handler pursuant to § 1076.8(d) according to the classification assigned pursuant to § 1076.44 (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 amount 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.

11. Section 1076.61 is revised to read as follows:

§ 1076.61 Plants subject to other Federal orders.

The provisions of this part, except §§ 1076.32 through 1076.34 and as spec-

ified elsewhere in this section, shall not apply to a handler with respect to the operation of plants described in paragraph (a) or (b).

(a) A plant qualified pursuant to § 1076.12(a) from which a lesser volume of fluid milk products, except filled milk, is disposed of in the Eastern South Dakota marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(b) Any plant qualified pursuant to § 1076.12(b) for any portion of the period of March through June, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

(c) Each handler operating a plant specified in paragraph (a), 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.

(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.

12. In § 1076.62, subdivision (i) of paragraph (a) (1), and paragraph (b) are revised to read as follows:

§ 1076.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1076.70 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 § 1076.70 (e) and a

credit in the amount specified in § 1076.82(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 in subdivision (ii) of this subparagraph.

(b) An amount computed as follows:

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

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products or in filled milk 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.

12a. In § 1076.70, paragraph (d) is revised as follows:

§ 1076.70 Computation of the net pool obligation of each pool handler.

(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 § 1076.46(a) (3) and the corresponding step of § 1076.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1076.46

(a) (3) (iv) and (v) and the corresponding step of § 1076.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

13. Section 1076.76 is revised to read as follows:

§ 1076.76 Notification of handlers.

On or before the 12th day of each month the market administrator shall notify each handler with respect to each of his pool plants:

(a) The amount and value of milk (including filled milk) in each class computed pursuant to §§ 1076.46 and 1076.70 and the totals of such amounts and values;

(b) The uniform price computed pursuant to § 1076.72 or § 1076.73, whichever is applicable;

(c) The amount, if any, due such handler from the producer-settlement fund; and

(d) The total amounts to be paid by such handler pursuant to §§ 1076.82 and 1076.85.

14. Section 1076.81 is revised to read as follows:

§ 1076.81 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 §§ 1076.61, 1076.62, 1076.82, and 1076.84 and out of which he shall make all payments to handlers pursuant to §§ 1076.83 and 1076.84: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from each handler.

15. In § 1076.86, paragraphs (a) and (d) are revised to read as follows:

§ 1076.86 Termination of obligations.

(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;

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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 § 8c(15)(A) of the Act, a petition claiming such money.

PART 1078—MILK IN NORTH CENTRAL IOWA MARKETING AREA

1. Section 1078.10 is revised as follows:

§ 1078.10 Pool plant.

"Pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to more than an average of 1,000 pounds per day or not less than 15 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except other plants) in the marketing area.

(b) A supply plant for the month in which shipments of milk, skim milk or cream are made to distributing plants which are pool plants on not less than 10 days in any of the months of September, October, and November and on not less than 5 days in other months: *Provided*, That a supply plant which was not a pool plant for each of the immediately preceding months of September, October, and November shall not be a pool plant for any month during which none of the milk, skim milk or cream from such plant would be allocated to Class I milk pursuant to the procedure specified in § 1078.46(a)(3) and the corresponding step of § 1078.46(b) at a distributing plant which is a pool plant.

2. Section 1078.11 is revised as follows:

§ 1078.11 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 that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

3. Section 1078.15 is revised as follows:

§ 1078.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), filled milk, cream or any mixture in fluid form of skim milk and cream (except aerated cream products, yogurt, ice cream mix, evaporated or condensed milk, and sterilized products

packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1078.19 is added as follows:

§ 1078.19 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).

5. In § 1078.30, paragraph (f) is revised as follows:

§ 1078.30 Reports of receipts and utilization.

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

6. In § 1078.32, paragraphs (b) and (c) are revised as follows:

§ 1078.32 Records and facilities.

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

7. In § 1078.44, paragraph (e)(5) is revised as follows:

§ 1078.44 Transfers.

(e) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1078.46, subparagraphs (3), (4), and (7) of paragraph (a) are revised as follows:

§ 1078.46 Allocation of skim milk and butterfat classified.

(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:

(1) 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; and

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(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, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, from an unregulated supply plant:

(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 other pool handlers, and receipts in bulk from other order plants;

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) of this paragraph;

(ii) Receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (4) (ii) of this paragraph;

9. Section 1078.61 is revised as follows:
§ 1078.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant is qualified as a pool plant pursuant to § 1078.10 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant to retail or wholesale outlets and to pool plants in the North Central Iowa marketing area than in the marketing area regulated pursuant to such other order: *Provided*, That the operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1078.30)

and allow verification of such reports by the market administrator.

10. In § 1078.86, paragraphs (a) and (d) are revised as follows:

§ 1078.86 Termination of obligations.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1079—MILK IN THE DES MOINES, IOWA, MARKETING AREA

1. Section 1079.10 is revised as follows:

§ 1079.1 Pool plant.

"Pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts or an average of not less than 7,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area: *Provided*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately

and is not approved by any health authorities for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of March through June, unless written application is filed with the market administrator on or before the 15th day of any of the months of March, April, May, or June to be designated a nonpool plant for such month and for each subsequent month through June of the same year; *And provided further*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

2. Section 1079.11 is revised as follows:

§ 1079.11 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 that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

3. Section 1079.13 is revised as follows:

§ 1079.13 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers or from sources other than pool plants and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk received from a pool plant.

4. Section 1079.15 is revised as follows:

§ 1079.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), filled milk, cream or any mixture in fluid form of skim milk and cream (except aerated cream products, sour cream, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1079.19 is added as follows:

§ 1079.19 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 milkfat, 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).

6. In § 1079.30, paragraphs (f) and (g) are revised as follows:

§ 1079.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk in the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

(g) Each handler operating a partially regulated distributing plant shall report as required in this section substituting receipts from dairy farmers for receipts of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

7. In § 1079.32, paragraphs (b) and (c) are revised as follows:

§ 1079.32 Records and facilities.

(b) The weights and butterfat and other content of all milk, skim milk, cream, and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

8. In § 1079.44, paragraph (e) (5) is revised as follows:

§ 1079.44 Transfers.

(e)
(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. In § 1079.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised as follows:

§ 1079.46 Allocation of skim milk and butterfat classified.

(a)
(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 two percent of such receipts; and

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

(3) Subtract successively 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; 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:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (exclusive of Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) (i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from

unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in 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, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

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

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

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

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1079.27(1); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(i) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(ii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

10. Section 1079.61 is revised as follows:

§ 1079.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a handler who operates a plant specified in paragraph (a) of this section except as specified in paragraphs (b) and (c):

(a) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the disposition of fluid milk products, except filled milk, from such plant to retail and wholesale outlets in the Des Moines, Iowa, marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order;

(b) Each handler operating a plant described in paragraph (a) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1079.30 and 1079.31) and allow verification of such reports by the market administrator.

(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.

11. In § 1079.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1079.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1079.70 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 uniform 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 § 1079.70(e) and a credit in the amount specified in § 1079.84(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

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(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 uniform 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.

11a. Section 1079.70 is revised as follows:

§ 1079.70 Computation of the net pool obligation of each pool handler.

(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 § 1079.46(a)(3) and the corresponding step of § 1079.46(b) except that for receipts of fluid milk products assigned to Class I pursuant to § 1079.46(a)(3)(iv) and (v) and the corresponding step of § 1079.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

12. Section 1079.83 is revised as follows:

§ 1079.83 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made to such fund and out of which he shall make all payments from such fund pursuant to §§ 1079.61, 1079.62, 1079.84, 1079.85, and 1079.86: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

13. In § 1079.89, paragraphs (a) and (d) are revised as follows:

§ 1079.89 Termination of obligations.

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

tion 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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1090—MILK IN THE CHATTA-NOOGA, TENN., MARKETING AREA

1. In § 1090.7, paragraphs (a) and (b) are revised to read as follows:

§ 1090.7 Pool plant.

(a) Milk distributing plant approved or recognized by a duly constituted health authority for the receiving or processing of Grade A milk and from which Class I milk, except filled milk, equal to not less than 50 percent of its receipts of milk from other pool plants and from approved dairy farmers is disposed of during the month on routes and from which Class I milk, except filled milk, equal to not less than 15 percent of its total Class I disposition, except filled milk, is disposed of during the month on routes in the marketing area;

(b) Milk supply plant which, during the month, ships fluid milk products, except filled milk, approved or recognized by a duly constituted health authority as eligible for distribution under a Grade A label in a volume equal to not less than 50 percent of its receipts of milk from approved dairy farmers to a plant specified in paragraph (a) of this section: *Provided*, That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July unless the operator of such plant files with the market administrator prior to the first day of any of the months of March-July a written request for withdrawal; or

2. Sections 1090.8, 1090.10, 1090.12, and 1090.14 are revised to read as follows:

§ 1090.8 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 other than a producer-handler plant or an other order 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 other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1090.10 Producer-handler.

"Producer-handler" means an approved dairy farmer who:

(a) Operates a plant from which Class I milk is disposed of on routes in the marketing area;

(b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

§ 1090.12 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, flavored milk, flavored milk and skim milk drinks, yogurt, cream (sweet or sour) or any mixture in fluid form of milk, skim milk and cream (except sterilized products packaged in hermetically sealed containers, eggnog, a product which contains 6 percent or more nonmilk fat (or oil), ice cream and ice milk mix and aerated cream).

§ 1090.14 Route.

"Route" means any delivery (including delivery by a vendor or a sale from a plant or plant store) of milk or any milk product (including filled milk) classified as Class I milk pursuant to § 1090.41(a) other than a delivery to any milk or filled milk processing plant.

3. A new § 1090.20 is added and reads as follows:

§ 1090.20 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 milkfat, 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).

4. In § 1090.30, paragraphs (a) (5) and (b) are revised to read as follows:

§ 1090.30 Reports of receipts and utilization.

(a) * * *

(5) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, including separate statements as to the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

(b) Each handler specified in § 1090.9 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and in quantity of reconstituted skim milk in such disposition.

5. In § 1090.44, the introductory text of paragraph (d) and subparagraph (5) of paragraph (f) are revised to read as follows:

§ 1090.44 Transfers.

(d) As Class I milk, if transferred in the form of milk, skim milk, or filled milk in bulk 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:

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

6. In § 1090.46(a), subparagraphs (1-a), (2), (3), (4), and (7) and the introductory text of subparagraph (8) are revised to read as follows:

§ 1090.46 Allocation of skim milk and butterfat classified.

(a) * * *

(1-a) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products, except filled milk made from reconstituted skim milk, received from an unregulated supply plant or the pounds of skim milk classified as Class I milk and transferred or diverted during the month to such plant, whichever is less;

(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; 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, excluding a quantity equal to the pounds of skim milk subtracted pursuant to subparagraphs (1-a) 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 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, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(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;

(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, excluding a quantity equal to the pounds of skim milk subtracted pursuant to subparagraphs (1-a), (3) (iv) and (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 subparagraphs (3) (v) and (4) (ii) of this paragraph:

7. In § 1090.61, paragraph (a) is revised and a new paragraph (c) is added and reads as follows:

§ 1090.61 Plants subject to other Federal orders.

(a) Any distributing plant which would otherwise 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 from such plant to retail or wholesale outlets (except pool plants or nonpool plants) in the Chattanooga, Tennessee, marketing area than in the marketing area regulated pursuant to such order

(c) Each handler operating a plant described 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.

8. In § 1090.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1090.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1090.70 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 § 1090.70(e) and a credit in the amount specified in § 1090.82(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.

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 location of the nonpool plant less the value of such skim milk at the Class II price.

8a. In § 1090.70, paragraph (d) is revised to read as follows:

§ 1090.70 Computation of the net pool obligation of each pool handler.

(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 § 1090.46(a) (3) and the corresponding step of § 1090.46(b), except for receipts of fluid milk products assigned to Class I pursuant to § 1090.46(a) (3) (iv) and (v) and the corresponding step of § 1090.46 (b) the Class I price shall be adjusted to the location of the transferor plant; and

9. Section 1090.81 is revised to read as follows:

§ 1090.81 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 §§ 1090.61, 1090.62, 1090.82, and 1090.84, and out of which he shall make all payments pursuant to §§ 1090.83 and 1090.84: *Provided*, That any payments due to any

handler shall be offset by any payments due from such handler.

10. In § 1090.87, paragraph (a) is revised to read as follows:

§ 1090.87 Termination of obligations.

(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;

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

1. Section 1094.7 is revised to read as follows:

§ 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.

1a. In § 1094.10, paragraph (a) is revised to read as follows:

§ 1094.10 Pool plant.

(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;

2. Section 1094.11 is revised to read as follows:

§ 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.

3. Section 1094.13 is revised to read as follows:

§ 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.

4. Section 1094.17 is revised to read as follows:

§ 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).

5. A new § 1094.19a is added to read as follows:

§ 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 milkfat, 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).

6. In § 1094.30, subparagraph (6) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1094.30 Reports of receipts and utilization.

(a) * * *

(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.

(b) Each handler specified in § 1094.13 (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.

7. In § 1094.44, subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1094.44 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1094.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i) of paragraph (a) are revised to read as follows:

§ 1094.46 Allocation of skim milk and butterfat in each class.

- (a) * * *
- (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; 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 subparagraph (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;

(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 which were not subtracted pursuant to subparagraph (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:

9. In § 1094.62, paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1094.62 Obligations of handlers operating a partially regulated distributing plant.

(a) * * *

(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

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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.

10. Section 1094.63 is revised to read as follows:

§ 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.

10a. In § 1094.70, paragraph (d) is revised to read as follows:

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

(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

11. Section 1094.81 is revised to read as follows:

§ 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.

12. In § 1094.87, paragraph (a) is revised to read as follows:

§ 1094.87 Termination of obligations.

(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.

PART 1096—MILK IN THE NORTHERN LOUISIANA MARKETING AREA

1. Section 1096.10 is revised to read as follows:

§ 1096.10 Plant.

"Plant" means the land, buildings together with their surroundings, facilities and equipment whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and/or processed or packaged: *Provided*, That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distributing depot for fluid milk products in transit on routes shall not be a plant under this definition.

2. In § 1096.13, paragraphs (a) and (b) are revised to read as follows:

§ 1096.13 Pool plant.

(a) A distributing plant other than the plant of a producer-handler from which a volume of Class I milk, except filled milk, not less than 50 percent of the Grade A milk received at such plant from dairy farmers and a cooperative association in its capacity as a handler pursuant to § 1096.8(d) is disposed of during the month on routes unless the volume so disposed of in the marketing area is less than 10 percent of such receipts or less than 1,500 pounds on a daily average;

(b) A supply plant from which a volume of fluid milk products not less than 50 percent of its Grade A receipts from dairy farmers and from a cooperative association in its capacity as a handler pursuant to § 1096.8(d) is transferred during the month to a distributing plant(s) from which a volume of Class I milk, except filled milk, not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants is disposed of on routes during the month and the volume so disposed of in the marketing area is at least 10 percent of such receipts or a daily average of 1,500 pounds whichever is less: *Provided*, That any plant which was a pool plant pursuant to this paragraph in each of the months of September through January shall be a pool plant in each of the following months of February through August in which it does not meet the shipping requirements, unless written request is filed with the market administrator prior to the beginning of any such month for nonpool status for the remaining months through August; and

3. Section 1096.15 is revised to read as follows:

§ 1096.15 Fluid milk product.

"Fluid milk product" means all the skim milk (including concentrated and reconstituted skim milk) and butterfat in the form of milk, skim milk, butter-milk, flavored milk and milk drinks, filled milk, cream, cultured sour cream and any mixture of cream and milk or skim milk (except eggnog, aerated cream products, ice cream, ice cream mix, ice milk, ice milk mix, frozen desserts, frozen cream, evaporated milk, condensed milk, sterilized milk products packaged in hermetically sealed containers and any product which contains 8 percent or more non-milk fat (or oil)): *Provided*, That when any such product is fortified with nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content.

4. Section 1096.21 is revised to read as follows:

§ 1096.21 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.

5. A new § 1096.22 is added to read as follows:

§ 1096.22 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 milkfat, 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).

6. In § 1096.30, subparagraphs (2) and (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1096.30 Reports of receipts and utilization.

(a) * * *

(2) Utilization of all skim milk and butterfat required to be reported pursuant to this section including a statement of the route disposition of fluid milk products on routes outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(3) Such other information with respect to the receipts and utilization of milk and milk products (including filled milk) as the market administrator may require;

(b) Each handler specified in § 1096.8 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer 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;

7. In § 1096.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1096.44 Transfers.

(e) * * *

(5) For purposes of this paragraph (e), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1096.46, subparagraphs (2), (3), (4), (5), (6), (7), and the introductory text to subparagraph (8) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1096.46 Allocation of skim milk and butterfat classified.

- (a) * * *
- (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) as follows:
- (i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and
- (ii) From Class I milk, the remainder of such receipts;
- (2-a) Subtract from the remaining pounds of skim milk in Class I milk, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;
- (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; and
- (iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order or from a plant exempt pursuant to § 1096.60 (b);
- (iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; 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:
- (i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;
- (ii) (a) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:
- (1) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;
- (2) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(3) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(b) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in 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, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(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 bulk 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) of this paragraph;

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

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subpara-

graph (3) (v) or (4) (iii) of this paragraph pursuant to the following procedure:

9. Section 1096.61 is revised to read as follows:

§ 1096.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a plant specified in paragraph (a) or (b) of this section except as specified in paragraphs (c) and (d):

(a) A distributing plant meeting the requirements of § 1096.13(a) which also meets the pooling requirements of another Federal order and from which the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, and which was fully subject to the classification and pooling provisions of such other order;

(b) A distributing plant meeting the requirements of § 1096.13(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order;

(c) The operator of a plant specified in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator; and

(d) Each handler operating a plant specified in paragraph (a) or (b) 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.

(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.

10. In § 1096.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1096.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1096.70 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 § 1096.70(e) and a credit in the amount specified in § 1096.82(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

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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.

10a. In § 1096.70, paragraph (d) is revised to read as follows:

§ 1096.70 Computation of the net pool obligation of each pool handler.

(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 § 1096.46(a) (3) and the corresponding step of § 1096.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1096.46(a) (3) (iv) and (v) and the corresponding steps of § 1096.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

11. Section 1096.81 is revised to read as follows:

§ 1096.81 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 §§ 1096.61, 1096.62, 1096.82, and 1096.84 and out of which he shall make payments to handlers pursuant to §§ 1096.83 and 1096.84: *Provided*, That payments due to any handler shall be offset by any payment due from such handler.

12. In § 1096.87, paragraphs (a) and (d) are revised to read as follows:

§ 1096.87 Termination of obligations.

(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 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;

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1097—MILK IN THE MEMPHIS, TENN., MARKETING AREA

1. Section 1097.7 is revised to read as follows:

§ 1097.7 Fluid milk plant.

(a) Any milk processing or packaging plant from which a volume of Class I milk, except filled milk, equal to an average of 1,000 pounds or more per day, or not less than 5.0 percent of the Class I milk, except filled milk, of such plant is disposed of during the month as Class I milk on route disposition in the marketing area;

(b) Any plant from which during the month fluid milk products (bulk or packaged), except filled milk, in excess of 70,000 pounds are moved to and received at a plant(s) described pursuant to paragraph (a) of this section.

1a. Section 1097.8 is revised to read as follows:

§ 1097.8 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk products to a retail or wholesale outlet other than a delivery to a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets, without intermediate movement to another milk or filled milk plant.

2. Section 1097.9 is revised to read as follows:

§ 1097.9 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk manufacturing, processing or packaging plant other than a fluid milk plant. The following categories of nonfluid milk 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 nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which Class I milk in consumer-type packages or dispenser units is distributed on routes in the marketing area during the month.

(d) "Unregulated supply plants" means a nonfluid milk plant from which fluid milk products are moved during the month to a fluid milk plant and which is not an other order plant nor a producer-handler plant.

3. Section 1097.16 is revised to read as follows:

§ 1097.16 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, plain or flavored milk drinks, sweet and sour cream (except aerated cream, frozen cream, and sterilized cream packaged in

hermetically sealed containers not labeled as Grade A; filled milk; and any mixture in fluid form of milk, skim milk, and cream except mixes for frozen dairy products. Eggnog and sour cream mixtures to which cheese or any food substance other than a milk product has been added shall be considered as fluid milk products only if disposed of under a Grade A label. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1097.19 is added to read as follows:

§ 1097.19 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 milkfat, 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).

5. In § 1097.30, paragraph (e) is revised to read as follows:

§ 1097.30 Reports of receipts and utilization.

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

6. In § 1097.32, paragraphs (b) and (c) are revised to read as follows:

§ 1097.32 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled; and

(c) The pounds of skim milk and butterfat contained in or represented by all milk and milk products (including filled milk) on hand at the beginning and end of each month.

7. In § 1097.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1097.44 Transfers.

(f)
(5) For purposes of this paragraph (f), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1097.46, subparagraphs (3), (4), and (7) of paragraph (a) are revised to read as follows:

§ 1097.46 Allocation of skim milk and butterfat classified.

(a)

(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; and

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

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

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

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (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 fluid milk plants of other handlers, from cooperative associations which are handlers pursuant to § 1097.10(c), and receipts in bulk from other order plants;

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) of this paragraph;

(ii) Receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (4) (i) of this paragraph;

9. Section 1097.61 is revised to read as follows:

§ 1097.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as operator of a plant specified in paragraph (a) or (b) of this section, the provisions of this part shall not apply except that such handler shall with respect to his total receipts and disposition

of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may prescribe and allow verification of such reports by the market administrator:

(a) A plant qualified pursuant to § 1097.7 (a) or (b) which would be fully regulated pursuant to the provisions of another order issued pursuant to the Act and from which the market administrator determines that a greater volume of fluid milk products, except filled milk, was disposed of during the month from such plant as Class I route disposition in the marketing area regulated by the other order and as fluid milk products transferred as Class I milk to plants fully regulated by such other order than as Class I route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants: *Provided*, That a plant which was a fluid milk plant pursuant to § 1097.7 (a) or (b) under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of fluid milk products, except filled milk, is disposed of as Class I milk on routes in such other marketing area or to plants fully subject to such other order, unless the other order requires regulation of the plant without regard to its qualifying as a fluid milk plant for regulation under this order subject to the proviso of this paragraph; and

(b) A plant qualified pursuant to § 1097.7 (a) or (b) which meets the requirements for fully regulated plants under another Federal order and from which the market administrator determines a greater volume of fluid milk products, except filled milk, is disposed of during the month as Class I route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants than as Class I route disposition in the other marketing area and fluid milk products transferred as Class I milk to plants fully regulated by such other order, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation under the particular circumstances described herein of having greater Class I disposition under the Memphis, Tenn., order.

10. In § 1097.98, paragraphs (a) and (d) are revised to read as follows:

§ 1097.98 Termination of obligations.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1098—MILK IN THE NASHVILLE, TENN., MARKETING AREA

1. Section 1098.9 is revised to read as follows:

§ 1098.9 Producer-handler.

"Producer-handler" means a person who:

- (a) Produces milk and operates an approved plant;
- (b) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and
- (c) Receives no fluid milk products during the month except milk of his own production and transfers from pool plants.

2. In § 1098.11, paragraphs (a) and (b) are revised to read as follows:

§ 1098.11 Pool plant.

(a) A plant at which during the month fluid milk products are processed or packaged and from which (1) disposition of fluid milk products, except filled milk, on routes is at least 50 percent of total receipts of Grade A milk and (2) fluid milk products, except filled milk, distributed on routes in the marketing area are at least 15 percent of its total disposition of fluid milk products, except filled milk, on routes.

(b) A plant from which during the month there has been delivered to plants described in paragraph (a) of this section fluid milk products, except filled milk, approved by any health authority having jurisdiction in the marketing

area as eligible for distribution under a Grade A label in a volume not less than 50 percent of its receipts of milk from approved dairy farmers: *Provided*, That any plant which qualified as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July, unless the operator of such plant files with the market administrator a written request for withdrawal prior to the first day of the month for which nonpool status is requested, in which case the plant shall remain a nonpool plant until it again qualifies for pool status.

3. Sections 1098.12, 1098.15, and 1098.18 are revised to read as follows:

§ 1098.12 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 other than a producer-handler plant or an other order 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 other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1098.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, flavored milk, flavored milk drinks, yogurt, cream (sweet and sour), or any mixture in fluid form of skim milk and butterfat components of milk (except sterilized products packaged in hermetically sealed containers, eggnog, ice cream mix, a product which contains 6 percent or more nonmilk fat (or oil), aerated cream and sour cream mixtures to which cheese or any food substance other than a milk product has been added and which is not disposed of under a Grade A label).

§ 1098.18 Route.

"Route" means any delivery (including delivery by a vendor or a sale from a plant store) of fluid milk products other than a delivery to a milk or filled milk processing plant.

4. A new § 1098.19 is added and reads as follows:

§ 1098.19 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 milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than six percent nonmilk fat (or oil).

5. In § 1098.30, paragraphs (a) and (e) are revised to read as follows:

§ 1098.30 Reports of receipts and utilization.

(a) The quantities of skim milk and butterfat contained in producer milk (showing separately such milk received from a cooperative association pursuant to § 1098.8(c)), except that a handler as specified in § 1098.8(d) who operates a partially regulated distributing plant shall report receipts of Grade A milk from dairy farmers in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and the quantity of reconstituted skim milk in such disposition;

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

6. Section 1098.33 is revised to read as follows:

§ 1098.33 Records and facilities.

Each handler shall keep adequate records of receipts and utilization of skim milk and butterfat, and shall, during the usual hours of business, make available to the market administrator, or his representative, such records and facilities as will enable the market administrator to (a) verify the receipts and utilization of all skim milk and butterfat, and in case of errors or omissions, ascertain the correct figures; (b) weigh, sample and test butterfat content of all milk and milk products (including filled milk) handled; (c) verify deductions authorized by producers and the disbursement of moneys so deducted; and (d) make such examinations of operations, equipment, and facilities as the market administrator deems necessary.

7. In § 1098.41(b), subparagraph (3-a) is revised to read as follows:

§ 1098.41 Classes of utilization.

(b) * * *

(3-a) Disposed of in bulk fluid milk products to bakeries, candy factories, soup factories and similar establishments at which the fluid milk products were used in the manufacture of food products other than milk products (including filled milk);

8. In § 1098.44, the introductory text of paragraph (d) and and subparagraph

(5) of paragraph (e) are revised to read as follows:

§ 1098.44 Transfers.

(d) 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:

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. In § 1098.46(a), subparagraphs (2), (3), (4), and (7) and the introductory text of subparagraph (8) are revised to read as follows:

§ 1098.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 two 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; 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 re-

maining 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 subparagraph (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 and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(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;

(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 which were not subtracted pursuant to subparagraphs (3)(iv) and (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 subparagraphs (3)(v) and (4)(ii) of this paragraph:

9a. In § 1098.70, paragraph (d) is revised to read as follows:

§ 1098.70 Computation of the net pool obligation of each pool handler.

(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 § 1098.46(a)(3) and the corresponding step of § 1098.46(b), except for receipts of fluid milk products assigned to Class I pursuant to § 1098.46(a)(3)(iv) and (v) and the corresponding step of § 1098.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

10. Section 1098.80 is revised to read as follows:

§ 1098.80 Producer-settlement fund.

The market administrator shall maintain a producer-settlement fund into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1098.81, 1098.87, 1098.91, and 1098.92 and out of which he shall make appropriate payments required pursuant to §§ 1098.82 and 1098.87.

11. In § 1098.88, paragraphs (a) and (d) are revised to read as follows:

§ 1098.88 Termination of obligations.

(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 obligations, 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, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

12. Section 1098.91 is revised to read as follows:

§ 1098.91 Handlers subject to other Federal orders.

(a) Except as specified in paragraphs (b) and (c) of this section, the provisions of this part shall not apply to a handler with respect to the operation of a plant during any month in which the milk at such plant would be subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the Act and in which the disposition of fluid milk products, except filled milk, from such plant in the other Federal marketing area exceeds that in the Nashville, Tenn., marketing area: *Provided*, That on the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes

of this paragraph shall exclude (for a specified period of time) Class I disposition made under limited term contracts to governmental bases and institutions;

(b) Each handler operating a plant described in paragraph (a) of this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator; and

(c) Each handler operating a plant described 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.

13. In § 1098.92, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1098.92 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1098.70 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 § 1098.70(e) and a credit in the amount specified in § 1098.81(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.

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 location of the nonpool plant less the value of such skim milk at the Class II price.

PART 1099—MILK IN THE PADUCAH, KY., MARKETING AREA

1. Section 1099.8 is revised to read as follows:

§ 1099.8 Pool plant.

"Pool plant" means:

(a) A distributing plant from which 45 percent or more of its receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmers diverted by the plant operator), from cooperative associations in their capacity as handlers pursuant to § 1099.10(e) and fluid milk products, except filled milk, from other plants is disposed of as Class I milk, except filled milk, on route disposition during the month and from which a daily average of 3,000 pounds or more per day, or 10 percent or more of such receipts, whichever is less, is disposed of as fluid milk products, except filled milk, on route disposition in the marketing area: *Provided*, That a plant which qualifies as a pool plant by complying with the foregoing requirements during any month shall be a pool plant during the following month; or

(b) A distributing plant or supply plant from which the volume of milk, skim milk and cream shipped to pool plants qualified pursuant to paragraph (a) of this section, or disposed of as Class I milk, except filled milk, on route distribution is equal to not less than 50 percent of the receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy

farmers diverted by the plant operator), from cooperative associations in their capacity as handlers pursuant to § 1099.10(e) and fluid milk products, except filled milk, received from other plants: *Provided*, That if a supply plant ships to pool plants qualified pursuant to paragraph (a) of this section, milk, skim milk and cream equal to at least 75 percent of its receipts of milk from such dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1099.10(e) in October and November and 35 percent of such milk in three additional months during the period from August through January, such plant shall, upon written application to the market administrator on or before the end of such period, be designated as a pool plant until the end of any month during the succeeding August through January period in which the milk of such plant is disposed of in such a way that it becomes impossible for the plant to reestablish its qualification under the term of this proviso.

2. Section 1099.9 is revised to read as follows:

§ 1099.9 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 route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant (other than a producer-handler plant or an other order plant) from which fluid milk products are shipped to a pool plant.

3. Section 1099.15 is revised to read as follows:

§ 1099.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk and flavored milk drinks (modified or fortified, including dietary products) and reconstituted milk or skim; filled milk; concentrated milk not sterilized in hermetically sealed containers; cream, sweet and sour; and mixtures of cream and milk or skim milk but not including the following: Frozen cream, aerated cream products, cultured sour cream mixtures other than sour cream, eggnog and boiled custard, ice cream, and ice cream and ice milk mixes, and cream or mixtures of cream with milk or skim milk sterilized in hermetically sealed containers. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

3a. Section 1099.16 is revised to read as follows:

§ 1099.16 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk products to a retail or wholesale outlet other than a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets.

4. A new § 1099.19 is added to read as follows:

§ 1099.19 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 milkfat, 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).

5. Section 1099.30 is revised to read as follows:

§ 1099.30 Reports of receipts and utilization.

On or before the 6th day after the end of each month, reports for such month shall be made to the market administrator in the detail and on forms prescribed by the market administrator:

(a) Each handler other than one specified in § 1099.10(b) shall report the following:

(1) The quantities of skim milk and butterfat contained in all receipts at each of his distributing and supply plants of (i) producer milk, showing separately that from cooperative associations pursuant to § 1099.10(c), (ii) in fluid milk products received from pool plants, and (iii) other source milk;

(2) The quantities of skim milk and butterfat contained in producer milk diverted to nonpool plants pursuant to § 1099.13, the names of the producers so diverted, and the plant to which diverted;

(3) The utilization of all skim milk and butterfat required to be reported pursuant to paragraphs (1) and (2) of this paragraph, including a statement showing the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(4) Inventories of Class I milk on hand at the beginning and end of the month;

(5) The name and address of each producer from whom milk was not received during the previous months and the date on which milk was first received from such producer;

(6) The name and address of each producer who discontinues deliveries of milk and the date on which milk was last received from such producer; and

(7) Each handler with respect to fluid milk products disposed of for animal feed

or dumped shall report to the market administrator such information and at such time as a market administrator may require.

(b) Each handler specified in § 1099.10(b) shall report as required in paragraph (a) of this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk and 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.

6. Section 1099.33 is revised to read as follows:

§ 1099.33 Records and facilities.

Each handler shall keep adequate records of receipts and utilization of milk and milk products (including filled milk) and shall during the usual hours of business, make available to the market administrator or his representative such records and facilities as will enable the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The amount and nature of deductions authorized by producers and disbursements of any money so deducted; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk and milk products (including filled milk) on hand at the beginning and end of the month.

7. In § 1099.43, subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1099.43 Transfers.

(d) * * * * *

(5) For purposes of this paragraph (d), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

* * * * *

8. In § 1099.45, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (1) of paragraph (a) are amended to read as follows:

§ 1099.45 Allocation of skim milk and butterfat classified.

(a) * * * * *

(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:

(1) From Class II milk, the lesser of the pounds remaining or two 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; and

(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; 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 unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, and dairy farmers who are not producers;

(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 other pool handlers, 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;

* * * * *

(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 and dairy farmers who are not producers which were not subtracted pursuant to subparagraphs (3)(iv) or (4)(1) 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 subparagraphs (3)(v) or (4)(ii) of this paragraph;

PROPOSED RULE MAKING

9. Section 1099.61 is revised to read as follows:

§ 1099.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as operator of a plant specified in paragraphs (a), (b), and (c) of this section, the provisions of this part shall not apply except as specified in paragraphs (d) and (e):

(a) A distributing plant qualified pursuant to § 1099.8 which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as Class I route disposition in the marketing area regulated by the other order than as Class I route disposition in the Paducah, Ky., marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such Class I route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this paragraph: *And provided further*, on the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I route dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) Class I route disposition made under limited term contracts to governmental bases and institutions;

(b) A distributing plant qualified pursuant to § 1099.8 which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Paducah marketing area as Class I route disposition than as Class I route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation even though such plant has greater such Class I route disposition in the marketing area of the Paducah, Ky., order;

(c) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of § 1099.8(b) during the preceding August through January period;

(d) The operator of a plant specified in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as

the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a) or (b) 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.

(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.

10. In § 1099.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1099.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1099.70 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 § 1099.70(e) and a credit in the amount specified in § 1099.82(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

(b) An amount computed as follows:

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

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other

order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim 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 or the Class II price, whichever is higher, 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.

10a. In § 1099.70, paragraph (d) is revised to read as follows:

§ 1099.70 Computation of the net pool obligation of each pool handler.

(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 the skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1099.45(a) (3) and the corresponding step of § 1099.45(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1099.45(a) (3) (iv) and (v) and the corresponding steps of § 1099.45(b) the Class I price shall be adjusted to the location of the transferor plant; and

11. Section 1099.81 is revised to read as follows:

§ 1099.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers, pursuant to §§ 1099.61, 1099.62, 1099.82, and 1099.84 shall be deposited in this fund, and all payments made pursuant to §§ 1099.83 and 1099.84 shall be made out of this fund: *Provided*, That payments due to any handler shall be offset by payments due from such handler; and

(b) All amounts subtracted pursuant to § 1099.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1099.80 in accordance with the requirements of § 1099.71(i).

12. In § 1099.89, paragraphs (a) and (d) are revised to read as follows:

§ 1099.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this order 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.

(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 order shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1101—MILK IN KNOXVILLE, TENN., MARKETING AREA

1. Sections 1101.7, 1101.9, 1101.10, and 1101.17 are revised to read as follows:

§ 1101.7 Producer-handler.

"Producer-handler" means any person who:

- (a) Operates a dairy farm and an approved plant from which Class I milk is disposed of on routes in the marketing area;
- (b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants;
- (c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and
- (d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging and distribution business are the personal enterprise and risk of such person.

§ 1101.9 Pool plant.

"Pool plant" means:
(a) An approved plant from which a volume of Class I milk, except filled milk, equal to not less than 50 percent of its receipts of producer milk and milk and skim milk from other pool plants is dis-

posed of during the month on routes (including routes operated by vendors) to retail or wholesale outlets (including plant stores): *Provided*, That not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area; and

(b) An approved plant from which at least 50 percent of the hundredweight of its producer milk received during the month is shipped in the form of milk, skim milk or cream to a plant qualified pursuant to paragraph (a) of this section and classified as Class I milk: *Provided*, That if such shipments amount to not less than 65 percent of the producer milk of such plant during each of the preceding months of August through February, such plant may, upon written application to the market administrator on or before March 1 of any year be designated as a pool plant for the months of March through July of such year.

§ 1101.10 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 other than a producer-handler plant or an other order 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 other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1101.17 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, flavored milk, flavored milk drinks, cream, and any cream product except frozen cream and ice cream mix. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

2. A new § 1101.18 is added to read as follows:

§ 1101.18 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, culture, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, 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).

3. In § 1101.30, paragraph (a) (5) and (b) are revised to read as follows:

§ 1101.30 Reports of receipts and utilization.

(a) * * *
(5) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

(b) Each handler specified in § 1101.11(b) who operates a partially regulated distributing plant, shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and the quantity of reconstituted skim milk in such disposition.

4. Section 1101.32 is revised to read as follows:

§ 1101.32 Records and facilities.

Each handler shall keep adequate records of receipts and utilization of skim milk and butterfat and shall, during the usual hours of business, make available to the market administrator or his representative such records and facilities as will enable the market administrator to (a) verify the receipts and utilization of all skim milk and butterfat and, in case of errors or omissions, ascertain the correct figures; (b) weigh, sample, and test for butterfat content all milk and milk products (including filled milk) handled; (c) verify payment to producers; and (d) make such examination of operations, equipment, and facilities, as are necessary and essential to the proper administration of this subpart or any amendments thereto.

5. In § 1101.44, the introductory text of paragraph (c) and subparagraph (5) of paragraph (d) are revised to read as follows:

§ 1101.44 Transfers.

(c) As Class I milk, if transferred in bulk in the form of 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:

(d) * * *
(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk prod-

ucts shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

6. In § 1101.46(a), subparagraphs (2), (3), (5), (6), and (8) and the introductory text of subparagraph (9) are revised to read as follows:

§ 1101.46 Allocation of skim milk and butterfat classified.

(a) Subtract from the total pounds of skim milk in Class I milk the pounds of skim milk in receipts of packaged fluid milk products, except filled milk made from reconstituted skim milk, from an unregulated supply plant or the pounds of skim milk classified as Class I milk and transferred during the month to such nonpool plant, whichever is less;

(3) 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 (5) (v) of this paragraph, as follows:

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

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

(5) 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; 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;

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

(1) Receipts of fluid milk products from an unregulated supply plant, excluding a quantity equal to the pounds of skim milk subtracted pursuant to subparagraphs (2) and (5) (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 pro-

ducer milk, receipts from pool plants of other handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (5) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (5) (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;

(8) 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, excluding a quantity equal to the pounds of skim milk subtracted pursuant to subparagraphs (2), (5) (iv), and (6) (i) of this paragraph;

(9) 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 subparagraphs (5) (v) and (6) (ii) of this paragraph:

6a. In § 1101.70, paragraph (d) is revised to read as follows:

§ 1101.70 Computation of the net pool obligation of each pool handler.

(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 § 1101.46(a) (5) and the corresponding step of § 1101.46(b), except for receipts of fluid milk products assigned to Class I pursuant to § 1101.46(a) (5) (iv) and (v) and the corresponding step of § 1101.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

7. Section 1101.81 is revised to read as follows:

§ 1101.81 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 §§ 1101.82, 1101.84, 1101.91, and 1101.92, and out of which he shall make all payments pursuant to §§ 1101.83 and 1101.84: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

8. In § 1101.89, paragraphs (a) and (d) are revised to read as follows:

§ 1101.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this subpart, 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.

(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 subpart shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

9. In § 1101.91, paragraph (a) is revised and a new paragraph (c) is added and reads as follows:

§ 1101.91 Plants subject to other Federal orders.

(a) Any pool plant qualified pursuant to § 1101.9(a) which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the Secretary determines that more Class I milk, except filled milk, is disposed of from such plant on routes to retail or wholesale outlets in the Knoxville, Tennessee, marketing areas than is so disposed of in the marketing area regulated pursuant to such other order.

(c) Each handler operating a plant described 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 applicable at the nonpool plant and subtract its value at the Class II price.

10. In § 1101.92, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1101.92 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1101.70 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, excepted 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 § 1101.70(e) and a credit in the amount specified in § 1101.82(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.

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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

location of the nonpool plant less the value of such skim milk at the Class II price.

PART 1102—MILK IN THE FORT SMITH, ARK., MARKETING AREA

1. Section 1102.7 is revised to read as follows:

§ 1102.7 Approved plant.

"Approved plant" means any milk plant, except the plant of a producer-handler or a plant exempt pursuant to § 1102.61, approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores).

2. Section 1102.8 is revised to read as follows:

§ 1102.8 Unapproved plant.

"Unapproved plant" means any milk or filled milk receiving, manufacturing or processing plant other than an approved plant. The following categories of unapproved 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) "Unregulated supply plant" means an unapproved plant which is not an other order plant nor a producer-handler plant and from which fluid milk products eligible for distribution in the marketing area for fluid consumption are moved during the month to an approved plant.

3. Section 1102.9 is revised to read as follows:

§ 1102.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores);

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted to an unapproved plant for the account of such cooperative association.

4. Section 1102.16 is revised to read as follows:

§ 1102.16 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream, cultured sour cream and any mixture of cream and milk or skim milk (except bulk ice cream mix). This definition shall not include a product which contains 6 percent or more non-milk fat (or oil).

5. A new § 1102.17 is added to read as follows:

§ 1102.17 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 milkfat, 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).

6. In § 1102.33, paragraphs (b) and (d) are revised to read as follows:

§ 1102.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

(d) The pounds of skim milk and butterfat contained in or represented by all milk and milk products (including filled milk) on hand at the beginning and end of each month.

7. In § 1102.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1102.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1102.46, subparagraphs (3), (4), and (6) of paragraph (a) are revised to read as follows:

§ 1102.46 Allocation of skim milk and butterfat classified.

(a) * * *

(3) Subtract in the order specified below the pound 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; and

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

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

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

(i) Receipts of fluid milk products from an unregulated supply plant, that

were not subtracted pursuant to subparagraph (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 approved plants of other handlers, and receipts in bulk from other order plants;

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(6) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) of this paragraph;

(ii) Receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (4) (ii) of this paragraph;

9. Section 1102.61 is revised to read as follows:

§ 1102.61 Milk priced under other Federal orders.

In the case of any handler who the Secretary determines disposes of a greater portion of his fluid milk products, except filled milk, as Class I milk in another marketing area regulated by a milk marketing agreement or order issued pursuant to the act, the provisions of this part shall not apply except that:

(a) The handler shall, with respect to his total receipts of skim milk and butterfat make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

10. In § 1102.85, paragraphs (a) and (d) are revised to read as follows:

§ 1102.85 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of paragraphs (b) and (c) of this section, terminates 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.

(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 subpart shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1104—MILK IN RED RIVER VALLEY MARKETING AREA

1. In § 1104.7, paragraph (c) is revised as follows:

§ 1104.7 Distributing plant.

(c) from which Class I milk, except filled milk, is disposed of during the month on routes in the marketing area in an amount greater than an average of 600 pounds per day.

2. Section 1104.8 is revised as follows:

§ 1104.8 Supply plant.

"Supply plant" means all the buildings, premises, and facilities of a plant from which fluid milk products, except filled milk, equal to not less than 50 percent of its receipts of milk from dairy farmers, who would be producers if this plant qualified as a pool plant, are shipped to a distributing plant during such month; *Provided*, That any plant which qualifies as a supply plant for each of the months of September through December shall, upon written application to the market administrator before January 31 of the following year, be designated as a supply plant for the months of January through August.

3. Section 1104.10 is revised as follows:

§ 1104.10 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, except an other order plant or a producer-handler plant, from which fluid milk products

are distributed on routes in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1104.9 and which is not an other order plant nor a producer-handler plant.

4. Section 1104.13 is revised as follows:

§ 1104.13 Producer-handler.

"Producer-handler" means any person who produces milk and who operates a plant from which the disposition of Class I milk on routes in the marketing area does not exceed such person's own production and fluid milk products received from a pool plant regulated under either this Part or Part 1106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

5. Section 1104.15 is revised as follows:

§ 1104.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream or any mixture in fluid form of cream and milk or skim milk (except cultured sour cream, frozen storage cream, aerated cream products, ice cream and frozen dessert mix, evaporated or condensed milk, and sterilized products in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

6. Section 1104.17 is revised as follows:

§ 1104.17 Route disposition.

"Route disposition" or "disposed of on routes" means any delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products, other than a delivery to a milk or filled milk plant.

7. A new § 1104.18 is added as follows:

§ 1104.18 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 milkfat, 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).

8. In § 1104.30, paragraphs (a) (5) and (c) are revised as follows:

§ 1104.30 Reports of receipts and utilization.

(a) * * *

(5) The disposition of Class I products on routes wholly outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(c) Each handler specified in § 1104.11 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk shall be reported in lieu of those in producer

milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of in the marketing area as Class I milk on routes with such in-area sales of reconstituted skim milk in fluid milk products shown separately.

9. Section 1104.33 is revised as follows:

§ 1104.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or his representative 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 with respect to:

(a) The receipts and utilization of all skim milk and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products (including filled milk) handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and milk products (including filled milk) on hand at the beginning and end of each month.

10. In § 1104.44 paragraph (e) (5) is revised as follows:

§ 1104.44 Transfers.

(e) * * *

(5) For purposes of this paragraph (e), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

11. In § 1104.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i) of paragraph (a) are revised as follows:

§ 1104.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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; and

(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; 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, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (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 other pool plants, 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;

(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 which were not subtracted pursuant to subparagraph (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:

12. Section 1104.61 is revised as follows:

§ 1104.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e).

(a) A distributing plant meeting the requirements of § 1104.9 which also

meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was disposed of during the month on routes in such other Federal order marketing area than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) Class I disposition made under limited term contracts to governmental bodies and institutions.

(b) A distributing plant meeting the requirements of § 1104.9 which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk was disposed of during the month on routes in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A supply plant meeting the requirements of § 1104.9 which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

(d) Each handler operating a plant described in paragraph (a), (b) or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), 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 the receipts 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 applicable to milk used in the manufacture of American cheese, butter and nonfat dry milk.

13. In § 1104.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1104.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1104.70 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 applicable to milk used in the manufacture of American cheese, butter and nonfat dry milk. There shall be included in the obligation so computed a charge in the amount specified in § 1104.70(e) and a credit in the amount specified in § 1104.82(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 in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

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

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class II price applicable to milk used in the manufacture of American cheese, butter and nonfat dry milk, whichever is higher 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 such Class II price.

13a. In § 1104.70, paragraph (d) is revised to read as follows:

§ 1104.70 Computation of the net pool obligation of each pool handler.

(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 § 1104.46(a) (3) and the corresponding step of § 1104.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1104.46(a) (3) (iv) and (v) and the corresponding step of § 1104.46(b) the Class I price shall be adjusted to the location of the transferor plant;

14. Section 1104.81 is revised as follows:

§ 1104.81 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 §§ 1104.61, 1104.62, 1104.82, and 1104.84, and out of which he shall make all payments to handlers pursuant to §§ 1104.83 and 1104.84; *Provided*, That any payments due to any handler may be offset by any payments due from such handler.

15. In § 1104.87, paragraphs (a) and (d) are revised as follows:

§ 1104.87 Termination of obligations.

(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 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 mar-

ket administrator the account for which it is to be paid;

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler, if a refund of 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.

PART 1106—MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

1. In § 1106.9, paragraphs (a) and (b) are revised to read as follows:

§ 1106.9 Pool plant.

(a) A distributing plant (other than that of a producer-handler or one which is exempt pursuant to § 1106.61) from which the following percentages of the receipts described in § 1106.7(c) are disposed of during the month as follows:

(1) 50 percent as Class I milk in the form of fluid milk products, except filled milk, and

(2) 5 percent as fluid milk products, except filled milk, on routes in the marketing area.

(b) A supply plant from which an amount equal to 50 percent of the receipts described in § 1106.8 is shipped during the month as fluid milk products, except filled milk, to a plant described in paragraph (a) of this section. Any supply plant that qualifies as a pool plant during each of the months of September through December shall be a pool plant for the following months of January through August except that, if the operator of such plant so requests the market administrator in writing, its pool plant status shall be terminated the first day of the month following receipt of such notification.

2. Section 1106.10 is revised as follows:

§ 1106.10 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 an 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 are distributed on routes in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant, except an other order plant or a producer-handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1106.9.

3. Section 1106.15 is revised as follows:

§ 1106.15 Producer-handler.

"Producer-handler" means any person who produces milk and operates a plant which meets the standards in § 1106.7(a) from which Class I milk is disposed of on routes in the marketing area, but who receives no milk from producers or other dairy farmers, and whose disposition of Class I milk does not exceed his own production and fluid milk products received from pool plants.

4. Section 1106.16 is revised as follows:

§ 1106.16 Route.

"Route" means any delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products other than a delivery in bulk to a milk or filled milk plant.

5. Section 1106.17 is revised as follows:

§ 1106.17 Fluid milk products.

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream (except cream stored and frozen), cultured sour cream, and any mixture in fluid form of cream and milk or skim milk (except bulk ice cream mix). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

6. A new § 1106.19 is added as follows:

§ 1106.19 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 milkfat, 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).

7. Section 1106.30 is revised as follows:

§ 1106.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month each handler, except a producer-handler, shall report to the market administrator for each accounting period in the month in detail on forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in milk received from producers.

(b) The quantities of skim milk and butterfat contained in (or used in the production of) receipts of fluid milk products from other handlers;

(c) The quantities of skim milk and butterfat contained in receipts of other source milk (except Class II products disposed of in the form in which received

without further processing or packaging by the handler);

(d) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(e) The disposition of Class I products on routes wholly outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(f) The quantities of skim milk and butterfat contained in opening and closing inventories of fluid milk products separately in bulk and in packaged form; and

(g) Each handler specified in § 1106.11(b) who operates a partially regulated distributing plant shall report as required in this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of in the marketing area as Class I milk on routes with such in-area sales of reconstituted skim milk in fluid milk products shown separately; and

(h) Such other information with respect to receipts and utilization as the market administrator may prescribe.

8. Section 1106.33 is revised as follows:

§ 1106.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative 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 with respect to: (a) The receipts and utilization of all receipts of producer milk and other source milk; (b) the weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products (including filled milk) handled; (c) payments to producers and cooperative association; and (d) the pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and milk products (including filled milk) on hand at the beginning and end of each accounting period.

9. In § 1106.44, paragraph (e) (5) is revised as follows:

§ 1106.44 Transfers.

.....

(e) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

.....

10. In § 1106.46, paragraph (a) is revised as follows:

§ 1106.46 Allocation of skim milk and butterfat classified.

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

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1106.41(b) (5);

(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 of 2 percent of such receipts; and

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

(2-a) Subtract from the remaining pounds of skim milk in Class I milk, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the accounting period;

(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; 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, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (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, 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;

(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 bulk fluid

milk products on hand at the beginning of the accounting period;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) 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 which were not subtracted pursuant to subparagraphs (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 subparagraphs (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 § 1106.22(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 other handlers according to the classification assigned pursuant to § 1106.44(a);

(10) 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 amount so subtracted shall be known as "overage";

11. Section 1106.61 is revised as follows:

§ 1106.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A distributing plant meeting the requirements of § 1106.9 which also meets the pooling requirements of another Federal order and from which a greater quantity of Class I milk, except filled milk, was disposed of during the month on routes in such other Federal order marketing area than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this para-

graph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) Class I disposition made under limited term contracts to governmental bases and institutions.

(b) A distributing plant meeting the requirements of § 1106.9 which also meets the pooling requirements of another Federal order and from which a greater quantity of Class I milk, except filled milk, was disposed of during the month on routes in this marketing area than was so disposed of in such other Federal order marketing area but which plant is nevertheless, fully regulated under such other Federal order;

(c) A supply plant meeting the requirements of § 1106.9 which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), 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 the receipts 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 plants 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 applicable to milk used in the manufacture of American cheese, butter and nonfat dry milk.

12. In § 1106.62 paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1106.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1)(i) The obligation that would have been computed pursuant to § 1106.70 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 uniform 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 applicable to milk used in the manufacture of American cheese, butter and nonfat dry milk. There shall be included in the obligation so computed a charge in the amount specified in § 1106.70(e) and a credit in the amount specified in § 1106.84(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 in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

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

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class II price applicable to milk used in the manufacture of American cheese, butter and nonfat dry milk, whichever is higher 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 such Class II price.

13. Section 1106.63 is revised as follows:

§ 1106.63 Governmental agencies.

A plant owned and operated by a governmental agency or establishment

which processes or packages milk or filled milk distributed in the marketing area, shall be exempt from all provisions of this part. Fluid milk products received at a pool plant from such agencies shall be treated on the same basis as though received from a producer-handler. Fluid milk products (including diverted milk) disposed of by a handler to such agencies shall be classified as Class I milk.

13a. In § 1106.70, paragraph (d) is revised to read as follows:

§ 1106.70 Computation of the net pool obligation of each pool handler.

(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 § 1106.46(a) (3) and the corresponding step of § 1106.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1106.46(a) (3) (iv) and (v) and the corresponding step of § 1106.46(b) the Class I price shall be adjusted to the location of the transferor plant;

14. Section 1106.83 is revised as follows:

§ 1106.83 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 §§ 1106.61, 1106.62, 1106.84 and 1106.86, and out of which he shall make all payments to handlers pursuant to §§ 1106.85 and 1106.86, inclusive.

15. In § 1106.89, paragraphs (a) and (d) are revised as follows:

§ 1106.89 Termination of obligation.

(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 ad-

ministrator, the account for which it is to be paid.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or two 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.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.7 is revised to read as follows:

§ 1108.7 Approved plant.

"Approved plant" means all of the buildings, premises and facilities of a plant (a) in which milk or skim milk is processed or packaged and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors and sales through plant stores) to wholesale or retail outlets (except pool plants) located in the marketing area, or (b) from which milk or skim milk is shipped during the month to a distributing plant.

2. Section 1108.8 is revised to read as follows:

§ 1108.8 Distributing plant.

"Distributing plant" means an approved plant from which Class I milk, except filled milk, equal to not less than 50 percent of its receipts of producer milk, milk from a cooperative association in its capacity as a handler pursuant to § 1108.12(c), and fluid milk products, except filled milk, from other pool plants is disposed of during the month, on routes or through plant stores, to wholesale or retail outlets (except pool plants) and from which Class I milk, except filled milk, equal to not less than 10 percent of such receipts is disposed of during the month on routes or through plant stores, to wholesale or retail outlets (except pool plants) located in the marketing area.

3. In § 1108.9, paragraph (a) is revised to read as follows:

§ 1108.9 Supply plant.

(a) An approved plant from which fluid milk products, except filled milk, in an amount not less than 50 percent of its receipts of producer milk and milk received from a cooperative association in its capacity as a handler pursuant to § 1108.12(c) is moved during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months during the period October through January

shall upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September; or

4. Section 1108.11 is revised to read as follows:

§ 1108.11 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 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 shipped during the month to a pool plant qualified pursuant to § 1108.10 and which is not an other order plant nor a producer-handler plant.

5. A new paragraph (d) is added to § 1108.12 to read as follows:

§ 1108.12 Handler.

(d) Any person who operates a partially regulated distributing plant.

6. Section 1108.16 is revised to read as follows:

§ 1108.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, yogurt, cream, or any mixture in fluid form of milk, skim milk and cream except frozen cream, aerated cream, ice cream mix, eggnog and sterilized products in hermetically sealed containers. Sour cream mixtures to which cheese or any food substance other than a milk product has been added shall be considered as a fluid milk product only if disposed of under a Grade A label. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

7. A new § 1108.21 is added to read as follows:

§ 1108.21 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 milkfat, 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).

8. In § 1108.30, paragraphs (b) and (c) are revised to read as follows:

§ 1108.30 Reports of sources and utilization.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including separate statements as to the disposition of Class I milk outside the marketing area, in-area and outside area route disposition of filled milk, and inventories of fluid milk products on hand at the end of the month.

(c) Each handler who operates a partially regulated distributing plant shall report as required in this section, except that receipts in Grade A milk shall be reported in lieu of those in producer 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.

9. In § 1108.44, subparagraph (5) of paragraph (g) is revised to read as follows:

§ 1108.44 Transfers.

(g) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1108.46, subparagraph (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1108.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 two 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; and

(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; 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, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (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 other pool plants, from cooperative associations as handlers pursuant to § 1108.12(c), 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;

(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 which were not subtracted pursuant to subparagraphs (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 subparagraphs (3) (v) or (4) (ii) of this paragraph:

11. Section 1108.61 is revised to read as follows:

§ 1108.61 Plants subject to other Federal orders.

A plant specified in paragraphs (a) or (b) of this section shall be a nonpool plant for purposes of this part except as specified in paragraphs (c) and (d).

(a) Any distributing plant which would otherwise 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, was disposed of from such plant during the six months period immediately preceding to retail or wholesale outlets (except pool plants or nonpool plants) in the Central Arkansas marketing area than in the marketing

area regulated pursuant to such other order.

(b) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless such plant qualified as a pool plant for each of the preceding months of August through January.

(c) The operator of a plant specified in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) 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.

(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.

12. In § 1108.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1108.62 Obligations of handler operating a partially regulated distributing plant.

(1) (i) The obligation that would have been computed pursuant to § 1108.70 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 § 1108.70(e) and a credit in the amount specified in § 1108.82(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

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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.

13. Section 1108.81 is revised to read as follows:

§ 1108.81 **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 §§ 1108.81, 1108.82, 1108.83, and 1108.84, and out of which he shall make all payments pursuant to §§ 1108.83 and 1108.84: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

13a. In § 1108.70, paragraph (d) is revised to read as follows:

§ 1108.70 **Computation of the net pool obligation of each pool handler.**

(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 § 1108.46(a)(3) and the corresponding step of § 1108.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1108.46(a)(3)(iv) and (v) and the corresponding steps of § 1108.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

14. In § 1108.87, paragraph (a) is revised to read as follows:

§ 1108.87 **Termination of obligations.**

(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.

PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEX., MARKETING AREA

1. Section 1120.7 is revised as follows:

§ 1120.7 **Fluid milk product.**

"Fluid milk product" means all the skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, concentrated milk, fortified milk or skim milk, flavored milk drinks, filled milk, cream except aerated cream products, cultured sour cream and sour cream products labeled Grade A, and any mixture of cream and milk in fluid form except ice cream and other frozen dessert mixes, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

2. Section 1120.9 is revised as follows:

§ 1120.9 **Plant.**

"Plant" means the land, buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received from dairy farmers or processed or packaged: *Provided*, That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk products in transit on routes shall not be a plant under this definition.

3. Section 1120.12 is revised as follows:

§ 1120.12 **Pool plant.**

"Pool plant" means:

(a) A distributing plant, other than the plant of a producer-handler, from which a volume of Class I milk, except filled milk, not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a cooperative association(s) in its capacity as a handler pursuant to § 1120.17(c)(2) is disposed of during the month on routes unless the volume so disposed of in the marketing area is less than 15 percent of such receipts or less than 1500 pounds on a daily average: *Provided*, That if a portion of such plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be a part of such pool plant pursuant to this paragraph;

(b) A supply plant from which a volume of fluid milk products, except filled milk, not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a cooperative association(s) in its capacity as a handler pursuant to § 1120.17(a)(2) is transferred during the month to a distributing plant from which a volume of Class I milk, except filled milk, not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants is disposed of on routes during the month and the volume so disposed of in the marketing area is at least 15 percent of such receipts or a daily average of 1500 pounds, whichever is less: *Provided*, That if a portion of such supply plant, physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be part of such pool plant pursuant to this paragraph: *And provided further*, That any plant which was a pool plant pursuant to this paragraph in each of the months of September through November shall be a pool plant for the following months of March through June, unless written application is filed with the market administrator on or before the first day of any such months for designation as a nonpool plant for the remaining months through June.

4. Section 1120.13 is revised as follows:

§ 1120.13 **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 any 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.

5. Section 1120.18 is revised as follows:

§ 1120.18 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and whose only source of supply for Class I milk is his own farm production and transfers from pool plants: *Provided*, That such person furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprises of and at the personal risks of such person.

6. A new § 1120.19 is added as follows:

§ 1120.19 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 milkfat, 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).

7. Section 1120.30 is revised as follows:

§ 1120.30 Reports of receipts and utilization.

(a) On or before the eighth day after the end of each month each cooperative association in its capacity as a handler pursuant to § 1120.17(c) (1) and (2) and each handler with respect to each of his pool plants shall report to the market administrator for such month and for each accounting period in such month elected pursuant to § 1120.34, in the detail and on forms prescribed by the market administrator, as follows:

(1) The quantities of skim milk and butterfat contained in:

(i) Receipts of producer milk (including such handler's own farm production);

(ii) Receipts of fluid milk products from other pool plants and from cooperative associations;

(iii) Receipts of other source milk; and

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

(2) The utilization of all skim milk and butterfat required to be reported by this part, including a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler specified in § 1120.17 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those of producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk with such in-area disposition of reconstituted skim milk in fluid milk products shown separately; and

(c) Each handler operating a nonpool supply plant shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

8. Section 1120.34 is revised as follows:

§ 1120.34 Accounting periods.

A handler may account for receipts, utilization and classification of skim milk and butterfat at any of his pool plants for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

9. In § 1120.44, paragraph (e) (5) is revised as follows:

§ 1120.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1120.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i) of paragraph (a) are revised as follows:

§ 1120.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 two 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; and

(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; 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:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool plants and from a cooperative association in its capacity as a handler pursuant to § 1120.17(c), and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) (i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in 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, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (3) (iv), (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest in sequence beginning with the nearest in sequence beginning with the nearest at which such adjustment can be made;

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

11. Section 1120.61 is revised as follows:

§ 1120.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a) or (b) of this section except as specified in paragraphs (c) and (d):

(a) A plant meeting the requirements of § 1120.12(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its Class I route disposition, except filled milk, is made in such other marketing area, unless notwithstanding the provisions of this paragraph it is regulated under such other order;

(b) A plant meeting the requirements of § 1120.12(a) which also meets the pooling requirements of another Federal order on the basis of route distribution in such other marketing area and from

which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is disposed of in such other marketing area but which plant is fully regulated under such other Federal order.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), 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 the receipts 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.

12. In § 1120.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1120.62 Obligations of handler operating a partially regulated distributing plant.

(a)

(1) (i) The obligation that would have been computed pursuant to § 1120.70 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 § 1120.70(e) and a credit in the amount specified in § 1120.82 (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 in subdivision (ii) of this subparagraph; and

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class II price, whichever is higher 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.

13. Section 1120.63 is revised as follows:

§ 1120.63 State institutions.

A State owned and operated institution or establishment which processes or packages fluid milk products distributed solely on its premises or those of other State institutions or establishments shall be exempt from all provisions of this part. Fluid milk products received at a pool plant from such institutions shall be treated on the same basis as though received from a producer-handler. Fluid milk products disposed of by a handler to such institutions shall be classified on the same basis as though disposed of to a producer-handler.

13a. In § 1120.70, paragraph (d) is revised to read as follows:

§ 1120.70 Computation of the net pool obligation of each pool handler.

(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 § 1120.46(a) (3) and the corresponding step of § 1071.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1120.46 (a) (3) (iv) and (v) and the corresponding step of § 1120.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

14. Section 1120.81 is revised as follows:

§ 1120.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" in which he shall deposit all payments made by handlers pursuant to §§ 1120.61, 1120.62, 1120.82, and 1120.84, subject to the provisions of § 1120.87, and out of which he shall make all payments pursuant to §§ 1120.83 and 1120.84; *Provided*, That payments due to any handler shall be offset by any payment due from such handler.

15. In § 1120.83, paragraphs (a) and (d) are revised as follows:

§ 1120.83 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part, except as provided in paragraphs (b) and (c) of this section, shall terminate 2 years after the last day of the 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 a cooperative association, the name of such producer(s) or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(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 last day of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the last day of the 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.

PART 1121—MILK IN THE SOUTH TEXAS MARKETING AREA

1. Section 1121.7 is revised to read as follows:

§ 1121.7 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/

or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

2. Section 1121.9 is revised to read as follows:

§ 1121.9 Supply plant.

"Supply plant" means any plant approved by an appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which fluid milk products are moved to a distributing plant.

3. In § 1121.10, paragraphs (a) and (b) are revised to read as follows:

§ 1121.10 Pool plant.

(a) Any distributing plant, except a producer-handler plant or an other order plant, from which during the month:

(1) The disposition of fluid milk products, except filled milk, on routes within the marketing area is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total disposition of fluid milk products, except filled milk, on routes is 50 percent or more of the receipts of Grade A milk at such plant;

(b) A supply plant:

(1) During any month in which 50 percent or more of the receipts of Grade A milk from dairy farmers and handlers pursuant to § 1121.12(d) at such plant is moved as fluid milk products, except filled milk, in bulk to pool distributing plants; or

(2) During each of the months of January through August, if such plant was a pool plant pursuant to subparagraph (1) of this paragraph during each of the immediately preceding months of September through December, unless the operator of such plant has filed with the market administrator before the first day of any month written request that such plant not be a pool plant for each month through August during which it does not otherwise qualify as a pool plant; or

4. In § 1121.11, the introductory text and paragraphs (c) and (d) are revised to read as follows:

§ 1121.11 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:

(c) "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.

(d) "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 (other than to pool plants) in the marketing area during the month.

5. Section 1121.15 is revised to read as follows:

§ 1121.15 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from other dairy farmers;

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk;

(d) Receives from pool plants not more than a total of 5,000 pounds of fluid milk products during the month or 5 percent of his Class I disposition, whichever is less; and

(e) Furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

6. Section 1121.16 is revised to read as follows:

§ 1121.16 Fluid milk products.

"Fluid milk products" mean milk, skim milk, buttermilk, filled milk, flavored milk, flavored milk drinks; sweet cream, cultured sour cream and sour cream products labeled Grade A; any mixture in fluid form of milk or skim milk and cream; concentrated milk or skim milk. Eggnog, frozen dessert mixes, yogurt, aerated cream products, evaporated milk, condensed milk or skim milk and sterilized products in hermetically sealed metal or glass containers shall not be fluid milk products pursuant to this section. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

7. Section 1121.18 is revised to read as follows:

§ 1121.18 Route disposition.

"Route disposition", or "disposed of on routes", means any delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products, other than a delivery to a plant.

8. A new § 1121.19a is added to read as follows:

§ 1121.19a 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 milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and con-

tains less than 6 percent nonmilk fat (or oil).

9. In § 1121.22, paragraph (g) is revised to read as follows:

§ 1121.22 Duties.

(g) Verify all reports and payments of each handler by audit of such handler's records and the records of any other handler or person upon whose disposition such handler claims classification of skim milk and butterfat and by such investigation as the market administrator deems necessary:

10. In § 1121.30, paragraphs (a) (3) and (c) are revised to read as follows:

§ 1121.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization or disposition of all quantities required to be reported, showing separately:

- (i) Total route disposition, except filled milk,
- (ii) Route disposition in the marketing area showing filled milk disposition separately;
- (iii) Transfers to other pool plants;
- (iv) Transfers to other order plants;
- (v) Transfers to nonpool plants; and
- (vi) Diversion to nonpool plants.

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of receipts of producer 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.

11. In § 1121.32, paragraph (b) is revised to read as follows:

§ 1121.32 Other reports.

(b) Each handler operating an other order plant with route disposition in the marketing area shall report such disposition (showing filled milk disposition separately) to the market administrator on or before the seventh day after the end of the month.

12. In § 1121.33, paragraph (b) is revised to read as follows:

§ 1121.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products (including filled milk) handled;

13. In § 1121.46, paragraph (a) (2), (4), (5), (8), and (9) is revised to read as follows:

§ 1121.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 (4) (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;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class in series beginning with Class II milk, 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 or from a plant exempt pursuant to § 1121.62;
- (iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; 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;

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

- (i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;
- (ii) For which the handler requests Class II milk utilization; or
- (iii) 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 other pool plants and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (4) (v) of this paragraph; and

(i) Receipts of fluid milk products, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in bulk from an other order plant in excess of similar transfers to such plant, if Class II milk utilization was requested by the operator of such plant and the handler;

(8) 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 which were not subtracted pursuant to subparagraph (4) (iv) or (5) (i) of this paragraph;

(9) 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 (4) (v) or (5) (i) of this paragraph:

- (i) In series beginning with Class II milk, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II milk utilization of skim milk announced for the month by the market administrator pursuant to § 1121.22(c) or the percentage that Class II milk utilization remaining is of the total remaining utilization of skim milk of the handler; and
- (ii) From Class I milk, the remaining pounds of such receipts;

14. Section 1121.60 is revised to read as follows:

§ 1121.60 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e) of this section.

(a) A plant meeting the requirements of § 1121.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A plant meeting the requirements of § 1121.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) shall, with respect to total receipts of

skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), 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 marketwide 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) to Class I disposition in this area at the Class I price under this part applicable at the location of the other order pool plant and subtract its value at the Class II price.

15. In § 1121.61, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1121.61 **Obligation of handler operating a partially regulated distributing plant.**

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1121.70 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 transfer 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 uniform 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 § 1121.70(e) and a credit computed at the uniform price with respect to receipts, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph.

(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 as Class

I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 uniform 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.

16. Section 1121.62 is revised to read as follows:

§ 1121.62 **Governmental agencies.**

A plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk distributed in the marketing area, shall be exempt from all provisions of this part. Fluid milk products received at a pool plant from such agencies shall be treated on the same basis as though received from a producer-handler. Fluid milk products disposed of by a handler to such agencies shall be classified on the same basis as though disposed of to a producer-handler.

16a. In § 1121.70, paragraph (d) is revised to read as follows:

§ 1121.70 **Computation of the net pool obligation of each pool handler.**

(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 § 1121.46(a) (4) and the corresponding step of § 1121.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1121.46(a) (4) (iv) and (v) and the corresponding step of § 1121.46(b) the Class I price shall be adjusted to the location of the transferor plant;

17. Section 1121.83 is revised to read as follows:

§ 1121.83 **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 §§ 1121.60, 1121.61, 1121.84, and 1121.86, and out of which he shall make all payments to handlers pursuant to §§ 1121.85 and 1121.86.

18. In § 1121.89, paragraphs (a) and (d) are revised to read as follows:

§ 1121.89 **Termination of obligation.**

(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 the market administrator, the account for which it is to be paid.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

PART 1125—MILK IN THE PUGET SOUND, WASH., MARKETING AREA

1. The text of § 1125.7 which precedes paragraph (a) is revised to read as follows:

§ 1125.7 **Plant.**

"Plant" means the land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment, which is maintained and operated primarily for the receiving, handling and/or processing of milk or milk products (including filled milk). The term "plant" does not include:

2. In § 1125.8, paragraphs (a) and (b) are revised to read as follows:

§ 1125.8 **Pool plant.**

(a) Any such plant, hereinafter referred to as a "pool distributing plant", from which during the month route disposition of fluid milk products, except

route disposition of filled milk, in the marketing area averages more than 110 pounds daily and is also 10 percent or more of receipts of Grade A milk at such plant; or

(b) Any other such plant, hereinafter referred to as a "pool supply plant", at which milk, so qualified is received from dairy farmers or a cooperative association pursuant to § 1125.10(f), and which is:

(1) Located in the marketing area; or

(2) Located outside the marketing area, and from which is moved to a pool distributing plant at least the following applicable percentage of both the skim milk and butterfat in Grade A milk derived from dairy farmers:

(i) During the months of October through December, 50 percent of such receipts during the month; or

(ii) During the months of January through September, 20 percent of such receipts during the month, except that any plant which shipped in the form of fluid milk products, more than 50 percent of such receipts during the entire period of October through December immediately preceding shall be a pool plant for each of the months of January through September.

(3) Any plant which otherwise meets the requirements of this paragraph may withdraw from pool supply plant status for any month in the January-September period if the operator of the plant files with the market administrator, prior to the first day of such month, a written request for such withdrawal.

3. Section 1125.9 is revised to read as follows:

§ 1125.9 Nonpool plant.

"Nonpool plant" means any 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 during the month an average of more than 110 pounds daily of fluid milk products is disposed of on routes in the marketing area.

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

4. Section 1125.12 is revised to read as follows:

§ 1125.12 Producer milk.

"Producer milk" or "milk received from producers" means skim milk and butterfat in milk produced by producers which is received for the account of a handler as follows:

(a) With respect to receipts at a pool plant, producer milk shall include:

(1) Milk received at such plant directly from producers;

(2) Milk (not including filled milk) diverted from such pool plant to a nonpool plant for the account of the operator of the pool plant, subject to the condition set forth in paragraph (c) of this section; and

(3) Milk received at such pool plant from a cooperative association in its capacity as a handler pursuant to § 1125.10(f), for all purposes other than those specified in paragraph (b)(2)(i) of this section;

(b) With respect to milk for which a cooperative association is a handler in a capacity other than as the operator of a pool plant, producer milk shall include:

(1) Milk (not including filled milk) diverted from the pool plant of another handler to a nonpool plant for the account of the cooperative association, subject to the condition set forth in paragraph (c) of this section; and

(2) Milk for which the cooperative association is a handler pursuant to § 1125.10(f) to the following extent:

(i) For purposes of reporting pursuant to §§ 1125.30(c) and 1125.31(a) and making payments to producers pursuant to § 1125.30(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler;

(c) For purposes of location adjustments pursuant to §§ 1125.53 and 1125.81, milk diverted to a nonpool plant shall be priced at the location of the plant to which diverted; and

(d) In the case of any bulk tank load of milk originating at farms and subsequently received in part at two or more plants, the proportion of the load received at each such plant shall be prorated among the individual producers on the basis of their percentage of the total load.

5. In § 1125.14, the introductory text and paragraphs (a)(2) and (d) are revised to read as follows:

§ 1125.14 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month an average of more than 110 pounds daily of fluid milk products, except filled milk, is disposed of on a route(s) within the marketing area and who has been so designated by the market administrator upon his determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section. The Department of Institutions, State of Washington, shall be a producer-handler exempt from the provisions of this section and §§ 1125.30 and 1125.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant.

(a) * * *

(2) The producer-handler neither receives at his designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of his milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) his designated milk production resources and facilities, (ii) pool plants within the limitation specified in paragraph (c)(2) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been cancelled, and the effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

6. Section 1125.15 is revised to read as follows:

§ 1125.15 Fluid milk product.

"Fluid milk product" means the following, in fluid or frozen form:

(a) Milk, skim milk, skim milk drinks, buttermilk, filled milk, flavored milk, and flavored milk drinks (including such products reconstituted or fortified with additional nonfat milk solids);

(b) Concentrated milk, skim milk, flavored milk, and flavored milk drinks; and

(c) Cream (sweet or sour) and any mixtures of cream and milk or skim milk (exclusive of ice cream and frozen dessert mixes, cocoa mixes, aerated cream products, and eggnog).

Fluid milk products shall not include those products commonly known as evaporated milk, condensed milk, and skim milk (plain or sweetened), yogurt, starter, any milk or milk products (including filled milk) sterilized and packaged in hermetically sealed metal or glass containers; or a product which contains 6 percent or more nonmilk fat (or oil).

7. A new § 1125.15a is added to read as follows:

§ 1125.15a 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 milkfat, 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).

8. In § 1125.30, paragraphs (a) (1) and (2) and (d) are revised to read as follows:

§ 1125.30 Monthly reports of receipts and utilization.

(a) * * *

(1) The quantities of skim milk and butterfat contained in:

(i) Milk received directly from producers, showing separately any milk of own-farm production;

(ii) Milk received from a cooperative association pursuant to § 1125.10(f);

(iii) Fluid milk products received from other pool plants showing filled milk separately; and

(iv) Other source milk showing filled milk separately.

(2) The utilization of all skim milk and butterfat required to be reported, including separate statements of quantities:

(i) Contained in fluid milk products on hand at the beginning and end of the month;

(ii) Route disposition showing separately route disposition of filled milk inside and outside the marketing area;

(d) Each handler who operates a partially regulated distributing plant shall report as specified in paragraph (a) (1), (2), and (4) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include separate statements, respectively, showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

9. Section 1125.32 is revised to read as follows:

§ 1125.32 Other reports.

At such time and in such manner as the market administrator may prescribe, each handler shall report to the market administrator such information in addition to that required under § 1125.30 as may be requested by the market administrator with respect to milk and milk products (including filled milk) handled by him.

9a. In § 1125.41, subparagraph (1) of paragraph (b) is revised to read as follows:

§ 1125.41 Classes of utilization.

(b) * * *

(1) Used to produce ice cream, ice cream mix, frozen desserts, aerated cream products, plastic cream, soured cream dressing, yogurt, eggnog, cottage cheese, pot cheese, bakers cheese, cream cheese, neufchatel cheese, starter or any milk or milk products (including filled milk) sterilized and packaged in hermetically sealed metal or glass containers;

10. In § 1125.43, paragraph (b) is revised to read as follows:

§ 1125.43 Responsibility of handlers and reclassification of milk.

(b) The burden shall rest upon each handler to establish the sources of milk and milk products (including filled milk) required to be reported by him pursuant to § 1125.30.

11. In § 1125.44, paragraph (a) (4) is revised to read as follows:

§ 1125.44 Interplant movements.

(a) * * *

(4) Notwithstanding the prior provisions of this paragraph, any such skim milk and butterfat transferred in bulk from a pool plant to a pool distributing plant in which facilities are maintained and used to receive milk or milk products required by applicable health authority regulations to be kept physically separate from Grade A milk shall be classified in accordance with the provisions of paragraph (b) of this section; and

12. In § 1125.45, paragraph (a) is revised to read as follows:

§ 1125.45 Computation of skim milk and butterfat in each class.

(a) If any other source milk not subject to allocation at such plant pursuant to § 1125.46(a) (2) through (4) was received at any pool plant of a handler, there will be computed for such handler the total pounds of skim milk and butterfat, respectively, in each class at all of his pool plants combined, exclusive of any classification based upon movements between such plants, and allocation pursuant to § 1125.46 and computation of obligation pursuant to § 1125.70 shall be based upon the combined utilization so computed. For purposes of assigning location adjustments pursuant to §§ 1125.53 with respect to fluid milk products moved between such plants, the skim milk and butterfat subtracted from each class pursuant to § 1125.46(a) (2), (3), (4), (6), and (7) and the corresponding steps of § 1125.46 (b) will be assigned so far as possible to utilization (exclusive of such interplant movements) reported at the plant at which it was received, and thereafter in sequence to plants at which location adjustment for such class is the same or most nearly similar, and the applicable location adjustments will be determined on the basis of the classification resulting from the application of § 1125.44 (a) and (b) to the remaining utilization reported;

13. Section 1125.46 is revised to read as follows:

§ 1125.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1125.45, the market administrator shall determine the classification of producer milk for each handler at all his pool plants (or at each pool plant, when § 1125.45(b) applies) as follows:

(a) Skim milk shall be allocated in the following manner, except that the quantities allocated to Class II milk and Class III milk shall be subtracted in series beginning with Class III.

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1125.41(c) (5);

(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 III 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 III, 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 not qualified for disposition to consumers in fluid form, or which are from unidentified sources; and

(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; 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;

(vi) Subtract, if the total pounds of skim milk in all classes pursuant to § 1125.45 exceed the total pounds of skim milk reported pursuant to § 1125.30(a) (1), from the remaining pounds of skim milk in each class, in series beginning with Class III, the amount determined by prorating such excess between the pounds of skim milk subtracted pursuant to subdivisions (i) through (v) of this subparagraph and the remaining receipts;

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

(i) Receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II or III utilization;

(ii) Remaining receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, 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 receipts of producer milk, receipts from

pool plants of other handlers (and of the same handler, when § 1125.45(b) applies), and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(iii) 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 or III utilization was requested by the operator of such plant and the handler;

(5) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(6) 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 which were not subtracted pursuant to subparagraph (3) (iv) or (4) (i) and (ii) of this paragraph;

(7) 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) (iii) of this paragraph:

(i) In series, beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1125.22(m) or the percentage that Class II and Class III 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;

(8) 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 of the same handler, when § 1125.45(b) applies) according to the classification assigned pursuant to § 1125.44;

(9) If the pounds of skim milk remaining in all three 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 III. Any amount 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 and § 1125.45(e) into one total for each class and determine the weighted average butterfat content of producer milk in each class.

14. Section 1125.66 is revised to read as follows:

§ 1125.66 Plants subject to other Federal orders.

Except for §§ 1125.30(e), 1125.32 through 1125.34, and paragraph (e) of this section, the provisions of this part shall not apply to a handler with respect to the operation of plants described as follows:

(a) A distributing plant from which a lesser volume of fluid milk products, except filled milk, is disposed of as route disposition in the Puget Sound marketing area than as route disposition in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(b) Any supply plant for any portion of the period of January through September, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

(c) Each handler operating a plant specified in paragraph (a), 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 the 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.

(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 III price.

15. In § 1125.67, subdivision (i) of paragraph (a) (1), and paragraph (b) are revised to read as follows:

§ 1125.67 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1125.70 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 or Class III 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1125.70(e) and a credit in the amount specified in § 1125.84(b) (3) 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 III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

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

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(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 III 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 III price.

15a. In § 1125.70, paragraph (d) is revised to read as follows:

§ 1125.70 Computation of the net pool obligation of each pool handler.

* * *

(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 III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1125.46(a) (3) and the corresponding step of § 1125.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1125.46(a) (3) (iv) and (v) and the corresponding step of § 1125.46(b) the Class I price shall be adjusted to the location of the transferor plant;

16. In § 1125.81, paragraph (c) is revised to read as follows:

§ 1125.81 Location adjustments to producers and on nonpool milk.

* * *

(c) For purposes of computations pursuant to §§ 1125.84 and 1125.85 the weighted average price for all milk shall be adjusted at the rates set forth in § 1125.53 for Class I milk applicable at

the location of the nonpool plant from which the milk or filled milk was received.

17. Section 1125.83 is revised to read as follows:

§ 1125.83 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 §§ 1125.66, 1125.67, and 1125.84 and out of which he shall make all payments to handlers pursuant to § 1125.85.

18. Section 1125.84 is revised to read as follows:

§ 1125.84 Payments to the producer-settlement fund.

On or before the 15th day after the end of the month during which the skim milk and butterfat were received, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a) of this section exceeds the total amount specified in paragraph (b) of this section:

(a) The sum of:

(1) The net pool obligations computed pursuant to § 1125.70 for such handler; and

(2) For a cooperative association handler, the amount due from other handlers pursuant to § 1125.80(d);

(b) The sum of:

(1) The value of milk received by such handler from producers at the applicable uniform prices specified in § 1125.80(a);

(2) The amount to be paid to cooperative associations pursuant to § 1125.80(d); and

(3) The value at the weighted average price for all skim milk and butterfat applicable at the location of the plant(s) from which received (not to be less than the value at the Class III price) adjusted for butterfat content by the producer butterfat differential, with respect to other source milk for which a value is computed pursuant to § 1125.70(e).

19. Section 1125.85 is revised to read as follows:

§ 1125.85 Payments out of the producer-settlement fund.

On or before the 17th day after the end of each month during which the skim milk and butterfat were received, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1125.84(b) exceeds the amount computed pursuant to § 1125.84(a), and less any unpaid obligations of such handler to the market administrator pursuant to §§ 1125.84, 1125.86, 1125.87, and 1125.88: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

20. In § 1125.89, paragraphs (a) and (d) are revised to read as follows:

§ 1125.89 Termination of obligations.

(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.

(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 order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claims were received if an underpayment is claimed, or 2 years after the end of the 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.

PART 1126—MILK IN NORTH TEXAS MARKETING AREA

1. Section 1126.7 is revised as follows:

§ 1126.7 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

2. In § 1126.10 paragraph (a) is revised as follows:

§ 1126.10 Pool plant.

(a) Any distributing plant, except a producer-handler plant or an other order plant, from which during the month:

(1) The disposition of fluid milk products, except filled milk, on routes within the marketing area is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total disposition of fluid milk products, except filled milk, on routes is 50 percent or more of the receipts of Grade A milk at such plant, except that if two or more distributing plants operated by the same handler each meet the performance requirement of subparagraph (1) of this paragraph and total disposition of fluid milk products, except filled milk, on routes of such plants is 50 percent or more of receipts of Grade A milk at such plants, each such plant shall be deemed to have met the requirement of this subparagraph;

3. Section 1126.11 is revised as follows:

§ 1126.11 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) "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.

(d) "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 (other than to pool plants) in the marketing area during the month.

4. Section 1126.15 is revised as follows:

§ 1126.15 Fluid milk products.

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk drinks, filled milk, cream (except sterilized cream and sterilized cream products disposed of in hermetically sealed metal or glass containers and cultured sour cream), and any mixture (except eggnog and bulk ice cream and frozen dairy product mixes) of cream and milk or skim milk. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. Section 1126.18 is revised as follows:

§ 1126.18 Reserve supply credit.

The hundredweight of reserve supply credit that may be assigned to milk moved from a supply plant to a distributing plant shall be calculated

as follows: From the total hundredweight of milk classified as Class I milk, except filled milk, at the distributing plant during the month, deduct Class I sales, except filled milk, to other pool plant(s) and from this result deduct an amount equal to 85 percent of the total hundredweight of milk received from producers during the month at such plant. Any plus figure resulting from this calculation shall be assigned pro rata to milk moved to such plant from supply plants unless the operator of the distributing plant notifies the market administrator in writing of a different assignment on or before the 7th day after the end of the month.

6. Section 1126.19 is revised as follows:

§ 1126.19 Route.

"Route" means any delivery (including any delivery by a vendor or disposition at a plant store) of a fluid milk product other than a delivery in bulk form to a milk processing plant.

7. A new § 1126.20 is added as follows:

§ 1126.20 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 milkfat, 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).

8. In § 1126.30, paragraphs (f) and (h) are revised as follows:

§ 1126.30 Reports of receipts and utilization.

(f) The disposition of fluid milk products on routes wholly outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

(h) Each handler operating a partially regulated distributing plant shall report as required in this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of receipts of producer 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.

9. In § 1126.33, paragraph (b) is revised as follows:

§ 1126.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products (including filled milk) handled;

10. In § 1126.41, paragraph (a) (1) is revised as follows:

§ 1126.41 Classes of utilization.

(a) * * *

(1) Disposed of in the form of a fluid milk product: *Provided*, That when any fluid milk product is modified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content;

(7) That portion of modified products excluded from a Class I skim milk classification pursuant to paragraph (a) of this section.

11. In § 1126.44, paragraph (g) (5) is revised as follows:

§ 1126.44 Transfers.

(g) * * *

(5) For purposes of this paragraph, if the order to which the skim milk and butterfat is transferred or diverted provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

12. In § 1126.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised as follows:

§ 1126.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 two 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; 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:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk in receipts from other pool plants and from a cooperative association in its capacity as a handler pursuant to § 1126.12 (c) and (d) and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in 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, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of

skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv), or (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

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

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1126.27(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

13. Section 1126.61 is revised as follows:

§ 1126.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A plant meeting the requirements of § 1126.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part, in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A plant meeting the requirements of § 1126.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A plant meeting the requirements of § 1126.10(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), 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 the receipts 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 reconsti-

tuted 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) 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.

14. In § 1126.62, paragraphs (a) (1), (i) and (b) are revised as follows:

§ 1126.62 Obligation of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1126.70 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 uniform 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 § 1126.70(e) and a credit in the amount specified in § 1126.93(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 in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

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

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class II price, whichever is higher 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.

14a. In § 1126.70, paragraph (d) is revised to read as follows:

§ 1126.70 Computation of the net pool obligation of each pool handler.

(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 § 1126.46(a)(3) and the corresponding step of § 1126.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1126.46(a)(3)(iv) and (v) and the corresponding step of § 1126.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

15. Section 1126.92 is revised as follows:

§ 1126.92 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 §§ 1126.61, 1126.62, 1126.93, and 1126.95, and out of which he shall make all payments to handlers pursuant to §§ 1126.94 and 1126.95.

16. In § 1126.98, paragraphs (a) and (d) are revised as follows:

§ 1126.98 Termination of obligations.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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 8(c)(15)(A) of the Act, a petition claiming such money.

PART 1127—MILK IN SAN ANTONIO, TEX., MARKETING AREA

1. In § 1127.8, paragraph (a) is revised to read as follows:

§ 1127.8 Pool plant.

(a) A distributing plant (other than one exempt pursuant to § 1127.60) which disposes of as Class I milk, except filled milk, on routes in the marketing area 15 percent or more of its receipts of milk during the month from pool plants and from dairy farmers conforming to the requirements set forth in § 1127.11;

2. Section 1127.9 is revised to read as follows:

§ 1127.9 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 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.

3. Section 1127.14 is revised to read as follows:

§ 1127.14 Fluid milk products.

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream or any mixture of cream and milk or skim milk (except eggnog, cultured sour cream, frozen storage cream and bulk ice cream and frozen dairy product mixes). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1127.16 is added to read as follows:

§ 1127.16 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 milkfat, 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).

5. In § 1127.30, paragraph (e) is revised to read as follows:

§ 1127.30 Reports of receipts and utilization.

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

6. Section 1127.32 is revised to read as follows:

§ 1127.32 Other reports.

Each handler who operates a partially regulated distributing plant shall report pursuant to § 1127.30 and pursuant to § 1127.31 in the event that such handler does not elect at the regular time of reporting pursuant to § 1127.30 to pay amounts computed pursuant to § 1127.61(b), except that receipts of Grade A milk from dairy farmers and payments to such dairy farmers shall be reported in lieu of receipts from and payments to producers; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

7. In § 1127.33, paragraphs (b) and (d) are revised to read as follows:

§ 1127.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and other milk products (including filled milk) handled;

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and other milk products (including filled milk) on hand at the beginning and end of each month.

8. In § 1127.44, subparagraph (5) of paragraph (c) is revised to read as follows:

§ 1127.44 Transfers.

(c) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II or Class II-A (if identical classification is provided under the other order); and

9. In § 1127.46, subparagraphs (3), (4), (5), (7), and the introductory text

of subparagraph (8) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1127.46 Allocation of skim milk and butterfat classified.

(a) * * *

(3) 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 (4) (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;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with the lowest priced class, 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; 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;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II-A and Class II (beginning with Class II-A), but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph:

(a) For which the handler requests such 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 subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants, receipts from a cooperative association in its capacity as a handler pursuant to § 1127.10(d) and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (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;

(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 which were not subtracted pursuant to subparagraphs (4) (i) or (5) (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 subparagraphs (4) (v) or (5) (ii) of this paragraph:

10. Section 1127.60 is revised to read as follows:

§ 1127.60 Handlers subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a) or (b) of this section except as specified in paragraphs (c) and (d):

(a) A plant meeting the requirements for pooling pursuant to § 1127.8(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all of the provisions of this part in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such Class I route disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is fully regulated under such other order.

(b) A plant meeting the requirements for pooling pursuant to § 1127.8(a) which also meets the pooling requirements of another Federal order on the basis of route distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area, but which plant is fully regulated under such other Federal order.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1127.30 and 1127.31) and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), or (b) 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.

11. In § 1127.61, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1127.61 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1127.70 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 or Class II-A 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 § 1127.70(d) and a credit in the amount specified in § 1127.84(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 in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

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

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class II price, whichever is higher 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.

11a. In § 1127.70, paragraph (c) is revised to read as follows:

§ 1127.70 Computation of the net pool obligation of each pool handler.

(c) 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 § 1127.46(a) (4) and the corresponding step of § 1127.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1127.46(a) (4) (iv) and (v) and the corresponding step of § 1127.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

12. In § 1127.89, paragraphs (a) and (d) are revised to read as follows:

§ 1127.89 Termination of obligation.

(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 delivery period 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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the agreement (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.

PART 1128—MILK IN CENTRAL WEST TEXAS MARKETING AREA

1. In § 1128.7, paragraphs (a) (1) and (b) are revised to read as follows:

§ 1128.7 Approved plant.

(1) From which Class I milk labeled Grade A other than filled milk, in consumer packages is disposed of in the marketing area on routes, or

(b) A milk plant approved by and under the routine inspection of a health authority other than that of a municipality in the marketing area from which Class I milk labeled Grade A other than filled milk in consumer packages is disposed of in the marketing area on a route operated wholly or partially in the marketing area in an amount equal to 10 percent or more of the total disposition of Class I milk, except filled milk, from such plant during the month.

2. Section 1128.8 is revised to read as follows:

§ 1128.8 Unapproved plant.

"Unapproved plant" means any milk or filled milk receiving, manufacturing or processing plant other than an approved plant. The following categories of unapproved plant 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 an unapproved 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 an unapproved plant from which fluid milk products are moved to an approved plant during the month but which is neither an other order plant nor a producer-handler plant.

3. Section 1128.13 is revised to read as follows:

§ 1128.13 Producer-handler.

"Producer-handler" means any person:

(a) who operates a dairy farm and a milk plant approved by and under the routine inspection of the appropriate health authority from which fluid milk products labeled Grade A in consumer-type packages are disposed of in the marketing area on routes and;

(b) whose disposition of fluid milk products does not exceed his own farm production and receipts of fluid milk products from approved plants.

4. Section 1128.14 is revised to read as follows:

§ 1128.14 Route.

"Route" means any delivery (including any delivery by a vendor or at a plant store) of a fluid milk product other than in bulk to a milk or filled milk processing plant.

5. Section 1128.15 is revised to read as follows:

§ 1128.15 Fluid milk product.

"Fluid milk product" means all the skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, flavored milk drinks, filled milk, cream, sour cream and sour cream products under a Grade A label, and any mixture (except eggnog, aerated cream products and mixes for ice cream or other frozen dairy products) of cream and milk or skim milk: *Provided*, That when any such product is fortified with nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

6. A new § 1128.16 is added to read as follows:

§ 1128.16 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 milkfat, 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).

7. In § 1128.30, paragraph (g) is revised to read as follows:

§ 1128.30 Reports of receipts and utilization.

(g) The disposition of Class I products on routes wholly outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

8. In § 1128.32, paragraph (b) is revised to read as follows:

§ 1128.32 Other reports.

(b) Each handler who operates a partially regulated distributing plant shall report pursuant to § 1128.30 and pursuant to § 1128.31 in the event that such handler does not elect at the regular time of reporting pursuant to § 1128.30 to pay amounts computed pursuant to § 1128.62(b), except that receipts in Grade A milk from dairy farmers and payments to such dairy farmers shall be reported in lieu of receipts from and payments to producers; 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.

9. In § 1128.33, paragraphs (b) and (d) are revised to read as follows:

§ 1128.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products (including filled milk) handled;

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and milk products (including filled milk) on hand at the beginning and end of each month.

10. In § 1128.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1128.44 Transfers.

(f) * * *

(5) For purposes of this paragraph (f), if the transferee order provides for more than two classes of utilization skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II unless the other order provides a Class II-A classification identical to that provided in this order; and

11. In § 1128.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i) of paragraph (a) are revised to read as follows:

§ 1128.46 Allocation of skim milk and butterfat classified.

(a) * * *

(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 two 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 the lowest priced class, the pounds of skim milk in each of the following:

(i) Other source milk in the 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; 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 transfer plant;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II-A and Class II (beginning with Class II-A):

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in such classes, respectively;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between approved plants of the handler) at all approved plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other approved plants and from a cooperative association in its capacity as a handler pursuant to § 1128.9(c), and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all approved plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Such subtraction is to be made first from the remaining Class II-A at the pool plant where received, next from remaining Class II-A at other pool plant(s) of such handler. If the amount to be subtracted is greater than the remaining Class II-A at all pool plants of the handler, such additional amount is to be subtracted first from the remaining

Class II at the pool plant where received, next from Class II at other pool plant(s) of such handler. In such case, the utilization of skim milk in Class II-A (then Class II) shall be increased and the utilization of skim milk in Class II (then Class I) shall be decreased in an amount equal to the quantity necessary to make such subtraction, and the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in 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, but not in excess of the pounds of skim milk remaining in Class II-A and Class II milk, if Class II-A (or Class II) utilization was requested by the operator of such plant and the handler;

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

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the approved plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other approved plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other approved plant of such handler at which such adjustment can be made;

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

12. Section 1128.61 is revised to read as follows:

§ 1128.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e) that:

(a) An approved plant pursuant to § 1128.7 (a) (1) or (b) which also meets

the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I route disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is regulated under such other order.

(b) An approved plant pursuant to § 1128.7 (a) (1) or (b) which also meets the pooling requirements of another Federal order on the basis of route distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is fully regulated under such other Federal order.

(c) An approved plant pursuant to § 1128.7 (a) (2) which (1) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part or, (2) retains automatic pooling status for the month under another Federal order by virtue of its performance in previous months.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), 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 applicable at the nonpool plant and subtract its value at the Class II price.

13. In § 1128.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1128.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1128.70 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 or Class II-A 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 § 1128.70 (e) and a credit in the amount specified in § 1128.94 (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 in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

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

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from approved plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class II price, whichever is higher 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.

13a. In § 1128.70, paragraph (d) is revised to read as follows:

§ 1128.70 Computation of each handler's pool obligation.

(d) Add an amount equal to the difference between the value at the Class I

price applicable at the approved 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 § 1128.46 (a) (3) and the corresponding step of § 1128.46 (b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1128.46 (a) (3) (iv) and (v) and the corresponding step of § 1128.46 (b) the Class I price shall be adjusted to the location of the transferor plant; and

14. Section 1128.93 is revised to read as follows:

§ 1128.93 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 §§ 1128.61, 1128.62, 1128.94, and 1128.96, and out of which he shall make all payments to handlers pursuant to §§ 1128.95 and 1128.96.

15. In § 1128.99, paragraphs (a) and (d) are revised to read as follows:

§ 1128.99 Termination of obligation.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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 8(c) (15) (A) of the act, a petition claiming such money.

PART 1129—MILK IN THE AUSTIN-WACO, TEX., MARKETING AREA

1. Section 1129.8 is revised as follows:

§ 1129.8 Distributing plant.

"Distributing plant" means any milk processing or packaging plant from which Class I milk, except filled milk, equal to more than an average of 500 pounds per day or 5 percent, whichever is less, of the Grade "A" milk and skim milk received from dairy farmers or other plants, is disposed of during the month on a route(s) operated partially or wholly in the marketing area.

2. Section 1129.11 is revised as follows:

§ 1129.11 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk receiving, manufacturing or processing plant other than a fluid milk plant. The following categories of nonfluid milk 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 nonfluid milk 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 nonfluid milk plant from which fluid milk products are moved to a fluid milk plant during the month, but which is neither an other order plant nor a producer-handler plant.

3. The introductory text and paragraph (a) of § 1129.14 are revised as follows:

§ 1129.14 Route.

"Route" means the delivery (including delivery by a vendor or sale at a plant store) of fluid milk products other than as follows:

(a) Delivery in bulk to a plant, or

4. Section 1129.20 is revised as follows:

§ 1129.20 Fluid milk product.

"Fluid milk product" means all skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, flavored milk drinks, filled milk, cream, cultured sour cream, any mixture of cream and milk or skim milk (other than frozen storage cream, aerated cream products, eggnog, ice cream mix, or other frozen mixes, evaporated or condensed milk and any milk product contained in hermetically sealed containers): *Provided*, That when nonfat milk solids are added for fortification the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of unmodified prod-

uct of the same nature and butterfat content. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1129.21 is added as follows:

§ 1129.21 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 milkfat, 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).

6. In § 1129.27, paragraph (g) is revised as follows:

§ 1129.27 Duties.

(g) Verify all reports and payments of each handler by audit of such handler's records and the records of any other handler or person upon whose disposition such handler claims classification of skim milk and butterfat and by such investigation as the market administrator deems necessary;

7. In § 1129.30, paragraph (e) is revised as follows:

§ 1129.30 Reports of receipts and utilization.

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section including a statement of the route disposition of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route disposition of filled milk; and

8. In § 1129.33, paragraphs (b) and (c) are revised as follows:

§ 1129.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, and milk products (including filled milk) handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk, and milk products (including filled milk) on hand at the beginning and end of each month; and

9. In § 1129.44, subparagraph (5) of paragraph (e) is revised as follows:

§ 1129.44 Transfers.

(5) For purposes of this paragraph (e), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1129.46, subparagraphs (2), (3), (4), and (7) of paragraph (a) are revised as follows:

§ 1129.46 Allocation of skim milk and butterfat classified.

(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;

(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 subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class I 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 fluid milk plants of other handlers, receipts from a cooperative association in its capacity as a handler pursuant to § 1129.13(b) (2) and receipts in bulk from other order plants; and

(ii) Receipts of fluid milk products in bulk from an other order plant, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (3) (iv) or (4) (i) of this paragraph;

(ii) Receipts of fluid milk products in bulk from other order plants that were

not subtracted pursuant to subparagraph (4) (ii) of this paragraph;

11. Section 1129.61 is revised as follows:

§ 1129.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to any plant specified in paragraph (a), (b), or (c) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) An approved distributing plant which also meets the pooling requirements of another Federal order and from which the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than is disposed of on routes (other than to a distributing plant(s)) in the Austin-Waco marketing area.

(b) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes (other than to a distributing plant(s)) in the Austin-Waco marketing area, but which plant is, nevertheless, fully regulated under such other Federal order.

(c) An approved supply plant which (1) meets the pooling requirements of another Federal order and from which greater qualifying shipments, except filled milk, are made during the month to plants regulated under such other order than are made to plants regulated under this part, or (2) retains automatic pooling status under another Federal order.

12. In § 1129.96, paragraphs (a) and (d) are revised as follows:

§ 1129.96 Termination of obligations.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1130—MILK IN CORPUS CHRISTI, TEX., MARKETING AREA

1. Section 1130.7 is revised as follows:

§ 1130.7 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed or packaged. Separate facilities without storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

2. In § 1130.10, paragraphs (a) and (b) are revised as follows:

§ 1130.10 Pool plant.

(a) Any distributing plant, except a producer-handler plant or an other order plant, from which during the month:

(1) The disposition of fluid milk products, except filled milk, within the marketing area on routes is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total disposition of fluid milk products, except filled milk, on routes is 50 percent or more of the receipts of Grade A milk at such plant;

(b) A supply plant:

(1) During any month in which 50 percent or more of the receipts of Grade A milk from dairy farmers and handlers pursuant to § 1130.12(d) at such plant is moved as fluid milk products, except filled milk, to pool distributing plants; or

(2) During each of the months of January through August, if such plant

was a pool plant pursuant to subparagraph (1) of this paragraph during each of the immediately preceding months of September through December, unless the operator of such plant has filed with the market administrator before the first day of any month written request that such plant not be a pool plant for each month through August during which it does not otherwise qualify as a pool plant; or

3. Section 1130.11 is revised as follows:

§ 1130.11 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 Federal 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) "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.

(d) "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 disposed of on routes in the marketing area during the month.

4. Section 1130.15 is revised as follows:

§ 1130.15 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from other dairy farmers;

(c) Disposes of no other source milk as Class I milk except:

(1) That represented by nonfat solids used in the fortification of fluid milk products; or

(2) Yogurt in packaged form and cream in prepackaged tetrapaks (one-half fluid ounce capacity) if such products are made from milk classified and priced under any Federal order;

(d) Receives during the month from pool plants fluid milk products in a total quantity of not more than 10,000 pounds, or 5 percent of his Class I disposition, whichever is less; and

(e) Furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

5. Section 1130.16 is revised as follows:

§ 1130.16 Fluid milk products.

"Fluid milk products" means all skim milk (including reconstituted skim milk) and butterfat disposed of in fluid form as milk, skim milk, buttermilk, flavored milk drinks, filled milk, cream, cultured sour cream and sour cream products labeled Grade A, and any mixture of cream and milk or skim milk (other than frozen cream, aerated cream products, eggnog, ice cream, ice cream mix or other frozen mixes, evaporated or condensed milk and milk products contained in hermetically sealed containers): *Provided*, That when nonfat milk solids are added for "fortification", the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

6. A new § 1130.16a is added as follows:

§ 1130.16a 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 milkfat, 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).

7. Section 1130.18 is revised as follows:

§ 1130.18 Route disposition.

"Route disposition", or "disposed of on routes", means any delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products other than a delivery to a milk or filled milk plant.

8. In § 1130.30, paragraphs (a) (3) and (c) are revised as follows:

§ 1130.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization or disposition of all quantities required to be reported, showing separately:

- (i) Total route disposition, except filled milk;
- (ii) Route disposition in the marketing area;
- (iii) Transfers to other pool plants;
- (iv) Transfers to other order plants;
- (v) Transfers to nonpool plants;
- (vi) Diversions to nonpool plants; and
- (vii) In-area and outside area route disposition of filled milk.

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of receipts of producer 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.

9. In § 1130.33, paragraphs (b) and (c) are revised as follows:

§ 1130.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and other milk products (including filled milk) handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and milk products (including filled milk) on hand at the beginning and end of each month; and

10. In § 1130.44, paragraph (e) (5) is revised as follows:

§ 1130.33 Transfers.

(e) * * *

(5) For purposes of this paragraph (e), if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk and butterfat allocated to another class shall be classified as Class III milk; and

11. Section 1130.46 is revised as follows:

§ 1130.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1130.45, the market administrator shall determine the classification of producer milk for each handler (or pool plant, if applicable) as follows:

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

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk classified as Class III milk pursuant to § 1130.41(c) (7);

(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 (4) (v) of this paragraph as follows:

(i) From Class III 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 from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class in series beginning with Class III milk, 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 re-

ceipts 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; 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;

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

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;

(a) For which the handler requests Class II or Class III milk 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 other pool plants and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in excess of similar transfers to such plant, if Class II or Class III milk utilization was requested by the operator of such plant and the handler;

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

(7) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) 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 which were not subtracted pursuant to subparagraphs (4) (iv) or (5) (i) of this paragraph;

(9) 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 subparagraphs (4) (v) or (5) (ii) of this paragraph:

(i) In series beginning with Class III milk, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1130.22(o) or the percentage that Class

II and Class III milk utilization remaining is of the total remaining utilization of skim milk of the handler; and

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

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other handlers (or other pool plants, if applicable) according to the classification assigned pursuant to § 1130.44(a); and

(11) If the pounds of skim milk remaining in each class 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 III milk. Any amount 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 and § 1130.45(d) for each class and determine the weighted average butterfat content of producer milk in each class.

12. Section 1130.60 is revised as follows:

§ 1130.60 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A plant meeting the requirements of § 1130.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition, except filled milk, is made in such other marketing area unless notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A plant meeting the requirements of § 1130.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A plant meeting the requirements of § 1130.10(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to

plants regulated under such other order than are made to plants regulated under this part, except during the months January through August, if such plant retains automatic pooling status under this part.

(d) Each handler operating a plant described in paragraphs (a) or (b) of this section shall report pursuant to § 1130.32(b) and each handler operating a plant described in paragraph (c) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a) or (b) 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 III price.

13. In § 1130.61, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1130.61 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1130.70 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 (or Class III) milk if allocated to such classes at the pool plant or other order plant and be valued at the uniform 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 III price. There shall be included in the obligation so computed a charge in the amount specified in § 1130.70(e) and a credit computed at the uniform price

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 III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

* * *

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 or the Class III price, whichever is higher 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 III price.

13a. In § 1130.70, paragraph (d) is revised to read as follows:

§ 1130.70 Computation of the net pool obligation of each pool handler.

* * *

(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 III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1130.46(a)(4) and the corresponding step of § 1130.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1130.46(a)(4) (iv) and (v) and the corresponding step of § 1130.46(b) the Class I price shall be adjusted to the location of the transferor plant;

* * *

14. Section 1130.83 is revised as follows:

§ 1130.83 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 §§ 1130.60, 1130.61, 1130.84, and 1130.86, and out of which he shall make all payments to handlers pursuant to §§ 1130.85 and 1130.86.

15. In § 1130.89, paragraphs (a) and (d) are revised as follows:

§ 1130.89 Termination of obligation.

(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 obligations exist, were received or handled; and
- (3) If the obligation is payable to the market administrator, the account for which it is to be paid.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

1. Section 1132.10 is revised as follows:

§ 1132.10 Pool plant.

"Pool plant" means a plant described in paragraph (a) or (b) of this section, subject to paragraph (c) of this section.

(a) A distributing plant from which a volume of Class I milk, except filled milk:

- (1) Not less than 50 percent of the Grade A milk received at such plant from dairy farmers, from cooperative association handlers pursuant to § 1132.12(c), and from other plants, is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants); and
- (2) Not less than 15 percent of such receipts, or an average of not less than 10,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from cooperative association handlers pursuant to § 1132.12(c) during such month: *Provided*, That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) If a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a plant qualified pursuant to this section.

2. Section 1132.11 is revised as follows:

§ 1132.11 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 (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) in the marketing area during the month.

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

3. Section 1132.12 is revised as follows:

§ 1132.12 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

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

(c) Any cooperative association with respect to milk of producers which is diverted from a pool plant to a nonpool plant for the account of such association;

(d) Any cooperative association with respect to milk of its member producers picked up at the farm for delivery to the pool plant of another handler in a tank truck owned or operated by such association or under control of such association, by contract or otherwise, in such a way that the association supervises

and controls the determination of farm weights and tests of the milk of each of such member producers; or

(e) A producer-handler, or any person who operates an other order plant described in § 1132.61.

4. Section 1132.13 is revised as follows:

§ 1132.13 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers and who disposes of no fluid milk products in excess of his own milk production and fluid milk products received from pool plants.

5. Section 1132.15 is revised as follows:

§ 1132.15 Fluid milk product.

"Fluid milk product" means milk (including concentrated milk), skim milk (including reconstituted skim milk), buttermilk, filled milk, milk drinks (plain or flavored), cream (sweet or sour), or any fluid mixture of cream and milk or skim milk (except storage cream, aerated cream products, sour cream, and sour cream products not labeled Grade A, eggnog, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers): *Provided*, That when any such product is modified by the addition of nonfat milk solids, the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content. This definition shall not include a product which contains 6 percent or more non-milk fat (or oil).

6. A new § 1132.18 is added as follows:

§ 1132.18 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 no fat 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).

7. Section 1132.30 is revised as follows:

§ 1132.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler in his capacity as the operator of a pool plant(s) and each cooperative association with respect to milk for which it is a handler pursuant to § 1132.12 (b) or (c) shall report for such month to the market administrator in detail and on forms prescribed by the market administrator:

(a) Each handler in his capacity as the operator of a pool plant(s) shall report:

(1) The quantities of skim milk and butterfat contained in receipts of producer milk;

(2) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants;

(3) The quantities of skim milk and butterfat contained in other source milk;

(4) The quantities of skim milk and butterfat contained in producer milk diverted to nonpool plants pursuant to § 1132.14;

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

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

(b) Each cooperative association shall report with respect to milk for which it is a handler pursuant to § 1132.12 (b) and (c):

(1) Skim milk and butterfat in milk received by such cooperative association from producers' farms;

(2) The quantities of such skim milk and butterfat delivered to each pool plant and each nonpool plant; and

(3) The utilization of skim milk and butterfat delivered to a nonpool plant.

8. In § 1132.31, paragraph (c) is revised as follows:

§ 1132.31 Other reports.

(c) Each handler operating a partially regulated distributing plant shall report pursuant to § 1132.30 including a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and pursuant to § 1132.31(b) (1) in the event that such handler does not elect at the regular time of reporting pursuant to § 1132.30 to pay amounts computed pursuant to § 1132.62 (b), except that receipts in Grade A milk from dairy farmers and payments to such dairy farmers shall be reported in lieu of receipts from and payments to producers.

9. In § 1132.32, paragraphs (b) and (c) are revised as follows:

§ 1132.32 Records and facilities.

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

10. In § 1132.44, subparagraph (5) of paragraph (e) is revised as follows:

§ 1132.44 Transfers.

(e) For purposes of this paragraph (e), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

11. In § 1132.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (1), of paragraph (a) are revised as follows:

§ 1132.46 Allocation of skim milk and butterfat classified.

(a) 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; and

(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; 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 subparagraph (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 § 1132.12(c) and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(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;

(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 which were not subtracted pursuant to subparagraphs (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 subparagraphs (3) (v) or (4) (ii) of this paragraph;

12. Section 1132.61 is revised as follows:

§ 1132.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraphs (a) or (b) of this section except as specified in paragraphs (c) and (d).

(a) A distributing plant meeting the requirements of § 1132.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of to retail and wholesale outlets (excluding pool plants) in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) such Class I disposition made under limited term contracts to governmental bases and institutions.

(b) A distributing plant meeting the requirements of § 1132.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month to retail and wholesale outlets (excluding pool plants) in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order;

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant,

report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), 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.

13. In § 1132.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1132.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1132.70 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 § 1132.70(e) and a credit in the amount specified in § 1132.84(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 in subdivision (ii) of this subparagraph, and

(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 as Class I milk at the partially regulated distrib-

uting plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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.

13a. In § 1132.70, paragraph (d) is revised to read as follows:

§ 1132.70 Computation of the net pool obligation of each pool handler.

(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 § 1132.46(a) (3) and the corresponding step of § 1132.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1132.46(a) (3) (iv) and (v) and the corresponding step of § 1132.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

14. Section 1132.83 is revised as follows:

§ 1132.83 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 §§ 1132.61, 1132.62, 1132.84, and 1132.86, and out of which he shall make all payments pursuant to §§ 1132.85 and 1132.86: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

15. In § 1132.90 paragraphs (a) and (d) are revised as follows:

§ 1132.90 Termination of obligations.

(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.

(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 skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 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.

PART 1133—MILK IN THE INLAND EMPIRE MARKETING AREA

1. Section 1133.7 is revised to read as follows:

§ 1133.7 Plant.

"Plant" means the land, buildings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment which is maintained primarily for receiving, processing or packaging of fluid milk and milk products (including filled milk). However, an establishment that is separate from the foregoing operating unit and used only for transferring bulk milk from one tank truck to another shall not be a plant under this definition.

2. In § 1133.8, paragraphs (a) and (b) are revised to read as follows:

§ 1133.8 Pool plant.

"Pool plant" means any plant described in paragraph (a) or (b) of this section, other than the plant of a producer-handler, or a plant with respect to which the handler is exempt pursuant to § 1133.61, which is approved by an appropriate health authority for the receiving of milk qualified for distribution as Grade A milk in the marketing area.

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which fluid milk products are processed or packaged and from which during the month:

(1) Disposition of fluid milk products, except filled milk, on routes within the marketing area equals or exceeds the lesser of 250,000 pounds or 20 percent of

the total receipts of Grade A milk from dairy farmers, cooperative associations pursuant to § 1133.15(d), and from pool supply plants and other plants forwarding the applicable percentage of receipts specified in paragraph (b) of this section to such plant and other pool distributing plants; and

(2) Total disposition of fluid milk products, except filled milk, on routes is 40 percent or more of such receipts in any of the months of February through August, inclusive, and 50 percent or more of such receipts in any of the months of September through January, inclusive.

(b) Any plant, hereinafter referred to as a "supply pool plant", from which there is forwarded in the form of fluid milk products, to a pool distributing plant(s) 50 percent or more each of the skim milk and butterfat in its dairy farm supply of Grade A milk except filled milk, during the current month during the period of September through November, or 20 percent or more during the current month during the period December through August. Any such plant which has forwarded in the form of fluid milk products, more than 50 percent of such receipts except filled milk, for the entire period of September through November shall be a pool plant for the months of December through August immediately following unless the operator of such plant files with the market administrator, prior to the first day of any month(s), a written request to withdraw such plant from pool plant status for such month(s); and

3. Section 1133.9, paragraph (c) is revised to read as follows:

§ 1133.9 Nonpool plant.

(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.

4. Section 1133.16 is revised to read as follows:

§ 1133.16 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a processing plant from which fluid milk products are distributed on routes in the marketing area but who receives no fluid milk products during the month from other dairy farmers or from any other source except by transfer from a pool plant, and who receives no milk products other than fluid milk products for reconstitution into fluid milk products. Such person must provide proof satisfactory to the market administrator that the maintenance, care and management of the dairy animals and other resources necessary to produce his own farm milk production and the operation of the processing and distribution business is the personal enterprise and risk of such person.

5. Section 1133.17 is revised to read as follows:

§ 1133.17 Fluid milk product.

"Fluid milk product" means milk, skim milk, skim milk drinks, buttermilk, flavored milk, flavored milk drinks, filled milk, concentrated milk, skim milk or milk drinks (not including evaporated milk, condensed milk or condensed skim milk), fortified milk or skim milk (including "diet" foods), cream (sweet or sour), any mixture in fluid form of cream and milk or skim milk (except ice cream mix, frozen dessert mix, cocoa mixes, a product which contains 6 percent or more nonmilk fat (or oil), aerated products, eggnog and yogurt), which are neither sterilized nor in hermetically sealed metal containers.

6. A new § 1133.19 is added to read as follows:

§ 1133.19 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 milkfat, 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).

7. In § 1133.30, subparagraph (3) of paragraph (a), and paragraph (b) are revised to read as follows:

§ 1133.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization in each class of the quantities required to be reported, including separate statements of quantities (i) in inventories of fluid milk products on hand at the end of the month, (ii) in route disposition outside the marketing area, and (iii) of in-area and outside area route disposition of filled milk; and

(b) Each handler specified in § 1133.15 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

8. Section 1133.33 is revised to read as follows:

§ 1133.33 Records and facilities.

Each handler shall maintain and make available to the market administrator, or his representative, during the usual hours of business, such accounts and records of his operations, including those of any other person upon whose utilization the classification of skim milk and butterfat depends, and such facilities as, in the opinion of the market administra-

tor, are necessary to verify or to establish the correct data with respect to:

(a) The information required to be reported pursuant to §§ 1133.30, 1133.31, and 1133.32;

(b) The weights and tests for butterfat and other contents of all milk, filled milk, and milk products handled, including filled milk; and

(c) Payments required to be made pursuant to §§ 1133.80 through 1133.88.

9. In § 1133.43, paragraph (b) is revised to read as follows:

§ 1133.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I unless the handler who first receives such skim milk or butterfat can establish to the satisfaction of the market administrator that such skim milk or butterfat should be classified otherwise:

(b) The burden shall rest upon each handler to establish the sources of milk and milk products (including filled milk) required to be reported by him pursuant to § 1133.30; and

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

10. In § 1133.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1133.44 Transfers and diversions.

(e) * * *

(5) For purposes of this paragraph, if the transferred order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to Class II under the other order shall be classified as Class III; and

11. In § 1133.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised to read as follows:

§ 1133.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1133.45, 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 in Class III the pounds of skim milk classified as Class III pursuant to § 1133.41(c)(5);

(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 III milk, the lesser of the pounds remaining or two 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 III, 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; 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 transfer plant;

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

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II or Class III 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 other pool handlers, 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 or Class III utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, 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 III milk the pounds subtracted pursuant to subparagraph (1) 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 which were not subtracted pursuant to subparagraph (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 sub-

tracted pursuant to subparagraphs (3) (v) or (4) (i) of this paragraph:

12. In § 1133.51, paragraph (d) (2) is revised to read as follows:

§ 1133.51 Class prices.

(d) * * *

(2) Determine the total pounds of milk and milk products (including filled milk) disposed of from pool plants as Class I milk (excluding shrinkage, unaccounted for milk, and any duplications resulting from interhandler transfers) during the same 2 months;

13. Section 1133.61 is revised to read as follows:

§ 1133.61 Plants subject to other Federal orders.

(a) Except as specified in paragraphs (b) and (c), the provisions of this part shall not apply to any distributing or supply plant which would be subject to the classification, pricing and payment provisions of another order issued pursuant to the Act, unless a greater volume of fluid milk products, except filled milk, are disposed of on routes or to pool plants in the Inland Empire marketing area than in the marketing area regulated pursuant to such other order.

(b) The operator of a plant specified in paragraph (a) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler operating a plant specified in paragraph (a), 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.

(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 III price.

14. In § 1133.62, paragraphs (a) (1) (1) and (b) are revised to read as follows:

§ 1133.62 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to

§ 1133.70 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 III 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 shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1133.70(e) and a credit in the amount specified in § 1133.84(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 III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph.

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(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 III 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 III price.

15. Section 1133.63 is revised to read as follows:

§ 1133.63 State institutions.

A State owned and operated institution or establishment which processes or packages skim milk and butterfat distributed solely on its premises or those of other State institutions or establishments shall be exempt from all provisions of this part. Skim milk and butterfat received from institutions at pool plants shall be treated as other source milk received from a producer-handler, and fluid milk products disposed of by a handler to such institutions shall be classified on the same basis as though disposed of to a producer-handler.

15a. In § 1133.70, paragraph (d) is revised to read as follows:

§ 1133.70 Computation of the net pool obligation of each pool handler.

(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 III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1133.46(a)(3) and the corresponding step of § 1133.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1133.46(a)(3)(iv) and (v) and the corresponding step of § 1133.46(b) the Class I price shall be adjusted to the location of the transferor plant;

16. Section 1133.83 is revised to read as follows:

§ 1133.83 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 §§ 1133.61, 1133.62, 1133.84, and 1133.86 and out of which he shall make all payments to handlers pursuant to §§ 1133.85 and 1133.86.

17. In § 1133.89, paragraphs (a) and (d) are revised to read as follows:

§ 1133.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money:

(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 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 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.

(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 month during which the skim milk and butterfat involved in the claims were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff 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.

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

1. Section 1134.9 is revised to read as follows:

§ 1134.9 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section, except the plant of a producer-handler or the plant of a handler exempt under § 1134.61.

(a) Any plant hereinafter referred to as a "distributing pool plant," in which during the month fluid milk products are processed or packaged and from which:

(1) An amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as fluid milk products, except filled milk, on routes, and

(2) Ten percent or more of such receipts, or 2,000 pounds per day, whichever is less, are disposed of as fluid milk products, except filled milk, on routes in the marketing area; and

(b) Any plant hereinafter referred to as a "supply pool plant" from which during the month 50 percent of its dairy farm supply of Grade A milk is moved in the form of fluid milk products, except filled milk, to distributing pool plants. Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant in each of the following months of March through August, unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any of the following months of March through August unless it fulfills the shipping requirements of this paragraph for such month(s).

2. Section 1134.10 is revised to read as follows:

§ 1134.10 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 under the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued under 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 that is neither an other order plant nor a producer-handler plant and from which fluid milk products are moved during the month to a pool plant.

3. Section 1134.16 is revised to read as follows:

§ 1134.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, reconstituted milk or skim milk fortified milk or skim milk (including "diet" foods), cream (sweet or sour), half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mixes, frozen cream, a product which contains 6 percent or more nonmilk fat or oil, aerated cream, egg-nog, cultured sour mixtures to which cheese or any food substance other than a milk product has been added in an amount not less than 3 percent by weight of the finished product), which are neither sterilized nor in hermetically sealed containers.

4. A new § 1134.19 is added to read as follows:

§ 1134.19 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 milkfat, 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).

5. In § 1134.30, subparagraph (5) of paragraph (a) and paragraph (c) are revised to read as follows:

§ 1134.30 Reports of receipts and utilization.

(a) (5) The utilization of all skim milk and butterfat required to be reported under this section, including a separate statement of the route disposition of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route disposition of filled milk;

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

PROPOSED RULE MAKING

6. Section 1134.33 is revised to read as follows:

§ 1134.33 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 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 milk, filled milk and milk products handled;
- (c) The pounds of skim milk and butterfat contained in or represented by all milk products and filled milk on hand at the beginning and end of each month; and
- (d) Payments to producers, or to cooperative associations, including any deductions, and the disbursement of money so deducted.

7. In § 1134.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1134.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to another class shall be classified as Class III; and

8. Section 1134.46 is revised to read as follows:

§ 1134.46 Allocation of skim milk and butterfat classified.

After making the computations under § 1134.45 the market administrator shall determine each month the classification of milk received from producers by each cooperative association handler under § 1134.11 (c) and (d) which was not received at a pool plant and the classification of milk received from producers, from a pool plant operated by a cooperative association and from cooperative association handlers under § 1134.11(d) at a pool plant(s) for each handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III under § 1134.41(c) (7);

(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 (4) (v) of this paragraph, as follows:

(i) From the utilization comparable under such other order if the products are not classified as Class I under the other order;

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

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

(3) Subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than 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; 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.

(5) Subtract in sequence beginning with Class III in the order specified below, from the pounds of skim milk remaining in Class III and Class II;

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, for which the handler requests Class III utilization, but not in excess of the pounds of skim milk remaining in Class III and Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers and in receipts of fluid milk products in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in excess of similar transfers or diversions to such plant, but not in excess of the pounds of skim milk remaining in Class III (and Class II), if Class III utilization was requested by the transferee handler and the operator of the transferor plant requests the lowest class utilization under the order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; 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.

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

(7) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted under subparagraph (1) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted under subparagraph (4) (v) or (5) (i) or (ii) of this paragraph.

(9) 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 or filled milk 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 subparagraphs (4) (v) or (5) (iii) of this paragraph:

(i) Such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class III and Class II combined;

(a) The estimated utilization of skim milk in each class by all handlers, as announced for the month under § 1134.22(i); or

(b) The pounds of skim milk remaining in each class at the pool plant of the handler;

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other pool plants according to the classification assigned under § 1134.44;

(11) If the remaining pounds of skim milk in all classes exceed the pounds of skim milk contained in milk received from producers, and from cooperative associations under § 1134.11(d) subtract such excess from the remaining pounds of skim milk in series beginning with Class III. Any amount 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 under 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.

9. Section 1134.61 is revised to read as follows:

§ 1134.61 Exempt plants.

In the case of a handler in his capacity as operator of a plant specified in paragraphs (a), (b), and (c) of this section the provisions of this part shall not apply except as specified in paragraphs (d) and (e):

(a) Any distributing plant from which less than an average of 200 pounds per day of Class I milk (except filled milk) is disposed of on routes in the marketing area during the month.

(b) Any distributing plant which would be subject to the classification and pricing provisions of another order issued under the Act, unless such plant is qualified as a pool plant under § 1134.9(a) and more Class I milk (except filled milk) is disposed of from such plant on routes in the Western Colorado marketing area than in the marketing area defined under such other order.

(c) Any plant qualified under § 1134.9 (b) for any portion of the period of March through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued under the Act.

(d) The operator of a plant specified in paragraphs (a), (b), or (c) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (b), 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 the receipts 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.

(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 III price.

10. In § 1134.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1134.62 Obligations of a handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed under § 1134.70 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 III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim

milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1134.70(e) and a credit in the amount specified in § 1134.84(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 III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued under the Act;

(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 uniform price applicable at such location (not to be less than the Class III 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 III price.

10a. In § 1134.70, paragraph (d) is revised to read as follows:

§ 1134.70 Computation of the net pool obligation of each pool handler.

(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 III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1134.46(a)(4) and the corresponding step of § 1134.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1134.46(a)(4) (iv) and (v) and the corresponding step of § 1134.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

11. Section 1134.83 is revised to read as follows:

§ 1134.83 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 under §§ 1134.61, 1134.62, 1134.84, and 1134.86 and out of which he shall make all payments under §§ 1134.85 and 1134.86: *Provided*,

That any payments due to any handler shall be offset by any payments due from such handler.

12. In § 1134.89, paragraphs (a) and (d) are revised to read as follows:

§ 1134.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(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 month during which the market administrator received 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 a cooperative association, the names of such producer(s) or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(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 month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset 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, under section 8c (15) (A) of the Act, a petition claiming such money.

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

1. In § 1136.8 paragraph (c) is revised to read as follows:

§ 1136.8 Producer-handler.

(c) The operation of the milk (including filled milk) production, processing and distributing facilities are under the complete and exclusive control of such person and at his sole risk.

2. Section 1136.10 is revised to read as follows:

§ 1136.10 Approved plant.

"Approved plant" means a plant which either receives milk from dairy farmers

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or possesses the approval of any duly constituted health authority for the processing or packaging of Grade A fluid products, and (a) in which milk or milk products (including filled milk) are processed or packaged and from which any fluid milk product is disposed of during the month on routes in the marketing area, or (b) in which milk is received or processed and from which milk or skim milk is shipped during the month to a plant described in paragraph (a) of this section.

3. Section 1136.11 is revised to read as follows:

§ 1136.11 Pool plant.

"Pool plant" means:

(a) An approved plant, except the plant of a producer-handler as described in § 1136.8, from which during the month there is disposed of on routes fluid milk products, except filled milk, equal to not less than 50 percent of the receipts during the month at such plant of producer milk, producer milk diverted therefrom by the plant operator and receipts at the plant of fluid milk products, except filled milk, from plants described pursuant to paragraph (b) of this section, and there are disposed of on routes in the marketing area fluid milk products, except filled milk, equal to not less than 15 percent of the total fluid milk product disposition, except filled milk, from the plant on routes. If any cooperative association operating an approved plant as defined in § 1136.10(a) causes producer milk to be delivered to a pool plant pursuant to this paragraph operated by another handler, such producer milk shall be included for the computations made pursuant to this paragraph for such cooperative association's plant along with the receipts of producer milk at such cooperative association's plant, and the quantity of such milk calculated as Class I milk pursuant to § 1136.22(h) shall be included for such computations along with the fluid milk products, except filled milk, disposed of on routes from such cooperative association's plant. If such a cooperative association operates more than one approved plant as defined in § 1136.10(a), such producer milk and Class I milk shall be included in the computation for whichever plant the cooperative association requests in writing to the market administrator. If no such written request is made, such producer milk and Class I milk shall be prorated among the plants. If a handler operates more than one approved plant, the combined receipts and fluid milk products disposition, except filled milk, of any of such plants may be used as the basis for qualifying the respective plants pursuant to the preceding computations specified in this paragraph if the handler in writing so requests the market administrator.

(b) An approved plant from which during the month fluid milk products, except filled milk, equal to not less than 50 percent of the total of receipts at the plant from dairy farmers meeting the inspection requirements described in § 1136.7, milk diverted pursuant to

§ 1136.13 by the handler operating the plant and other fluid milk products, except filled milk, qualified for distribution for fluid consumption received at the plant are shipped to a plant described in paragraph (a) of this section: *Provided*, That a plant which so qualifies in each of the months of August through January as a pool plant shall be a pool plant in each of the following months of February through July unless the operator requests in written notice to the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

4. In § 1136.12 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1136.12 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:

5. Section 1136.15 is revised to read as follows:

§ 1136.15 Fluid milk products.

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream (sweet or sour) except frozen cream, concentrated milk (fresh or frozen), fortified milk or skim milk, reconstituted milk or skim milk, or any mixture in fluid form of milk, skim milk and cream (except ice cream, ice cream mix, eggnog, a product which contains 6 percent or more nonmilk fat (or oil), aerated cream, evaporated or condensed milk (plain or sweetened), and sterilized products in hermetically sealed containers).

6. A new § 1136.18 is added to read as follows:

§ 1136.18 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 milkfat, 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).

7. In § 1136.30, subparagraph (2) of paragraph (a) is revised to read as follows:

§ 1136.30 Reports of sources and utilization.

(a) * * *

(2) The utilization of all skim milk and butterfat required to be reported pursuant to subparagraph (1) of this paragraph, including a separate statement of the route disposition of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route disposition of filled milk;

8. In § 1136.31, paragraph (c) is revised to read as follows:

§ 1136.31 Other reports.

(c) Each handler specified in § 1136.9 (a) (2) who operates a partially regulated distributing plant shall report as required in § 1136.30, except that receipts of milk produced in compliance with the inspection requirements of a duly constituted health authority for fluid consumption shall be reported in lieu of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

9. In § 1136.42, paragraph (c) and subparagraph (5) of paragraph (d) are revised to read as follows:

§ 1136.42 Transfers.

(c) If transferred in bulk form as milk, filled milk, skim milk, or cream to a nonpool plant which is neither an order plant nor a producer-handler plant, shall be classified as Class I milk unless the requirements of subparagraphs (1), (2) and (3) of this paragraph are met, in which case the skim milk and butterfat so transferred shall be classified in accordance with the assignment resulting from subparagraph (4) of this paragraph:

(d) * * *

(5) For purposes of this paragraph (d), if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I and skim milk and butterfat allocated to Class II under the other order shall be classified as Class III; and

10. In § 1136.44, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised to read as follows:

§ 1136.44 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1136.43, the market administrator shall determine each month the classification of milk received from producers by each cooperative association handler pursuant to § 1136.9 (b) and (c) which was not received at a pool plant and the classification of milk received from producers and from cooperative association handlers pursuant to § 1136.9 (c) by each handler (or pool plant, if applicable) as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1136.41(c) (5);

(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) (1) (d) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III pursuant to § 1136.41 (c) (8) plus two percent of such receipts (weight of an equal volume of a like unmodified product of the same butterfat content);

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

(iii) In the event that packaged other order milk receipts (including filled milk) are in excess of the total amount subtracted pursuant to § 1136.44(a) (2) (i) and (ii), the remaining quantity shall be subtracted from the utilization remaining in Class III and then Class II;

(3) Subtract, in the order specified below, the pounds of skim milk in each of the following:

(i) From the pounds of skim milk remaining in each class, in series beginning with Class III:

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

(b) Receipts of fluid milk products (except filled milk) not qualified for fluid consumption, and receipts of fluid milk products from unidentified sources;

(c) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order, and from exempt plants as defined in § 1136.60(a);

(d) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(e) 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;

(ii) From the pounds of skim milk remaining in Class II and Class III, beginning with Class II, receipts from pool plants of other handlers (or other pool plants, if applicable) in the form of cottage cheese;

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

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (i) (d) of this paragraph, for which the handler requests Class III utilization;

(ii) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (i) (d) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk in producer milk, in receipts from pool plants of other handlers (or other pool plants, if applicable), and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (i) (e) of this paragraph;

(iii) Receipts of fluid milk products in bulk from an other order plant, that

were not subtracted pursuant to subparagraph (3) (i) (e) of this paragraph, in excess of similar transfers to such plant, if Class III utilization was requested by the transferee handler and the operator of the transferor plant requests the lowest class utilization under the other order;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, 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 III milk the pounds subtracted pursuant to subparagraph (1) 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 plants which were not subtracted pursuant to subparagraph (3) (i) (d) or (4) (i) or (ii) 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 subparagraphs (3) (i) (e) or (4) (iii) of this paragraph:

11. Section 1136.61 is revised to read as follows:

§ 1136.61 Plants where other Federal orders may apply.

Any plant described by paragraph (a) or (b) of this section shall be exempt from § 1136.11, except as specified in paragraphs (c) and (d):

(a) Any plant which does not dispose of a greater volume of Class I milk, except filled milk, on routes in the Great Basin marketing area than in the marketing area regulated pursuant to such other order; and

(b) Any plant during the months of February through July which qualifies as a pool plant only pursuant to the proviso of § 1136.11(b).

(c) The operator of a plant specified in paragraph (a) or (b) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), 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.

(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 III price.

12. In § 1136.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1136.62 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1136.70 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 III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1136.70(e) and a credit in the amount specified in § 1136.82(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 III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to a pool plant) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(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 uniform price applicable at such location (not to be less than the Class III price), and add for the quan-

tity 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 non-pool plant less the value of such skim milk at the Class III price.

12a. In § 1136.70, paragraph (d) is revised to read as follows:

§ 1136.70 Computation of the net pool obligation of each pool handler.

(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 III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1136.44(a)(3) and the corresponding step of § 1136.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1136.44(a)(3)(iv) and (v) and the corresponding step of § 1136.44(b) the Class I price shall be adjusted to the location of the transferor plant; and

13. Section 1136.81 is revised to read as follows:

§ 1136.81 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 §§ 1131.61, 1136.62, 1136.82, and 1136.84, and out of which he shall make all payments pursuant to §§ 1136.83 and 1136.84: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

14. In § 1136.87, paragraphs (a) and (d) are revised to read as follows:

§ 1136.87 Termination of obligations.

The provisions of this section shall apply to any obligations under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator received 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 months during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(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 month during which the skim milk

and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset 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.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. Section 1137.7 is revised to read as follows:

§ 1137.7 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section except the plant of a producer-handler or the plant of a handler exempt pursuant to § 1137.61.

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which during the month fluid milk products are processed or packaged and from which (1) an amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as fluid milk products, except filled milk, on routes, and (2) 10 percent or more of such receipts, or 12,000 pounds per day, whichever is less, are disposed of as fluid milk products, except filled milk, on routes in the marketing area; and

(b) Any plant, hereinafter referred to as a "supply pool plant" from which during the month 50 percent of its dairy farm supply of Grade A milk is moved to distributing pool plant(s) as fluid milk products, except filled milk. Any supply plant which has qualified as a pool plant in each of the months of September through February (under either this part or under Part 1135 of this chapter, regulating the handling of milk in Colorado Springs-Pueblo marketing area) shall be a pool plant in each of the following months of March through August unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of March through August unless it fulfills the shipping requirements of this paragraph for such month.

2. Section 1137.8 is revised to read as follows:

§ 1137.8 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 which is neither an other order plant nor a producer-handler plant and from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1137.7.

3. Section 1137.11 is revised to read as follows:

§ 1137.11 Producer-handler.

(a) "Producer-handler" means any person who operates a dairy farm and a milk processing plant which distributes fluid milk products on routes in the marketing area and who:

- (1) Receives no fluid milk products during the month from dairy farmers;
- (2) Receives no fluid milk products during the month from any other source except by transfer from a pool plant; and
- (3) Receives no other source milk for reconstitution into fluid milk products.

(b) Such person must provide proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the volume of fluid milk products (excluding transfers from pool plants) and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of such person.

4. Section 1137.14 is revised to read as follows:

§ 1137.14 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, concentrated milk, reconstituted milk or skim milk, fortified milk or skim milk (including "diet" foods), sweet cream, sour cream and sour cream mixtures disposed of under a Grade A label, half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mix, a product which contains 6 percent or more nonmilk fat (or oil), aerated cream, frozen cream, plastic cream, eggnog and sterilized products packaged in hermetically sealed containers).

5. Section 1137.15 is revised to read as follows:

§ 1137.15 Route.

"Route" means any delivery to retail or wholesale outlets (including a delivery by a vendor or a sale from a plant or plant store) of any fluid milk product, other than a delivery to a pool plant or a nonpool plant: *Provided*, That packaged fluid milk products, except filled milk, that are transferred to a distributing pool plant from a plant with route disposition in the marketing area, and which are classified as Class I under § 1137.44(a), shall be considered as a route disposition from the transferor plant, rather than from the transferee plant, for the single purpose of qualifying

it as a pool distributing plant under § 1137.7(a) (1).

6. A new § 1137.16 is added to read as follows:

§ 1137.16 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 milkfat, 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).

7. In § 1137.30, subparagraph (5) of paragraph (a), and paragraph (c) are revised to read as follows:

§ 1137.30 Reports of receipts and utilization.

(a) * * *

(5) The utilization of all skim milk and butterfat required to be reported by this section, including a separate statement of the route disposition of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route disposition of filled milk;

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

8. In § 1137.44, subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1137.44 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to another class shall be classified as Class III; and

9. In § 1137.48, subparagraphs (2), (3), (4), (5), (6), (8), and (9) of paragraph (a) are revised to read as follows:

§ 1137.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1137.45, the market administrator shall determine each month the classification of milk received from producers by each cooperative association handler pursuant to § 1137.9 (c) and (d) which was not received at a pool plant and the classification of milk received from producers, from a pool plant operated by a cooperative association and from cooperative association handlers

pursuant to § 1137.9(d) at a pool plant(s) for each handler as follows:

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

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1137.41(c) (7);

(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 (4) (v) of this paragraph as follows:

(i) From Class III 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 from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, 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 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; 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;

(5) Subtract, in sequence beginning with Class III in the order specified below, from the pounds of skim milk remaining in Class III and Class II;

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, for which the handler requests Class III utilization, but not in excess of the pounds of skim milk remaining in Class III and Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk in producer milk, in receipts from pool plants of other handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in excess of similar transfers or diversions to such plant, but not in excess of the pounds of skim milk remaining in Class III (and Class II), if Class III utilization was requested by the transferee handler and the operator of the transferor plant requests the lowest class utilization under the other order;

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

(7) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (4) (iv) or (5) (i) or (ii) of this paragraph. (For purposes of this subtraction at a pool plant(s) operated by a cooperative association, skim milk in fluid milk products transferred to the pool plant of another handler shall be added to the remaining pounds of skim milk in each class prorata to the market average utilization announced pursuant to § 1137.22(1));

(9) 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 subparagraphs (4) (v) or (5) (iii) of this paragraph:

9a. Section 1137.61 is revised to read as follows:

§ 1137.61 Exempt plants.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A plant meeting the requirements of § 1137.7(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition, except filled milk, is made in such other marketing area unless, notwithstanding

the provisions of this paragraph, it is regulated under such other order;

(b) A plant meeting the requirements of § 1137.7(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(c) Any distributing plant from which less than an average of 300 pounds of Class I milk per day, except filled milk, is disposed of on routes in the marketing area during the month; and

(d) Each handler operating a plant described in paragraph (a), (b), or (c) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1137.30 through 1137.32) and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), 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 and 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 marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(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 III price.

10. In § 1137.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1137.62 Obligations of a handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1137.70 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 III (or Class II) milk if allocated to such class at the pool

plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1137.70(e) and a credit in the amount specified in § 1137.84(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 III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(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;

(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 uniform price applicable at such location (not to be less than the Class III 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 III price.

10a. In § 1137.70, paragraph (d) is revised to read as follows:

§ 1137.70 Computation of the net pool obligation of each pool handler.

(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 III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1137.46(a) (4) and the corresponding step of § 1137.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1137.46(a) (4) (iv) and (v) and the corresponding step of § 1137.46(b) the Class I price shall be adjusted to the location of the transferor plant; and

11. Section 1137.83 is revised to read as follows:

§ 1137.83 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 §§ 1137.61, 1137.62, 1137.84, and 1137.86 and out of which he shall make all payments pursuant to §§ 1137.85 and 1137.86: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

12. In § 1137.89, paragraphs (a) and (d) are revised to read as follows:

§ 1137.89 Termination of obligation.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(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 month during which the market administrator received 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 months during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(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 month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset 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.

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

1. In § 1138.8 paragraph (c) is revised to read as follows:

§ 1138.8 Producer-handler.

(c) A governmental agency which operates a milk, or filled milk plant shall be considered a producer-handler: *Provided*, That the plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant which is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for one month and thereafter resumes the status of a nonpool plant it shall not be

eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

2. In § 1138.10, paragraphs (a) and (b) are revised as follows:

§ 1138.10 Pool plant.

(a) Any plant hereinafter referred to as a "distributing pool plant" in which fluid milk products are pasteurized or packaged and from which not less than 15 percent of the total Class I sales of such plant, except filled milk, or 10,000 pounds daily (average), whichever is less, are made in the marketing area on routes: *Provided*, That the total quantity of Class I milk, except filled milk, disposed from such plant during the month is not less than 50 percent of such plant's receipts of Grade A milk, which receipts shall include all milk diverted from such pool plant to a nonpool plant by the handler operating such pool plant;

(b) Any plant hereinafter referred to as a "supply pool plant" from which during the month not less than 50 percent of its dairy farm supply of Grade A milk is moved to plants from each of which a volume of Class I milk, except filled milk, not less than 50 percent of its receipts of Grade A milk is disposed of on routes during the month and Class I milk, except filled milk, disposed of in the marketing area on routes is at least 15 percent of such receipts or a daily average of 10,000 pounds, whichever is less.

3. Section 1138.11 is revised to read as follows:

§ 1138.11 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 eligible for distribution in the marketing area are moved to a pool plant qualified pursuant to § 1138.10 and which is not an other order plant nor a producer-handler plant.

4. Section 1138.14 is revised to read as follows:

§ 1138.14 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, milk drinks (plain or flavored), filled

milk, reconstituted milk or skim milk, fortified milk (including "dietary" milk products), concentrated milk, sweet cream and any mixture of milk, skim milk, or sweet cream except frozen cream, frozen dessert mixes, ice cream mix, evaporated or condensed milk or skim milk, aerated cream products, and sterilized products in hermetically sealed containers; and eggnog, yogurt and sour cream and cultured sour cream mixes shall be considered as fluid milk products only if disposed of under a Grade A label. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1138.16 is added to read as follows:

§ 1138.16 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 milkfat, 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).

6. In § 1138.30, subparagraph (6) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1138.30 Reports of receipts and utilization.

(a) The route disposition of fluid milk products in the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

7. Section 1138.36 is revised to read as follows:

§ 1138.36 Accounting periods.

A handler may account for receipts, utilization and classification of skim milk and butterfat at his pool plant(s) for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not less than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

8. In § 1138.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1138.44 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more

than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and 9. In § 1138.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i), of paragraph (a) are revised to read as follows:

§ 1138.46 Allocation of skim milk and butterfat classified.

(2) Subtract from the remaining pounds of skim milk in each class as follows:

(i) From Class I milk, the pounds of skim milk that were received from a producer-handler as packaged, certified fluid milk products and were disposed of in the same form as received;

(ii) From Class II milk, with respect to 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, the lesser of the pounds remaining or 2 percent of such receipts; and

(iii) From Class I milk, the remainder of the receipts specified in subdivision (i) of this subparagraph;

(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; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order, except that subtracted pursuant to subparagraph (2) (i) of this paragraph;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; 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:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph,

PROPOSED RULE MAKING

which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in 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, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

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

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds

of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3) (v) or (4) (iii) of this paragraph pursuant to the following procedure:

10. Section 1138.61 is revised to read as follows:

§ 1138.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempted from all the provisions of this part, except as specified in paragraphs (c) and (d):

(a) Any plant qualified pursuant to § 1138.10(a) which disposes of a lesser volume of Class I milk, except filled milk, in the Rio Grande Valley marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order;

(b) Any plant qualified pursuant to § 1138.10(b) for any portion of the period March through July, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part;

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), 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.

11. In § 1138.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1138.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1138.70 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 uniform 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 § 1138.70(e) and a credit in the amount specified in § 1138.84 (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 in subdivision (ii) of this subparagraph; and

(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 as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(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 uniform 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.

11a. In § 1138.70, paragraph (d) is revised to read as follows:

§ 1138.70 Computation of the net pool obligation of each pool handler.

(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 § 1138.46(a) (3) and the corresponding step of § 1138.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1138.46(a) (3) (iv) and (v) and the corresponding step of § 1138.46(b) the Class I price shall be adjusted to the location of the transferor plant;

12. Section 1138.83 is revised to read as follows:

§ 1138.83 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 §§ 1138.61, 1138.62, 1138.84, and 1138.86 and out of which he shall make all payments pursuant to §§ 1138.85 and 1138.86: *Provided*, That any payments due any handler shall be offset by any payments due from such handler.

13. In § 1138.89, paragraphs (a) and (d) are revised to read as follows:

§ 1138.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator received 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 months 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 a cooperative association, the names of such producers or cooperative associations, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(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 two years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or offset 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.

[P.R. Doc. 69-12396; Filed, Oct. 17, 1969; 8:45 a.m.]

[7 CFR Part 26]

GRAIN STANDARDS

Inspection and Weight Certificates

Statement of considerations. On February 8, 1969, there was published in the FEDERAL REGISTER (34 F.R. 1859), an amendment of the regulations (7 CFR 26.1 et seq.) under the U.S. Grain Standards Act, as amended (Public Law 90-487).

Section 26.59(b) (15) (i) of the regulations (7 CFR 26.59(b) (15) (i)) requires that the statement "Weights Not Verified" be shown on lot inspection certificates in order to distinguish the inspection certificates from weight certificates. Members of the grain trade have expressed concern that the present wording may cause some foreign grain buyers and some financial institutions to question the weights shown on the certificates. They have recommended that the present wording be changed to read "This Is Not A Weight Certificate". The Department believes that the amended statement would satisfactorily distinguish the inspection certificates from weight certificates without causing any misunderstandings. Accordingly, it is proposed that the statement "Weights Not Verified" be changed to read "This Is Not A Weight Certificate".

Section 26.59 of the regulations (7 CFR 26.59), to become effective February 11, 1970, requires that official certificates be on standard forms.

Section 26.59(e) (1) of the regulations (7 CFR 26.59(e) (1)) requires that the original of the standard forms of certificates be printed on stock that is distinctly tinted with fugitive ink. However, the requirement increases the printing costs and the time required to fill orders for certificate forms, and there is reason to believe that the requirement is not essential to the official inspection program. Accordingly, it is proposed that the requirement for the original certificates to be printed on stock distinctly tinted with fugitive ink be deleted.

Under the authority contained in section 16 of the U.S. Grain Standards Act, as amended (7 U.S.C. 87(e)), notice is hereby given pursuant to the administrative procedure provisions of 5 U.S.C. 553, that the U.S. Department of Agriculture has under consideration a proposal to amend § 26.59 (b) (15) (i) and (e) (1) of the regulations under the Act (7 CFR 26.59 (b) (15) (i) and (e) (1)).

It is proposed that § 26.59 (b) (15) (i) and (e) (1) be amended to read as follows:

§ 29.59 Official certificates (general requirements).

(b)

(15) (i) For lot inspection certificates: The approximate quantity of grain in the lot, stated in terms of carload, truckload, trailerload, part-carload, part-trailerload, or in bushels, or by weight: truckload, part-trailerload, or in bushels, or by weight: *Provided*, That if the quantity is stated in terms of bushels or by weight, the statement "This Is Not A Weight Certificate" be shown on the certificate with the information showing the quantity.

(e)

(1) Uniform kind, weight, and color specifications for the original certificates and for copies of the certificates.

Opportunity is hereby afforded all interested parties to submit written data, views, or arguments with respect to the proposed amendments of the regulations, to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions should be in duplicate and should be received by the Hearing Clerk not later than 30 days after this notice is published in the FEDERAL REGISTER. All submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Consideration will be given to the written data, views, or arguments received by the Hearing Clerk and to other information available to the U.S. Department of Agriculture before final determination is made with respect to this proposal.

Done in Washington, D.C., this 15th day of October 1969.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[P.R. Doc. 69-12520; Filed, Oct. 17, 1969; 8:47 a.m.]

[7 CFR Part 906]

ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Container and Pack Regulation

Consideration is being given to the proposal, as hereinafter set forth, applicable to § 906.340 *Container, pack, and container marking regulations*, which was recommended by the Texas Valley Citrus Committee, established pursuant to the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

All persons who desire to submit written data, views, or arguments in connection with the proposal should file the same with the Hearing Clerk, Room 112A, U.S. Department of Agriculture,

Washington, D.C. 20250, not later than the 30th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The recommendation of the Texas Valley Citrus Committee reflects its appraisal of the need for the prescribed marking requirements. The marking requirements for 5- and 8-pound bags as provided herein are necessary to prevent possible misrepresentation of the quality of the oranges and grapefruit in such containers. As 5- and 8-pound bags usually have markings printed on them while they are being manufactured, and as handlers usually buy such containers in large quantities to obtain quantity discounts, this regulation should not be effective until September 15, 1970, to give handlers ample opportunity to make use of any bags which they might have on hand which fail to meet the requirements of this proposed regulation.

The amendment to the container and pack regulation would require, on and after the effective date, bags of 5- and 8-pound capacities which contain U.S. No. 2 grade fruit to be marked to indicate such grade with letters not less than one-fourth inch in height placed in a prominent position on the front panel of each such bag.

As amended, paragraph (a)(3) of § 906.340 (7 CFR 906.340; 34 F.R. 14515) would read as follows:

§ 906.340 Container and pack regulations.

(a) * * *

(3) *Container grade markings.* Any container of U.S. No. 2 grade fruit, other than bags having a capacity of 5 or 8 pounds, shall be marked with such grade, the letters thereof being not less than three-fourths inch in height: *Provided*, That on and after September 15, 1970, any bag having a capacity of 5 or 8 pounds which contains U.S. No. 2 grade fruit shall be marked with such grade, the letters thereof being not less than one-fourth inch in height in a prominent position on the front panel of such bag.

Dated: October 15, 1969.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-12521; Filed, Oct. 17, 1969; 8:47 a.m.]

[7 CFR Part 989]

RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Expenses of Raisin Administrative Committee and Rate of Assessment for 1969-70 Crop Year

Notice is hereby given of a proposal regarding expenses of the Raisin Ad-

ministrative Committee for the 1969-70 crop year and rate of assessment for that crop year, pursuant to §§ 989.79 and 989.80 of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The Raisin Administrative Committee has unanimously recommended for the crop year beginning September 1, 1969 (1969-70 crop year), a budget of expenses in the total amount of \$132,600 and an assessment rate of 85 cents per ton of assessable raisins. Expenses in that amount and the assessment rate are specified in the proposal hereinafter set forth.

All persons who desire to submit written data, views, or arguments in connection with the proposal should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the eighth day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal follows:

§ 989.320 Expenses of the Raisin Administrative Committee and rate of assessment for the 1969-70 crop year.

(a) *Expenses.* Expenses (other than those specified in § 989.82) in the amount of \$132,600 are reasonable and likely to be incurred by the Raisin Administrative Committee during the crop year beginning September 1, 1969, for the maintenance and functioning of the Committee and the Raisin Advisory Board and for such purposes as the Secretary may, in accordance with § 989.79, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for that crop year which each handler is required, pursuant to § 989.80, to pay to the Raisin Administrative Committee as his pro rata share of the expenses is fixed at 85 cents per ton applicable to each of the following:

(1) Free tonnage raisins acquired by the handler during the crop year, exclusive of such quantity thereof as represents the assessable portions of other handlers' raisins pursuant to subparagraph (3) of this paragraph;

(2) Reserve tonnage raisins released or sold to the handler for use as free tonnage, during the crop year; and

(3) Standard raisins (which he does not acquire) recovered by the handler by the reconditioning of offgrade raisins but only to the extent of the aggregate quantity of the free tonnage portions of these standard raisins that are acquired by other handlers during the crop year.

Dated: October 15, 1969.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-12522; Filed, Oct. 17, 1969; 8:47 a.m.]

[7 CFR Part 991]

HOPS OF DOMESTIC PRODUCTION Advance Payments by Equity Holders of Pooled Reserve Hops

Notice is hereby given of a proposal to amend § 991.205 with respect to prescribed requirements whereby the Hop Administrative Committee may require advances by equity holders of pooled reserve hops to cover expenses relative to such hops. This proposal would increase, from \$1.50 a bale, to \$4 a bale, the maximum advance payment that could be required from equity holders of pooled reserve hops. This subpart is operative pursuant to Marketing Order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal was unanimously recommended by the Hop Administrative Committee.

This amendment is being proposed due to overall increases in storage charges and administrative expenses that will be incurred in reserve pool disposition.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal should file the same in quadruplicate with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, within 7 days after the date of publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during official hours of business (7 CFR 1.27(b)).

The proposal to amend § 991.205 is as follows:

§ 991.205 Advance payments by equity holders of pooled reserve hops.

As a condition of accepting and including the reserve hops of any producer-handler in the reserve pool, the Committee may require advance payments from equity holders of pooled reserve hops. Such advances shall be in an amount, as determined by the Committee, as will be necessary to meet all charges attributable to reserve pooling but shall not exceed \$4.00 per bale.

Dated: October 14, 1969.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-12499; Filed, Oct. 17, 1969; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 230, 239]

[Release No. 33-5011]

FORM FOR REGISTRATION OF SECURITIES WHEN ISSUERS QUALIFY UNDER CERTAIN PROPOSED RULE

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposed Form S-16 (17 CFR 239.27), a short form for registration statements under the Securities Act of 1933, for use in connection with certain types of offerings specified in the instructions to the form. Such a form was recommended in the Disclosure Policy Study Report submitted to the Commission in March of this year.

Rules as to use of proposed Form S-16. The proposed form may be used to register securities of issuers qualified under proposed Rule 163 (17 CFR 230.163) under the Act (See, Securities Act of 1933 Release No. 4997; 34 F.R. 14228),¹ provided that at the time of filing the registration statement the issuer is not delinquent in filing any report required under section 13 or 15(d) of the Securities Exchange Act of 1934. The form may be used for registering securities to be sold in the following types of offerings specified in the instructions to the form:

1. The proposed form may be used to register securities to be offered on behalf of persons other than the issuer where delivery of the prospectus is to be made pursuant to Rule 153 (17 CFR 230.153) under the Act.² Where Rule 153 is applicable, sales are accomplished through ordinary brokerage transactions and no prospectus need be delivered to the buying broker. In such a situation the periodic reports required to be filed by the issuer under the Securities Exchange Act³ should provide sufficient information to the trading markets to permit some relaxation of the registration requirements under the Act. Thus, proposed Form S-16 may be used for sales on a national securities exchange by a selling security holder who is unable to obtain an exemption for his sales under proposed Rule 162 (17 CFR 230.162) under the Act (see, Securities Act of 1933 Release No. 4997; 34 F.R. 14228) because of the limitation on the amount

of securities which may be sold under the rule.

2. Proposed Form S-16 may also be used to register securities offered by an issuer to holders of convertible securities of an affiliate of the issuer which are convertible into securities of the issuer, where no commission or other remuneration is paid or payable by anyone for soliciting such conversion. Such an offering often occurs where a foreign subsidiary of a domestic corporation finances its operations through a foreign dollar offering of debt securities convertible into common stock of the parent. Registration of the securities issuable on conversion is required because the exemption in section 3(a)(9) of the Act applies only where the issuer of the convertible security and the security issuable on conversion is the same. In such a situation the information available to the trading markets through periodic reports filed by the issuer under the Securities Exchange Act should provide an adequate substitute for the disclosure which would be provided by the registration and prospectus delivery provisions of the Securities Act. The decision to convert will normally be based on market considerations and a prospectus may not be received until after the decision to convert has been made.

3. Proposed Form S-16 may be used to register securities to be issued on the exercise of outstanding publicly held warrants. As a condition for use of the form in such situations, no commission or other remuneration can be held by anyone for soliciting the exercise of the warrants. When exercising a warrant the holder is influenced primarily by the market price for the security to be issued which is in turn based on a collective decision of the market place. The market place relies on information currently available, including that provided by periodic reports under the Securities Exchange Act. Moreover, the Act may not require delivery of a prospectus relating to the underlying securities until after the decision to exercise the warrant has been made. Attention is directed to Rule 427 (17 CFR 230.427) which would permit updated prospectuses required by section 10(a)(3) of the Act to be prepared in accordance with the prospectus requirements of Form S-16 in an appropriate case.

Information required in the prospectus. The prospectus must identify the issuer and the security to be registered and state the amount to be registered. If the offering is to be made on behalf of a selling security holder, the name of the security holder and information concerning his ownership of the securities to be registered and his relationship to the issuer must be disclosed. If the offering involves convertible securities of an affiliate, certain information with respect to such securities must be disclosed and if the offering involves the exercise of warrants certain information with respect to the warrants must be given.

The statements and reports filed by the registrant under the Securities Exchange Act, specified in Item 6 of the

form, must be incorporated by reference and a statement made that similar material subsequently filed is also deemed to be incorporated includes the registrant's latest annual report, proxy or information statement and reports on proposed Forms 10-Q (17 CFR 249.308a) or 7-Q (17 CFR 249.307a).⁴

In addition, material adverse changes in the registrant's affairs subsequent to the date of the latest certified financial statements must be disclosed, if not previously disclosed in a filing incorporated by reference in the registration statement. The prospectus must also disclose where the documents incorporated by reference in the registration statement may be inspected or copies thereof obtained.

Material comprising the registration statement. In addition to the prospectus, the registration statement will contain the required exhibits and a signature page. As required by the Act the registration statement must be signed by the issuer, its principal officers and a majority of the board of directors.

The proposed form also requires an undertaking by the registrant to file section 10(a)(3) of the Act prospectuses as post-effective amendments to the registration statement and to notify the Commission when the offering is completed or terminated. Proposed amendment of Rule 429.

Rule 429 (17 CFR 230.429) provides that where two or more registration statements have been filed by the same issuer, a prospectus which meets the requirements for use in connection with the securities covered by the latest statement may be used in connection with the securities covered by the earlier statements if it contains all of the information which would be required in a prospectus relating to the securities covered by the earlier statements. However, such a combined prospectus may not be used if the latest registration statement was filed on Form S-14 (17 CFR 239.23), since a prospectus for securities registered on that form is not deemed suitable for securities registered on other forms. For similar reasons, it is proposed to amend Rule 429 to provide that a combined prospectus may not be used if the latest registration statement is filed on Form S-16 (17 CFR 237.27). To accomplish this, paragraph (a) of § 230.429 of the chapter would be amended to read as follows:

§ 230.429 Prospectus relating to several registration statements.

(a) Where two or more registration statements have been filed by the same registrant, a prospectus which meets the requirements of the Act and the rules and regulations thereunder for use in connection with the securities covered by the latest registration statement shall be deemed to meet such requirements for use in connection with the securities covered by the earlier registration statements if such prospectus includes all of the information which would currently

¹ Issuers required to file reports under section 13 or 15(d) of the Securities Exchange Act of 1934 and meeting certain other tests are deemed qualified under proposed Rule 163.

² Rule 153 provides, in effect, that the prospectus delivery requirements of section 5 of the Act are satisfied with respect to delivery to members of a national securities exchange by delivery of copies of a final prospectus to the exchange.

³ The Commission has released proposals to improve the form, content and timeliness of these reports. See Securities Exchange Act Release Nos. 8680-84 (34 F.R. 14235-42).

⁴ Securities Exchange Act Releases Nos. 8683 and 8684 (34 F.R. 14239-42).

be required in a prospectus relating to the securities covered by the earlier statements: *Provided*, That this section shall not apply if the latest registration statement was filed on Form S-14 or Form S-16.

The Disclosure Policy Study Report also recommended a proposed Rule 157 (17 CFR 230.157) to define the scope of a broker's investigation under section 11 of the Act when he sells securities registered on proposed Form S-16. Although such rule is not presently proposed, this Commission invites comments thereon.

Copies of proposed Form S-16 have been filed as part of this document with the Office of Federal Register and may be obtained from the Securities and Exchange Commission, Washington, D.C. 20549.

All interested persons are invited to submit their views and comments on the above proposals, in writing, to the Securities and Exchange Commission, Washington, D.C. 20549, on or before November 7, 1969. All such communications will be considered available for public inspection.

By the Commission, October 7, 1969.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 69-12464; Filed, Oct. 17, 1969;
8:45 a.m.]

[17 CFR Parts 230, 240]

[Releases Nos. 33-5010, 34-8710]

PUBLICATION OF INFORMATION AND DELIVERY OF PROSPECTUS BY BROKER-DEALERS PRIOR TO OR AFTER FILING OF REGISTRATION STATEMENT

Notice of Proposed Rule Making

The rules proposed herein by the Securities and Exchange Commission are designed to establish standards for determining circumstances under which broker-dealers may publish certain types of information regarding an issuer which proposes to or has registered securities under the Securities Act of 1933 ("Act"). Concurrently with the publication of these proposals the Commission is publishing a Securities Act Release No. 5009 (34 F.R. 16870) discussing various aspects of this subject which may best be dealt with without the promulgation of formal rules at this time.

The Commission is also proposing rules relating to the obligation of dealers to deliver prospectuses under section 4(3) of the Act and the antifraud provisions of the Securities Exchange Act of 1934 ("Exchange Act").

Consideration of these proposals was prompted by a report to the Commission from its staff entitled "Disclosure to Investors—A Reappraisal of Administrative Policies under the 1933 and 1934 Acts" (Report).

Information, opinions or recommendations by a broker-dealer concerning an issuer which proposes to offer securities

to be registered under the Act may, under certain circumstances, be deemed to be offers of a security for sale within the meaning of sections 2(3) and 5 of the Act, particularly when the broker-dealer is to participate in the distribution. If so, the publication of such information may result in a violation of the registration provisions of section 5 of the Act. Thus, under this statutory pattern, no offers or sales may be made of a security to be registered prior to the filing of the registration statement although preliminary negotiations or agreements may be made with underwriters and certain limited announcements may be published under Rule 135 (17 CFR 230.135) during this period. The Act permits oral offers but not sales after filing the registration statement but before it becomes effective. During this period the preliminary prospectus provided for in Rule 433 (17 CFR 230.433), the summary prospectus provided for in Rules 434 (17 CFR 230.434) and 434A (17 CFR 230.434a), and the so-called "tombstone" advertisement provided for in section 2(10) of the Act, and Rule 134 (17 CFR 230.134) may be used.

After the effective date written offers (including confirmations) may also be made of the registered securities if the recipient has received or contemporaneously receives a final prospectus and such material is not false or misleading. Under section 4(3) of the Act this requirement extends to all transactions by dealers in the registered securities, whether or not they participated in the distribution, for a period of 40 or 90 days after the later of the commencement of the offering or the effective date of the registration statement.

Various questions have arisen concerning the restrictions placed on the distribution of such information by broker-dealers during the period an issuer's shares are "in registration."¹ The proposed rules and release are intended to furnish some guidance to broker-dealers and others subject to those restrictions. The Commission, recognizing the value of the free flow of material information concerning actively traded securities, believes such guidance will remove some potential impediments to that flow.

ANALYSIS OF PROPOSED RULES

Proposed Amendments to Rule 135 (17 CFR 230.135). Rule 135 presently provides that notices by an issuer of certain proposed offerings given in accordance with the rule are not deemed offers for the purpose of section 5 of the Act. The proposed amendments would add two types of offerings for which notice may be given pursuant to Rule 135.

Proposed paragraph (a)(1) permits a notice that an issuer is proposing to make a public offering of securities to be regis-

¹ "In registration" is used herein to mean the entire process of registration, at least from the time an issuer reaches an understanding with the broker-dealer which is to act as managing underwriter, until the completion of the offering and the period of 40 or 90 days during which dealers must deliver a prospectus.

tered under the Act, if the notice is properly limited. It may only identify the security, state the amount of securities expected to be registered and the approximate dollar amount and time of the offering.

The Commission is aware that a number of issuers have published such notices. The rule is proposed to remove doubts as to the validity of the practice under the Act. It also establishes standards for the contents of the notice, in order to prevent such notices from being used to generate unwarranted interest in the contemplated offering.

Proposed paragraph (a)(4) of Rule 135 would permit notice of offerings relating to certain forms of business combinations. Timely disclosure policies of certain self-regulatory agencies and disclosure practices of corporate managements and others have resulted in notices of such offerings prior to the filing of a registration statement with the Commission. The proposed rule is intended to establish standards for the contents of such notices.

This amendment will be necessary if the Commission should amend Rule 133 (17 CFR 230.133) to require registration of securities to be issued in connection with certain business combinations as recommended in the Report.

The Commission also is proposing certain minor technical amendments to Rule 135.

Proposed Rule 137 (17 CFR 230.137). Proposed Rule 137 would clarify the status of persons not participating in a distribution. It would permit a person who does not have any arrangement with any participant regarding the publication, to publish information concerning an issuer which has securities in registration. The need for such a rule is primarily evidenced in connection with actively traded securities of issuers concerning which adequate information is available to the public. Accordingly, the rule would be limited to distribution of information concerning issuers required to file reports under section 13 or 15(d) of the Securities Exchange Act of 1934. The rule would not preclude adverse comments on any offering.

Proposed Rule 138 (17 CFR 230.138). Proposed Rule 138 would permit a broker-dealer participating in an offering of nonconvertible senior securities registered on Form S-7 (17 CFR 239.20) or S-9 (17 CFR 239.22) to publish opinions or recommendations concerning the issuer's common stock.

Existing restrictions on such recommendations have proved troublesome, particularly with respect to public utilities which are continuously seeking debt financing. However, investment conditions with respect to the common stock and the senior securities of established corporations are significantly different, and the market for senior securities is largely institutional. Accordingly, since the danger of creating unwarranted interest in the offering is reduced, the Commission believes that restrictions may be relaxed, subject to a qualification: The proposed rule would apply

only with respect to offerings of non-convertible or debt or preferred stock which are registered on Form S-7 or S-9.

For similar reasons the proposed rule would also permit a broker-dealer participating in a distribution of common stock registered on Form S-7 to publish opinions or recommendations concerning the issuer's nonconvertible senior securities.

Proposed Rule 139 (17 CFR 230.139). Proposed Rule 139 would permit a broker-dealer participating in an offering to publish opinions or recommendations concerning the issuer, if certain conditions are met. The issuer must have securities registered under section 12 of the Act or be subject to the reporting requirements of section 15(d) of the Exchange Act. The publication containing the opinion or recommendation must contain a comprehensive list of other securities and have been distributed with reasonable regularity for at least 2 years. Finally, the opinion or recommendation must not be given special prominence and must not be more favorable than the last previous recommendation distributed prior to the time the broker-dealer became subject to the restrictions of section 5 of the Act due to its participation.

Some relaxation of restrictions in this area appears necessary, particularly with respect to issuers which are continuously "in registration." Otherwise investors may be deprived of the broker-dealer's opinion when buying or selling securities in the trading markets.

Proposed amendments to Rule 174 (17 CFR 230.174). Rule 174 presently contains exemptions from the prospectus delivery requirements imposed on dealers by section 4(3) of the Act. Section 4(3) requires a participating dealer to deliver a prospectus in connection with sales of securities to a registration statement under the Act for the duration of the offering for any unsold allotment and as to all dealers for 40 or 90 days, depending on the status of the issuer, after the effective date of the registration statement or the commencement of the offering, whichever is later.

The proposed amendment would eliminate the 40-day requirement for securities of issuers required to file reports pursuant to section 13 or 15(d) of the Exchange Act.

Dealers have experienced difficulties in complying with the requirements of section 4(3) of the Act, in part because of problems of obtaining copies of the prospectus for delivery. The information supplied by the reports filed under the Exchange Act and widely distributed by newly developed methods of dissemination would appear to be an adequate substitute for prospectus delivery by dealers in connection with such trading transactions.

Proposed Rule 15c2-8 (17 CFR 240.15c2-8). The prospectus required under the Act was intended in part to act as a deterrent to fraudulent statements by securities salesmen. This intention cannot be reconciled with prevailing practices. Salesmen who offer newly issued

securities by telephone may never see a copy of the preliminary prospectus. Customers who may wish to review a proposal carefully or check a salesman's statements may be unable to obtain a copy of that document.

Proposed Rule 15c2-8 is designed to prevent the fraud which could possibly result from these circumstances.

The proposed rule would be adopted under section 15(c) (2) of the Exchange Act which permits the Commission to "prescribe means reasonably designed to prevent such acts or practices that are fraudulent, deceptive or manipulative * * *". Basically the proposed rule provides:

1. A broker-dealer participating in a distribution should take reasonable steps to see to it that any person desiring a copy of a preliminary or final prospectus receives a copy.

2. Each salesman who is expected to offer the securities should receive a copy of the preliminary prospectus and, if he is expected to offer the security after the effective date of the registration statement, the final prospectus.

3. The managing underwriter should take reasonable steps to see that broker-dealers participating in the distribution receive sufficient copies of the prospectus to comply with the rule and with section 5(b) of the Act.

It should be emphasized that the rule only requires that the broker-dealer take reasonable steps to comply with the rule. In addition, Securities Act Release No. 4968 (Apr. 24, 1969; 34 F.R. 7235) is also relevant to the obligations of broker-dealers to provide prospective customers with copies of the preliminary prospectus prior to the effective date of a registration statement under the Act.

THE TEXT OF THE PROPOSALS

Section 230.135 would be amended to read as follows:

§ 230.135 Notice of certain proposed offering.

(a) For the purposes only of section 5 of the Act, the following notices given in accordance with the terms and conditions of this section shall not be deemed to offer any security for sale:

(1) A notice given by an issuer that it proposes to make a public offering of securities to be registered under the Act;

(2) A notice given by an issuer to any class of its security holders advising them that it proposes to issue to such security holders rights to subscribe to securities of such issuer;

(3) A notice given by an issuer to any class of security holders of such issuer or of another issuer advising them that it proposes to offer its securities to them in exchange for other securities presently held by such security holders;

(4) A notice given by an issuer of a proposal for a statutory merger or consolidation of another corporation into the issuer, or of a proposal for the transfer of assets of such other corporation to the issuer or its affiliate in consideration of the issuance of securities of the issuer, involving an offer of securities to the security holders of such other cor-

poration, or a similar notice given by such other corporation; and

(5) A notice to its employees or to the employees of any affiliate advising them that it proposes to make an offering of its securities to such employees.

(b) Any notice contemplated by subparagraphs (1) through (5) of paragraph (a) of this section shall state that the offering will be made only by means of a prospectus and shall contain no more than the following additional information:

(1) The name of the issuer;

(2) The title and amount of the securities proposed to be offered, the anticipated time of the offering, and as to a notice of the type referred to in paragraph (a) (1) of this section, the approximate amount of the proposed offering;

(3) In the case of a rights offering, the class of securities the holders of which will be entitled to subscribe to the securities proposed to be offered, the subscription ratio, the proposed record date, the approximate date upon which the rights are proposed to be issued, the proposed term or expiration date of the rights and the approximate subscription price, or any of the foregoing;

(4) In the case of an exchange offering, the name of the issuer and the title of the securities to be surrendered in exchange for the securities to be offered, the basis upon which the exchange is proposed to be made and the period during which the exchange may be made, or any of the foregoing;

(5) In the case of an offering of the type referred to in paragraph (a) (4) of this section, the name of the issuer and the title of the securities to be surrendered in exchange for the securities to be offered in any such plan of merger, consolidation or sale of assets, the basis upon which the exchange is proposed to be made, and the expected date or period of time on or during which the transaction is to be consummated, or any of the foregoing;

(6) In the case of an offering to employees, the name of the employer and class or classes of employees to whom the securities are proposed to be offered, the offering price of the offering and the period during which the offering is to be made, or any of the foregoing; and

(7) Any statement or legend required by State law or administrative authority.

(c) Any notice contemplated by this section may take the form of a news release, or a written communication directed to security holders or employees as the case may be.

Section 230.137 would be added, as follows:

§ 230.137 Definition of "offers", "participates", or "participation" in section 2(11) of the Act in relation to certain publications by persons independent of participants in a distribution.

The terms "offers", "participates", or "participation" in section 2(11) of the Act shall not be deemed to apply to the publication or distribution of information, opinions or recommendations with respect to the securities of an issuer

which has a class of securities registered under section 12 of the Securities Exchange Act of 1934 or is required to file reports pursuant to section 15(d) of said Act and has filed or proposes to file a registration statement under the Act if:

(a) Such information, opinions and recommendations are published and distributed in the regular course of its business by a dealer or an investment adviser which is not and does not propose to be a member of the underwriting syndicate or dealer group in connection with the distribution of the security to which the registration statement relates, and (b) such dealer or investment adviser receives no consideration, directly or indirectly, in connection with the publication and distribution of such information, opinions or recommendation from the issuer of, or any member of the underwriting syndicate or dealer group with respect to, the securities to which the registration statement relates and such information, opinions or recommendations are not published or distributed pursuant to any arrangement or understanding, direct or indirect, with such issuer, underwriter, or dealer: *Provided, however,* That nothing herein shall forbid payment of the regular subscription or purchase price of the document or other written communication in which such information, opinions or recommendations appear.

Section 230.138 would be added, as follows:

§ 230.138 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) of the Act in relation to certain publications.

(a) Where an issuer which meets all of the conditions for the use of Form S-7 (§ 239.26 of this chapter) or S-9 (§ 239.22 of this chapter) has filed or proposes to file a registration statement under the Act relating solely to a nonconvertible debt security or to a nonconvertible, nonparticipating preferred stock, publication or distribution in the regular course of its business by a dealer of information, opinions or recommendations relating solely to common stock or preferred stock convertible into common stock of such issuer shall not be deemed to constitute an offer for sale or offer to sell the security to which such registration statement relates for purposes of sections 2(10) and 5(c) of the Act, even though such dealer is or will be a member of the underwriting syndicate or dealer group in connection with the distribution of the security to which such registration statement relates.

(b) Where an issuer which meets all of the conditions for the use of Form S-7 has filed or proposes to file a registration statement under the Act relating solely to common stock or to preferred stock convertible into common stock, the publication or distribution in the regular course of its business by a dealer of information, opinions or recommendations relating solely to a nonconvertible debt security, or to a nonconvertible, nonparticipating preferred stock, shall not be deemed to constitute an offer for sale or offer to sell

the security to which such registration statement relates for purposes of sections 2(10) and 5(c) of the Act, even though such dealer is or will be a member of the underwriting syndicate or dealer group in connection with the distribution of the security to which such registration statement relates.

Section 230.139 would be added, as follows:

§ 230.139 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) of the Act in relation to certain publications.

Where an issuer which has a class of securities registered under section 12 or is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 has filed or proposes to file a registration statement under the Act relating to its securities, the publication or distribution in the regular course of its business by a dealer of information, an opinion, or a recommendation with respect to the securities so registered or proposed to be registered shall not be deemed to constitute an offer for sale or offer to sell such securities for purposes of sections 2(10) and 5(c) of the Act, even though such dealer is or will be a member of the underwriting syndicate or dealer group in connection with the distribution of such securities, if all of the following conditions exist:

(a) Such information, opinion, or recommendation is contained in a publication which has for at least the past 2 years been distributed with reasonable regularity on an annual or other more frequent basis and each issue of which contains a comprehensive list of securities currently recommended by such dealer;

(b) Such information, opinion or recommendation is given no greater space or prominence in such publication than that given to other securities, and does not include projections of sales or earnings beyond the issuer's current fiscal year; and

(c) An opinion or recommendation at least as favorable as to the security was published by the dealer in either the last publication of the same character or in a subsequent publication of a different character, which was previously distributed by such dealer.

Section 230.174 would be amended by revising paragraphs (a) and (b), as follows:

§ 230.174 Delivery of prospectus by dealers; exemptions under section 4(3) of the Act.

(a) No prospectus need be delivered if the registration statement is on Form S-12 (§ 239.19 of this chapter) or S-13 (§ 239.25 of this chapter) unless registration of the deposited security is also required.

(b) No prospectus need be delivered if the issuer is subject immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

Section 240.15c-8 would be added, as follows:

§ 240.15c-8 Delivery of prospectus.

(a) It shall constitute a deceptive act or practice, as those terms are used in section 15(c) (2) of the Act, for a broker or dealer to participate in a distribution of securities with respect to which a registration statement has been filed under the Securities Act of 1933 unless he complies with the requirements set forth in paragraphs (b) through (g) of this section.

(b) He takes reasonable steps to see to it that any person who makes written request between the filing date and a reasonable time prior to the effective date of the registration statement for a copy of the preliminary prospectus or for any amended preliminary prospectus relating to such securities is furnished such copy promptly. Reasonable steps shall include receiving an undertaking by the managing underwriter or underwriters to honor such requests forwarded to them by such broker or dealer.

(c) He takes reasonable steps to comply promptly with the written request of any person for a copy of the final prospectus relating to such securities during the period between the effective date of the registration statement and the later of either the termination of such distribution, or the expiration of the applicable 40- or 90-day period under section 4(3) of the Securities Act of 1933. Reasonable steps shall include receiving an undertaking by the managing underwriter or underwriters to honor such requests forwarded to them by such broker or dealer. (The 40-day period referred to above shall be deemed to apply for purposes of this rule irrespective of the provisions of § 230.174(b) of this chapter.)

(d) He takes reasonable steps (1) to make available a copy of the preliminary prospectus relating to such securities to each of his associated persons who is expected, prior to the effective date, to solicit customers' orders for such securities before the making of any such solicitation by such associated persons and (2) to make available to each such associated person a copy of any amended preliminary prospectus promptly after the filing thereof.

(e) He takes reasonable steps to make available a copy of the final prospectus relating to such securities to each of his associated persons who is expected, after the effective date, to solicit customer orders for such securities prior to the making of any such solicitation by such associated persons.

(f) If he is a managing underwriter of such distribution, he takes reasonable steps to see to it that all other dealers participating in such distribution, whether as principal underwriters, as defined in Rule 405 under the Securities Act of 1933 or otherwise, are promptly furnished with sufficient copies, as requested by them, of each preliminary prospectus, each amended preliminary prospectus and the final prospectus to enable them to comply with paragraphs (b), (c), (d), and (e) of this section.

(g) If the broker or dealer is a managing underwriter of such distribution, he takes reasonable steps to see that any dealer is furnished reasonable quantities of the final prospectus relating to such securities, as requested by him, in order to enable him to comply with the prospectus delivery requirements of section 5(b) (1) and (2) of the Securities Act of 1933.

(h) This section shall not require the furnishing of prospectuses in any state where such furnishing would be unlawful under the laws of such State: *Provided, however*, That this provision is not to be construed to relieve a broker-dealer from complying with the requirements of section 5(b) (1) and (2) of the Securities Act of 1933.

All interested persons are invited to submit their views and comments on the above proposals, in writing, to the Securities and Exchange Commission, Washington, D.C. 20549, on or before November 7, 1969. All such communications will be considered available for public inspection.

By the Commission, October 7, 1969.

[SEAL] ORVAL L. DuBois,
Secretary.

[F.R. Doc. 69-12465; Filed, Oct. 17, 1969;
8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1134]

[Ex Parte No. MC-79]

CONTROL OR CONSOLIDATION OF MOTOR CARRIERS

Notice of Proposed Rule Making

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 7th day of October 1969.

This proceeding is directed to an examination of transactions under section 5 of the Interstate Commerce Act, creating the holding by commonly controlled motor carriers of operating rights which authorize duplicating operations, and a consideration of problems experienced by carriers in effectuating consolidations of motor carriers or their properties to eliminate such duplications.

It is ordered, That, based upon the foregoing explanation and good cause appearing therefor, a proceeding be, and it is hereby, instituted under the Interstate Commerce Act and the Administrative Procedure Act with a view to amending Part 1134 by adding a new section specifying the conditions which must be met before control of duplicating oper-

ations will be allowed under section 5 of the Interstate Commerce Act, as follows:

§ 1134... Control of duplicate operations.

(a) All applications for control of motor carriers under section 5 of the Interstate Commerce Act must meet at least one of the following conditions before control of duplicating operations will be allowed under that section:

(1) The carrier or carriers involved holding duplicating authority shall request cancellation, specifying the particular operating rights to be canceled, so that only one of them shall retain authority over the same route or rendering the same service between the same points;

(2) The carriers involved shall agree to effect a merger at the earliest practicable date, subject to prior Commission approval;

(3) Applicant shall submit a timetable and plan to eliminate the duplications at the earliest practicable date so that only one of the carriers involved shall hold authority to operate over the same route or render service between the same points;

(4) The operating rights to be controlled, to the extent they permit operations in any way duplicative of the present operations of applicant, or controlled by applicant, shall not thereafter be severed by sale or otherwise.

(b) Applicants shall specify the condition or conditions set out in paragraph (a) of this section to be met prior to any authority being granted, and support such specification with facts and circumstances relied upon to warrant approval of control of any duplicate operations.

It is further ordered, That any interested persons may submit for consideration original and 15 copies of statements¹ of facts, views, and arguments, such representations to be filed with the Commission on or before December 1, 1969; and

It is further ordered, That a copy of this notice and order be posted in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and that another copy be delivered to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER as notice to all interested persons.

By the Commission, Division 3.

[SEAL] ANDREW ANTHONY, JR.,
Acting Secretary.

[F.R. Doc. 69-12511; Filed, Oct. 17, 1969;
8:47 a.m.]

¹ In lieu of verification under oath, any prepared statement may be made subject to the following declaration: "I solemnly declare that I have examined the foregoing document and that the statements of fact contained therein are true." (Signature).

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 5344]

OREGON

Notice of Proposed Withdrawal and Reservation of Land

OCTOBER 13, 1969.

The Department of Agriculture, on behalf of the Forest Service, has filed application, OR 5344, for the withdrawal of public land described below. Said land is to be withdrawn from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, nor the disposal of materials under the Act of July 31, 1947, and reserved for use of the Department of Agriculture for the granting of easements for road rights-of-way as authorized by section 2 of the Act of October 13, 1964.

This proposal for the Euchre Mountain Road (Road No. S-889) will provide a means by which the Secretary of Agriculture can grant easements for road rights-of-way to private parties.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 729 Northeast Oregon Street (Post Office Box 2965), Portland, Oreg. 97208.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the land for purposes other than the applicant's, to eliminate land needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the land and its resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place which will be announced.

The land involved in the application is:

WILLAMETTE MERIDIAN
EUCHE MOUNTAIN ROAD

T. 8 S., R. 10 W.,
Sec. 27, NE $\frac{1}{4}$.

A strip of land 100 feet in width, being 50 feet in width on both sides of the centerline of the Euchre Mountain Road No. S-889.

The area described contains about 12 acres.

VIRGIL O. SEISER,
Chief, Branch of Lands.

[F.R. Doc. 69-12425; Filed, Oct. 17, 1969;
8:45 a.m.]

[OR 5487 (Wash.)]

WASHINGTON

Opening of Certain Lands

OCTOBER 13, 1969.

1. In an order issued August 20, 1969, the Federal Power Commission vacated the withdrawal created pursuant to the filing of an application for license for Project No. 1487, for the following described lands:

WILLAMETTE MERIDIAN, WASHINGTON
T. 23 N., R. 9 W.,
Sec. 14, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$
SW $\frac{1}{4}$ NW $\frac{1}{4}$, unsurveyed.

Five acres.

All portions of the following described subdivisions lying within 15 feet of the centerline of the proposed pipeline location as shown on a map designated "Exhibit C & F" and entitled "Quinault Light Company, R.E.A. Project, Washington-23-Grays Harbor; Map of 250 kw. Hydroelectric Project," and filed in the office of the Federal Power Commission on March 19, 1938:

T. 23 N., R. 9 W.,
Sec. 10, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 11, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, unsurveyed;
Sec. 14, NW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$,
unsurveyed.

Approximately 2.26 acres.

2. The lands lie within the Olympic National Forest and are located along or near Ziegler Creek, a small tributary of the Quinault River, which drains into the Pacific Ocean in Grays Harbor County, Wash.

3. The State of Washington has waived the right of selection in accordance with the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818) as amended.

4. Beginning at 10 a.m. on November 18, 1969, the national forest lands shall be open to such forms of disposition as may by law be made of such lands.

5. Inquiries concerning the lands should be addressed to the Chief, Division of Lands and Minerals Program

Management and Land Office, Post Office
Box 2965, Portland, Oreg. 97208.

VIRGIL O. SEISER,
Chief, Branch of Lands.

[F.R. Doc. 69-12502; Filed, Oct. 17, 1969;
8:47 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

EAST TENNESSEE STATE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00552-00-77030. Applicant: East Tennessee State University, Johnson City, Tenn. 37601. Article: Heteronuclear spin decoupler, Model SD-HB for a NMR spectrometer. Manufacturer: Japan Electron Optics Laboratory Co., Inc., Japan. Intended use of article: The article will be used for both instruction and research. The instructional use will be in connection with an instrumental analysis course, with an introductory organic chemistry course and with an NMR course. The initial use of the decoupler for research will be in connection with elucidating structures of fluorine compounds for the inorganic chemists, elucidating structures of some nitrogen containing compounds by N¹⁴ decoupling for an organic chemist and determining stereochemistry of deuterium containing bicyclic compounds synthesized by undergraduates and graduates by deuterium irradiation. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is an accessory for a nuclear magnetic resonance spectrometer (NMR) priorly imported for the use of the applicant institution. The article is being furnished by the manufacturer of the foreign NMR with which

the article is intended to be used. A domestic manufacturer of nuclear magnetic resonance spectrometers, Varian Associates (Varian) produces similar accessories for its instruments. Another domestic manufacturer, Nuclear Magnetic Resonance Specialties, Inc. (NMR Specialties), also produces accessories which are adaptable to the Varian instruments.

We are advised by the National Bureau of Standards, that the domestic accessories are not compatible with the foreign NMR, because these accessories are "crossed-coil" types, whereas the foreign article is a "bridge" type which was specifically designed for use with the foreign NMR instrument. (Memorandum dated Aug. 13, 1969.)

For these reasons, we find that neither of the domestic accessories is of equivalent scientific value to the foreign article for the purposes for which the article is intended to be used.

The Department of Commerce knows of no other accessory being manufactured in the United States, which is interchangeable with the foreign article or can be adapted to the foreign instrument with which the article is intended to be used.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[P.R. Doc. 69-12452; Filed, Oct. 17, 1969; 8:45 a.m.]

FLORIDA ATLANTIC UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 P.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00551-01-77030. Applicant: Florida Atlantic University, Boca Raton, Fla. 33432. Article: Nuclear Magnetic Resonance Spectrometer, Model JNM-C-60HL. Manufacturer: Japan Electron Optics Laboratory Co., Inc., Japan. Intended use of article: The article will be used for both teaching and research. Undergraduate and graduate courses include introductory and advanced organic chemistry, special topics in organic chemistry, physical chemistry, and instrumental analysis. The article will also be used for undergraduate research projects in chemistry providing professional majors with the opportunity to use nuclear magnetic resonance extensively in carrying out structure determination on unknown compounds which result from their synthetic investi-

gations. Comments: No comments have been received regarding this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides both internal and external locking facilities. The most closely comparable domestic instrument is the Model HA-60, manufactured by Varian Associates (Varian), which provides either an internal or external type, but not both types of locking facilities in the same instrument.

We are advised by the National Bureau of Standards (NBS) in its memorandum dated August 13, 1969, that the availability of both internal and external locking facilities in the same instrument is pertinent to the purposes for which the foreign article is intended to be used.

For this reason, we find that the Varian Model HA-60 is not of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[P.R. Doc. 69-12451; Filed, Oct. 17, 1969; 8:45 a.m.]

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 P.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00531-33-46040. Applicant: University of California, Berkeley, Physiology-Anatomy Department, 2549 Life Sciences Building, Berkeley, Calif. 94720. Article: Electron microscope, Model Elmiskop 101. Manufacturer: Siemens A.G., West Germany. Intended use of article: The article will be used primarily in studies of structure and function of cilia. These studies include the following:

a. High resolution studies of negatively stained cilia, and the 40 Å subunits of ciliary microtubules, and the chemical constituents of these organelles.

b. Serial section studies of ciliary tips and shafts in longitudinal and cross-sections at high magnification with specimen tilt to test proposed mechanisms of microtubule interaction and ciliary motility.

c. Studies of hyperfine structure of septate junctions connecting ciliated cells and the importance of cell coupling to the functioning of ciliated epithelia.

d. Electron diffraction studies of pyroantimonate precipitate to localize sodium ion in ciliated cells.

e. Studies of ciliated and flagellated protozoa under experimental conditions that alter the functional state of the cilium, during division and during ciliary growth, including morphological survey and fine structural detail of these protozoa.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article has a guaranteed resolving power of 3.5 angstroms. The most closely comparable domestic instrument is the Model EMU-4B electron microscope which was manufactured by the Radio Corp. of America (RCA), and is currently being produced by Forgflo Corp. (Forgflo). The Model EMU-4B electron microscope has a guaranteed resolving power of 5 angstroms. (The lower the numerical rating in terms of angstrom units, the better the resolving power.)

We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated July 1, 1969, that for the purposes for which the foreign article is intended to be used, the difference between 3.5 and 5 angstroms is significant.

We, therefore, find that the Model EMU-4B electron microscope is not of equivalent scientific value to the foreign article, for the purposes for which this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[P.R. Doc. 69-12449; Filed, Oct. 17, 1969; 8:45 a.m.]

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 P.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00544-00-41200. Applicant: University of California, Lawrence Radiation Laboratory, 7000 East Avenue, Livermore, Calif. 94550. Article: Klystron tubes, Type VC 104R (three each). Manufacturer: Varian Associates of Canada, Ltd., Canada. Intended use of article: The articles will be used as direct replacement Klystrons for the 70 GC interferometer system, a diagnostic tool for plasma research. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is a replacement component for a 70 gigacycle interferometer system. The Klystron tube which the foreign article replaces was at one time manufactured in the United States by Varian Associates (Varian). At the present time, however, this article is being manufactured in Varian's Canadian subsidiary.

The National Bureau of Standards (NBS) advises us that it knows of no oscillator tube being manufactured in the United States, which provides the frequency range and power output required in a replacement component. (NBS memorandum dated July 3, 1969.)

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-12450; Filed, Oct. 17, 1969; 8:45 a.m.]

UNIVERSITY OF WISCONSIN

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00546-01-86300. Applicant: University of Wisconsin, 750 University Avenue, Madison, Wis. 53706. Article: Viscoelastometer, Model DDV-II with low temperature bath equipment,

Model DDV-LTE. Manufacturer: Toyo Measuring Instruments Co., Ltd., Japan. Intended use of article: The article will be used for both teaching and research purposes. In the plastics laboratory, the students make films of polyvinyl acetate, polyvinyl alcohol, and polystyrene in three experiments. The subsequent examination of these films in the Viscoelastometer will provide the student a means of learning about glass transition, low temperature relaxations and the application of dynamic mechanical testing. The article will also be used for research concerning intermolecular bonding in block copolymer elastomers. Experiments are planned on films of segmented polyester-urethanes and polyether-urethanes of various aromatic urethane composition. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides the capability of making direct dynamic tensile mode measurements of Young's modulus of polymer films.

The National Bureau of Standards (NBS), advises us that this capability is pertinent to the purposes for which the foreign article is intended to be used. (NBS memorandum dated July 9, 1969.) NBS further advises that it knows of no instrument or apparatus being manufactured in the United States, which is capable of measuring the dynamic Young's modulus in the tensile mode.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-12454; Filed, Oct. 17, 1969; 8:45 a.m.]

WAYNE STATE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00543-33-46070. Applicant: Wayne State University, 5050 Cass Avenue, Detroit, Mich. 48202. Article: Scanning electron microscope, Model JSM-2 and accessories. Manufacturer:

Japan Electron Optics Laboratory Co., Japan. Intended use of article: The article will be used for health-related research with special attention focused on details of membrane changes basic to understanding the pathophysiology of disease. Specific problems under study are membrane features and alterations of (a) blood platelets, the smallest formed element in blood, very thin and about 1 micron in size, in potential and actual victims of thromboembolic disease, (b) platelet responses to drugs and particles such as endotoxin and zymosan, (c) red blood cells of anemic subjects with hemolytic and thrombotic complications, (d) synovial lining from patients with arthritic disease, (e) white blood cells and reticuloendothelial cells engaged in the processes of phagocytosis and pinocytosis, (f) bacterial surfaces and bacteria-cells interactions in response to drugs, (g) virus in tissue culture lines. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the applicant placed the order for the article. Reasons: Subject application is a resubmission of Docket No. 69-00294-33-46070, which was received on November 19, 1968. At the time the foreign article was ordered, the most closely comparable domestic instrument was the SM-1 which was manufactured by the K Square Corp. (K Square). The foreign article provides a minimum guaranteed resolving capability of 250 angstroms, whereas the K Square SM-1 had a guaranteed resolving capability of 500 angstroms. (The lower the numerical rating, the better the resolution.)

We are advised by the Department of Health, Education, and Welfare (HEW), that for the purposes for which the foreign article is intended to be used, the additional resolving capability is a pertinent characteristic. (HEW memorandum dated July 23, 1969.)

For this reason, we find that the K Square SM-1 is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the applicant placed the order for the foreign article, and which could have been made available to the applicant without unreasonable delay.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-12453; Filed, Oct. 17, 1969; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

2-(p-TERT-BUTYLPHENOXY)CYCLOHEXYL 2-PROPYNYL SULFITE

Notice of Establishment of Temporary Tolerances for Pesticide Chemical

Notice is given that at the request of Uniroyal, Inc., Bethany, Conn. 06525, temporary tolerances are established for residues of the insecticide 2-(p-tert-butylphenoxy)cyclohexyl 2-propynyl sulfite in or on the raw agricultural commodities: Grapes at 10 parts per million; strawberries at 7 parts per million; oranges at 3 parts per million; and almonds at 0.1 part per million (negligible residue). The Commissioner of Food and Drugs has determined that these temporary tolerances will protect the public health.

A condition under which these temporary tolerances are established is that the insecticide will be used in accordance with the temporary permits issued by the U.S. Department of Agriculture. Distribution will be under the Uniroyal, Inc., name.

These temporary tolerances expire October 13, 1970.

This action is taken pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: October 13, 1969.

R. E. DUGGAN,
Acting Associate Commissioner
for Compliance.

[F.R. Doc. 69-12460; Filed, Oct. 17, 1969;
8:45 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPUTY ASSISTANT SECRETARY AND DEPUTY ASSISTANT SECRETARY FOR RENEWAL AND HOUSING ASSISTANCE

Delegation of Authority With Respect to College Housing Program

SECTION A. General authority delegated. The Assistant Secretary for Renewal and Housing Assistance and the Deputy Assistant Secretary for Renewal and Housing Assistance each is hereby authorized to exercise the power and authority of the Secretary of Housing and Urban Development under title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749-1749c), with respect to the College Housing Program except the authority to:

1. Establish the rate of interest on Federal loans.

2. Issue notes and obligations for purchase by the Secretary of the Treasury.

3. Sue and be sued.

4. In the case of the Deputy Assistant Secretary for Renewal and Housing Assistance: Make rules and regulations.

5. Exercise the powers and authorities under section 402(a) of the Housing Act of 1950, as amended (12 U.S.C. 1749(a)).

Sec. B. Authority to redelegate. The Assistant Secretary for Renewal and Housing Assistance and the Deputy Assistant Secretary for Renewal and Housing Assistance each is further authorized to:

1. Redesignate to Regional Administrators and to Deputy Regional Administrators any of the authority delegated under section A except the authority to make rules and regulations.

2. Authorize further redelegations by Regional Administrators and by Deputy Regional Administrators to employees under the jurisdiction of the Regional Administrator of any of the authority redelegated.

3. Redesignate to the Deputy Assistant Secretary for Housing Assistance and to the General Deputy, Housing Assistance Administration, any of the authority delegated under section A except the authority to make rules and regulations.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Effective date. This delegation of authority shall be effective as of July 1, 1969.

GEORGE ROMNEY,
Secretary of Housing and
Urban Development.

[F.R. Doc. 69-12524; Filed, Oct. 17, 1969;
8:48 a.m.]

DEPUTY ASSISTANT SECRETARY FOR HOUSING ASSISTANCE AND GENERAL DEPUTY, HOUSING ASSISTANCE ADMINISTRATION

Redelegation of Authority With Respect to College Housing Program

SECTION A. Authority redelegated. The Deputy Assistant Secretary for Housing Assistance and the General Deputy, Housing Assistance Administration, each is hereby authorized to exercise the power and authority of the Secretary of Housing and Urban Development under title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749-1749c), with respect to the College Housing Program except the authority to:

1. Establish the rate of interest on Federal loans.

2. Issue notes and obligations for purchase by the Secretary of the Treasury.

3. Sue and be sued.

4. Make rules and regulations.

5. Exercise the powers and authorities under section 402(a) of the Housing Act of 1950, as amended (12 U.S.C. 1749a(a)).

(Secretary's delegation of authority published at 34 F.R. 17041, Oct. 18, 1969)

Effective date. This redelegation of authority shall be effective as of July 1, 1969.

LAWRENCE M. COX,
Assistant Secretary for
Renewal and Housing Assistance.

[F.R. Doc. 69-12525; Filed, Oct. 17, 1969;
8:48 a.m.]

REGIONAL ADMINISTRATORS AND DEPUTY REGIONAL ADMINISTRATORS

Redelegation of Authority With Respect to College Housing Program

SECTION A. General authority redelegated. Each Regional Administrator and each Deputy Regional Administrator of the Department of Housing and Urban Development is hereby authorized to exercise the power and authority of the Secretary of Housing and Urban Development under title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749-1749c), with respect to the College Housing Program except the authority to:

1. Establish the rate of interest on Federal loans.

2. Issue notes and obligations for purchase by the Secretary of the Treasury.

3. Exercise the powers under section 402(a) and under section 402(c) (1)-(7) of the Housing Act of 1950, as amended (12 U.S.C. 1749a(a) and 1749a(c) (1)-(7)).

Sec. B. Authority to redelegate. Each Regional Administrator and each Deputy Regional Administrator is authorized to redelegate to one or more employees under his jurisdiction the authority redelegated under section A except the authority to approve applications and authorize loans and grants.

Sec. C. Region VI additional authority to redelegate. The Regional Administrator and the Deputy Regional Administrator, Region VI, each is further authorized to redelegate to the Director, Northwest Area Office, Region VI, any of the authority redelegated under section A.

(Secretary's delegation of authority published at 34 F.R. 17041, Oct. 18, 1969)

Effective date. This redelegation of authority shall be effective as of July 1, 1969.

LAWRENCE M. COX,
Assistant Secretary for
Renewal and Housing Assistance.

[F.R. Doc. 69-12526; Filed, Oct. 17, 1969;
8:48 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 21395; 69-10-69]

DELTA AIR LINES, INC.

Order Providing for Further Procedures

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 15th day of October 1969.

On September 8, 1969, Delta Air Lines, Inc. (Delta), filed an application pursuant to Subpart N of Part 302 of the Board's procedural regulations, for amendment of its certificate of public convenience and necessity for Route 54 so as to permit it to provide nonstop service between Birmingham, Ala., and Cincinnati, Ohio, and between Birmingham, Ala., and Detroit, Mich.

No requests for dismissal have been filed. Civic parties in Birmingham, Detroit, and Cincinnati have filed answers supporting Delta's application.

Upon consideration of the foregoing, we do not find that the application is not in compliance with, or is inappropriate for processing under, the provisions of Subpart N. Accordingly, we order further proceedings pursuant to the provisions of Subpart N, §§ 302.1406-302.1410, with respect to the above application.¹

Accordingly, it is ordered, That:

1. The application of Delta Air Lines, Inc., be and it hereby is set for further proceedings pursuant to Rules 1406-1410 of the Board's procedural regulations; and

2. This order shall be served on all parties served by Delta Air Lines, Inc., in its application.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 69-12495; Filed, Oct. 17, 1969;
8:46 a.m.]

[Docket No. 21129]

DONALDSON LINE (AIR SERVICES), LTD.

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on November 6, 1969, at 10 a.m., e.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned examiner.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., October 17, 1969.

[SEAL] HARRY H. SCHNEIDER,
Hearing Examiner.

[F.R. Doc. 69-12496; Filed, Oct. 17, 1969;
8:47 a.m.]

¹ In the event no person files an appropriate pleading in opposition to said application which requests a public hearing thereon, the Board may grant said application without further notice or hearing.

[Docket No. 20415; Order 69-10-65]

LATIN AMERICAN SERVICE MAIL

Order To Show Cause Regarding Rate for Priority Mail

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of October 1969.

By petition filed October 28, 1968, the Postmaster General requested the establishment of new service mail rates in Latin American services for Braniff Airways, Inc., Delta Air Lines, Inc., and Pan American World Airways, Inc.¹ The petition noted that since the final rate of 42.09 cents per ton-mile was fixed by Order E-23753, dated May 31, 1966, there have been significant changes in service and new rates should be established. A prehearing conference in the matter was held on December 5, 1968, at which time the issues were formulated, requests for information adopted, and procedural dates established.

Pursuant to the prehearing conference report, the Post Office Department Braniff, and Pan American filed information responses on February 17, 1969. Thereafter, on April 22, 1969, Pan American filed a request, which was supported by Braniff, seeking a postponement of all procedural dates in order that the parties could further evaluate the operational and cost information with a view to reaching a possible settlement of the rate. Further requests for deferral of the formal proceedings were made by and granted to all participating parties for the purpose of permitting exploration of mutually agreeable rates. We are advised that extensive negotiations between the carriers and the Post Office Department were conducted which culminated in a settlement acceptable to both the Postmaster General and the carriers. On September 2, 1969, a joint petition was filed by the Postmaster General, Braniff, and Pan American requesting that these proceedings be brought to an early conclusion by the issuance of a show cause order proposing a final service mail rate of 42.09 cents per ton-mile for Latin American services performed during the period October 28, 1968, through May 31, 1969, inclusive, and a final service mail rate of 32.50 cents per ton-mile for these services performed on and after June 1, 1969.

¹ Eastern Air Lines was inadvertently listed as a party in this petition. Eastern's system rate applies to the transportation of priority mail (Order E-25610, Aug. 28, 1967), and it is not a party to these proceedings. Subsequent to the Postmaster General's petition, Trans Caribbean Airways and Caribbean-Atlantic Airlines were given route awards involving Latin American services, United States-Caribbean-South America Route Investigation (United States-Caribbean Part), Order 68-11-120, served Nov. 27, 1968. Trans Caribbean was designated a party pursuant to petition filed Dec. 9, 1968, and Caribbean was made a party to these proceedings by Order 69-6-179, dated June 30, 1969.

Thus the Board is presented with a situation where both the Postmaster General, the user of the services and the rate-payer, and Braniff and Pan American, the carriers providing most of the services, have agreed at arm's length on a rate which each believes to be a reasonable settlement of this proceeding. In our view, settlements reached under such circumstances are generally to be encouraged, since they permit expeditious resolution of cases and avoid or reduce the uncertainties, loss of time, and expense of protracted litigation. Of course, under section 406 of the Act the Board is vested with the ultimate responsibility of establishing fair and reasonable service mail rates, and the fact that the carrier and user interests have settled their controversy does not relieve us of that responsibility. This responsibility must necessarily be assumed and exercised. Yet where, as in the instant case, adversary parties have reached agreement after exchanging and evaluating a considerable body of information and cost data, and there is no reason to believe that the parties acted under constraint or on any basis other than the self-interest of the marketplace, we give great weight to the results achieved by the negotiations while at the same time assuring that these results are within the zone of reasonableness; i.e., that the rates not be so high as to burden the shipper—the Post Office Department—with excessive costs, nor so low as to impose a burden on the carriers' other services because the mail does not bear its appropriate share of costs. On the basis of our review of the information responses and of other data submitted by the Post Office Department in support of the proposed rates, as summarized below, we are satisfied the proposal meets these criteria.

1. The Department calculated the cost of the mail services involved at 30.70 cents per mail ton-mile by using the costing methodology used by the Board in the 1967 Domestic Service Mail Rate Investigation,² modified to reflect (a) the relative densities of mail and other cargo traffics and (b) the extreme directional imbalance of the U.S. mail traffic to South America. The Department then added, alternatively, 4.6 and 7.5 percent to the 30.70-cent cost figure to reflect labor cost increases since the 12 months ended September 30, 1968. This yielded mail costs of 32.11 cents and 33 cents, which bracket the agreed rate of 32.50 cents per ton-mile.

2. Next, the Department analyzed the trend to overall unit costs per revenue and available ton-mile from the 13 months ended September 30, 1965 (about the time the prior rate was set) to the corresponding period in 1968. It found the costs per revenue ton-mile had declined by 21.9 percent and per available ton-mile by 20.5 percent. It then

² Order E-25610, Aug. 28, 1967.

applied those cost reductions to the prior rate of 42.09 cents per mail ton-mile. The resulting rates of 32.87 cents and 33.45 cents are slightly higher than the proposed rate.

3. Finally, the Department computed the ratios of the two carriers' South American operating expenses per revenue ton-mile and per available ton-mile to the corresponding unit costs of the domestic trunklines for the period ended September 30, 1968. It found that South American unit costs exceeded the trunks' costs by 9.06 percent in terms of available ton-miles and 1.27 percent in the case of revenue ton-miles. By applying each of these ratios to the rate of 30 cents per ton-mile set by the Board in 1967 for the domestic mail services, the Department computed rates of 32.75 cents and 30.38 cents. These rates also bracket the proposed rate.

Although each of the suggested methods is subject to deficiencies as a means of costing the mail for Latin American services, nevertheless, on the basis of available data, we believe that the rate of 32.50 cents per ton-mile is within the zone of reasonableness.

The agreed rate represents a substantial reduction from the present rate, i.e., 22.8 percent. This assumes additional significance since it comes at a time when upward pressure is being placed on most fares and rates. Also, as indicated in the data which have been submitted, the carriers' South American costs are higher than both the Atlantic and Pacific unit costs of operation as well as domestic costs. Thus, the proposed rate compares favorably with the rates established for those services, namely, Atlantic, 32 cents; Pacific, 28.8 cents; and domestic, 30 cents. And finally, as previously stated, in the circumstances of this case consideration should also be given to the fact that the proposed rate reflects an arm's length settlement between adversary parties. In our judgment the rate of 32.5 cents, on the basis proposed, is within the zone of reasonableness for the transportation of priority mail in Latin American services.

The settlement also proposes continuation of the existing rate of 42.09 cents per ton-mile through May 31, 1969, with the 32.5-cent rate to be effective thereafter. Since the effective date was obviously considered in arriving at the future rate and under the settlement there would be a relatively short period of continued applicability of the 42.09-cent rate, we are of the view that the effective date is reasonable.

Proposed findings and conclusions. On the basis of the foregoing, the Board tentatively finds that the fair and reasonable rates of compensation to be paid the carriers named below by the Postmaster General, pursuant to the provisions of section 406 of the Federal Aviation Act of 1958, for the transportation of mail by aircraft over their respective routes as described below, the facilities used and useful therefor, and the services connected therewith are:

1. For all mail matter other than specific mail matter for which rates are

elsewhere established, the rates of compensation shall be as follows:

a. A rate of 42.09 cents per ton-mile for the Latin American services of Braniff International Airways, Inc., Delta Air Lines, Inc., and Pan American World Airways, Inc., for the period October 28, 1968, through May 31, 1969; of Caribbean-Atlantic Airlines, Inc., for the period September 17, 1968, through May 31, 1969; and of Trans Caribbean Airways, Inc.,³ for the period January 25, 1969, through May 31, 1969; except for service between the 48 contiguous States and the District of Columbia, on the one hand, and San Juan, P.R., the Virgin Islands, and Acapulco, Merida, Mexico City, and Monterrey, Mexico, on the other hand, and between points in Puerto Rico on the one hand and St. Croix and St. Thomas, V.I., on the other, between points in Puerto Rico, and between St. Croix and St. Thomas, V.I. This rate shall be applied in accordance with the terms and conditions set forth below.

b. For the period on and after June 1, 1969, a rate of 32.5 cents per ton-mile for the Latin American services of Braniff International Airways, Inc., Caribbean-Atlantic Airlines, Inc., Delta Air Lines, Inc., Pan American World Airways, Inc., and Trans Caribbean Airways, Inc., except for service between the 48 contiguous States and the District of Columbia, on the one hand, and San Juan, P.R., the Virgin Islands, and Acapulco, Merida, Mexico City, and Monterrey, Mexico, on the other hand, and between points in Puerto Rico on the one hand and St. Croix and St. Thomas, V.I., on the other, between points in Puerto Rico, and between St. Croix and St. Thomas, V.I. This rate shall be applied in accordance with the terms and conditions set forth below.

Mail ton-miles. The mail ton-miles for each shipment of mail shall be based upon the standard mileage established herein for service between the points of origin and destination of each shipment.⁴

Standard mileage. The standard mileage for each pair of points shall be as set forth in Appendix A to this order.⁵

Changes in standard mileage. The standard mileages set forth in Appendix A to this order shall remain in effect throughout the period this rate order is in effect: *Provided, however,* That at any time the Board may institute a proceeding, and any carrier subject to this order and/or the Postmaster General may make application to the Board for establishment of standard mileages to a new point: *And provided further, however,* That once each fiscal year the Board may institute a proceeding and any carrier subject to this order and/or

³ The Latin American rate was made applicable to Caribbean-Atlantic and Trans Caribbean on a temporary basis by Order 69-7-152, dated July 30, 1969.

⁴ No tabulation of standard mileages is being attached to this order, and Appendix A to Order 69-7-11, dated July 2, 1969, is hereby incorporated by reference. Standard mileages applicable to the service of Caribbean-Atlantic Airlines and Trans Caribbean Airways, will be issued at a future time.

⁵ See footnote 4 above.

the Postmaster General may make application to the Board for revision of any standard mileage effective July 1 of such fiscal year. Such applications will not be regarded as reopening the rate. Applications provided for above shall be clearly entitled "Application for (New) (Revised) Standard Mileage", shall contain a clear and concise statement of the requested standard mileage or standard mileage revision and the facts upon which such request is based, and shall in all other respects conform to the applicable requirements of the rules of practice.

In establishing standard mileages to a new point, the Board will consider the routings of flights to such point and the number of flights required by the postal service. In establishing revised standard mileages, the Board will consider the effect of changes in airport location, mail flow, and flight routings reflected in the carriers' general schedules during the first 7 days of the month immediately preceding the July 1 effective date of such revision.

Origin and destination of mail shipments. As used herein "point of origin" means the point at which the carrier departs the mail shipment after receipt thereof from a Postal Administration or its representatives, from another rate-making division of the same carrier, the operations of which divisions are not encompassed herein, or from another carrier; and "point of destination" means the point at which the carrier deplanes the mail shipment for delivery to a Postal Administration or its representatives, to a separate ratemaking division of the same carrier, the operations of which division are not encompassed herein, or to another carrier.

Equalization of rates—Election to equalize. Any air carrier, or, pursuant to agreement, any two or more air carriers providing service on an interline or interchange basis, may, by notice, elect to establish a reduced charge for the carriage of mail between:

(a) Any point where a U.S. Post Office Department international exchange office is located⁶ and any other point to which such international exchange office is authorized to dispatch air mail, or

(b) Foreign points, equal to the charge than in effect for service between such points by any other air carrier or air carriers.

Notice of election to equalize rate. An original and three copies of each notice of election and agreement to equalize shall be filed with the Board and a copy

⁶ Such offices for the Latin American area are: Chicago, Houston, Los Angeles, Miami, New Orleans, New York, Washington, D.C., San Juan, P.R., and Charlotte Amalie, Frederickssted, and Christiansted, V.I. The terms of this paragraph shall apply to points at which international exchange offices are hereafter established and shall cease to apply to any points at which international exchange offices are discontinued. The Postmaster General will file a notice of such new and discontinued offices in this docket and serve a copy on each carrier subject to this order.

thereof shall be served upon the Postmaster General and each carrier providing on-line or connecting service between the stated points. Such notices shall contain a complete description of the reduced charge being established, the routing over which it applies and how it is constructed and shall similarly describe the charge being equalized with.

Any equalized rate established pursuant to this order shall be effective for the electing carrier or carriers as of the date of filing of the notice or such later date as may be specified in the notice, until such election is terminated. Elections may be terminated by any electing carrier upon 10 days' notice filed with the Board and served upon the Postmaster General and each carrier providing on-line or connecting service between the stated points.

Division of equalized rates. In case of equalization of rates by agreement, the agreement shall provide for the proration of the mail compensation between participating carriers on the basis of the relative compensation which would otherwise be payable to each carrier in the absence of such an equalization. In the absence of an agreement among carriers for equalization of rates for interline or interchange shipments between a stated pair of points, any carrier (or two or more carriers jointly) may, by notice, elect to receive as its portion of the total compensation for each shipment the amount remaining after subtracting from such total compensation the compensation due the other carrier or carriers involved (nonelecting carriers). Such total compensation shall be computed on the basis of the lowest rate then in effect for service between the stated pair of points for any carrier or carriers. The compensation due the nonelecting carrier or carriers shall be that otherwise applicable to the point-to-point service it actually provides. In those instances where there is a nonelecting carrier or carriers involved in providing the through service and two or more carriers elect to receive payment under this provision, the total payment due such electing carriers shall be prorated by them on the basis of the relative compensation which would otherwise be payable to each of them in the absence of the provisions of this paragraph.

Divisions of equalized rates prescribed by the Board. In the event that any carrier is unable to enter into an agreement with any other carrier to transport mail between any stated points at a reduced rate it may file an application with the Board requesting it to determine and fix a different method of apportioning the total compensation for each such shipment of mail between the participating carriers. Such applications shall not be deemed to reopen the mail rates fixed by this order. An original and 19 copies of such an application shall be filed. Applications filed pursuant to this paragraph shall conform generally to the provisions of the rules of practice governing the filing of petitions in mail rate cases. Within 7 days after the application is served, any party may file an answer in

support of or in opposition to the application, together with any documentary material upon which it relies. Any order upon application filed pursuant to this paragraph shall be effective no earlier than the date of filing of the application with the Board.

In reviewing such application, the Board will consider, among other pertinent factors, the need for the proposed service, the historical participation of electing carrier or carriers in the transportation of mail between such stated points, the amount of absorption required, and the grounds for refusal by the carrier or carriers to enter into an equalization agreement. After hearing the carriers concerned, either orally or in writing, in those cases where it deems such action appropriate the Board will by order prescribe the method for apportioning the total compensation between such carriers, but in no event shall the carrier or carriers which refuse to enter into an agreement to equalize compensation be required to accept less than the compensation which would have been payable if the services were performed under voluntary equalization agreement.

2. The final service mail rates here fixed and determined are to be paid in their entirety by the Postmaster General. Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and pursuant to the regulations promulgated in 14 CFR Part 302:

It is ordered, That:

1. All interested persons and particularly Braniff Airways, Inc., Caribbean-Atlantic Airlines, Inc., Delta Air Lines, Inc., Pan American World Airways, Inc., Trans Caribbean Airways, Inc., and the Postmaster General are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rates specified above.

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and, if there is any objection to the rates or to the other findings and conclusions proposed herein, notice thereof shall be filed within 10 days after the date of service of this order, and if notice is filed, written answer and supporting documents shall be filed within 30 days after date of service of this order.

3. If notice of objection is not filed within 10 days, or if notice is filed and if answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rates specified herein.

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable rates herein shall be limited to those specifically raised by such answers except as otherwise provided in 14 CFR 302.307.

5. This order shall be served upon Braniff Airways, Inc., Caribbean-Atlantic

Airlines, Inc., Delta Air Lines, Inc., Pan American World Airways, Inc., Trans Caribbean Airways, Inc., and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 69-12494; Filed, Oct. 17, 1969;
8:46 a.m.]

[Docket No. 18381]

NONPRIORITY MAIL RATES CASE

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled proceeding is assigned to be heard on October 29, 1969, at 10 a.m., e.s.t., in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the Board.

Dated at Washington, D.C., October 14, 1969.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 69-12498; Filed, Oct. 17, 1969;
8:47 a.m.]

[Docket No. 20682, etc.]

SERVICE TO FORT MYERS, SARASOTA-BRADENTON AND ORLANDO CASE

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a public hearing in the above-entitled proceeding will be held before the undersigned examiner on November 4, 1969, at 10 a.m., e.s.t., in the Island Room of the Colony Beach Club, 1620 Gulf of Mexico Drive, Longboat Key, Sarasota, Fla., at which the evidence of the Florida civic parties will be received. Upon conclusion of the Sarasota City session, the hearing will convene on November 12, 1969, at 10 a.m., e.s.t., in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., to receive the evidence of the remaining parties.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to the prehearing conference report served July 28, 1969, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., October 14, 1969.

[SEAL] HYMAN GOLDBERG,
Hearing Examiner.

[F.R. Doc. 69-12497; Filed, Oct. 17, 1969;
8:47 a.m.]

FEDERAL MARITIME COMMISSION

[Docket No. 69-52]

JOHNS-MANVILLE PRODUCTS CORP.

Petition for Declaratory Order

Johns-Manville Products Corp. has petitioned the Commission seeking a declaratory order to terminate a controversy between themselves and Dillingham Line, Inc. The controversy involves the application of a specific commodity description in Dillingham's tariff No. 1, FMC-F No. 1. In September 1968, Johns-Manville tendered three shipments of asbestos-cement air ducts (Transite Air Duct) to Dillingham. Bills of lading were prepaid by Johns-Manville at the rates specified in Dillingham's tariff in Item 407 "Conduit or pipe, cement, containing asbestos fibre." In January 1969, Dillingham submitted balance due bills totaling \$5,161.68 alleging misdescription of the three shipments and basing the balance due on Item 5 of the tariff "Merchandise, cargo or freight, N.O.S."

Johns-Manville contends that the article shipped comes within the tariff description of Item 407. They contend that Transite Air Duct is a conduit or pipe, cement, containing asbestos fiber, and that it is no different than other transite products such as irrigation, house connection, or sewer pipe insofar as composition is concerned, all being specifically ratable per Item 407.

Johns-Manville asks that after due investigation an order be made determining the validity of the commodity description.

Dillingham states that it concurs with Johns-Manville's statement of the nature of the controversy and description of the transaction. Dillingham contends that since Johns-Manville advertises its product as an air duct and since in its description of the product attempts to convey the impression that the product is a higher or different grade material than either common asbestos cement pipe or ordinary asbestos cement conduit, commodity Item No. 407 is not applicable.

Dillingham prays for an order determining the validity of the commodity description and any further order the Commission may deem appropriate.

Under section 5(d) of the Administrative Procedure Act (5 U.S.C. 554(e)) we are given broad discretion whether to issue a declaratory order to terminate a controversy or to remove uncertainty. We find that the petition and reply set forth a true controversy and constitute a proper case for the issuance of a declaratory order. We will consider the petition and issue an order terminating the controversy.

While petitioner has asked for "due investigation", no formal hearing has been requested. It appears unnecessary to conduct a formal hearing since the petition and reply demonstrate no apparent factual dispute between the parties as to the nature of the controversy or the description of the transaction. Therefore, the proceeding on this mat-

ter will be limited to the filing of briefs of law and affidavits of fact with provision for hearing and taking of evidence only if it appears that an honest dispute exists as to any pertinent facts.

Now, therefore, it is ordered, That pursuant to section 5(d) of the Administrative Procedure Act (5 U.S.C. 554(e)) and Rule 5(h) of the Commission's rules of practice and procedure (46 CFR 502.69) a proceeding be instituted for the purpose of issuance of a declaratory order terminating the controversy between Johns-Manville Products Corp. and Dillingham Line, Inc., regarding the applicability of Item 407 of Dillingham Line, Inc.'s, tariff No. 1, FMC-F No. 1 to three shipments of asbestos-cement air ducts tendered in September 1968 by Johns-Manville Products Corp. and carried by Dillingham Line, Inc.

It is further ordered, That this proceeding shall be limited to the submission of affidavits of fact, memoranda of law, and replies. Should any party feel that an evidentiary hearing is required, any request for such hearing must be accompanied with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Request for hearing shall be filed on or before October 28, 1969. Affidavits of fact and memoranda of law shall be filed, unless otherwise ordered by the Commission, no later than close of business November 7, 1969. Replies thereto shall be filed no later than the close of business November 17, 1969. An original and 15 copies of affidavits of fact, memoranda of law, and replies are required to be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Copies of any papers filed with the Secretary should also be served upon all parties hereto.

It is further ordered, That this order be published in the FEDERAL REGISTER and served upon the parties to this proceeding.

Persons other than the present parties to this proceeding who desire to become a party shall file a petition for leave to intervene in accordance with Rule 5(1) (46 CFR 502.72) of the Commission's rules of practice and procedure no later than October 28, 1969.

By the Commission.

[SEAL]

THOMAS LISI,
Secretary.

[F.R. Doc. 69-12508; Filed, Oct 17, 1969;
8:47 a.m.]

FEDERAL RESERVE SYSTEM

WALKER BANK & TRUST CO.

Order Approving Acquisition of Bank's Assets

In the matter of the application of Walker Bank & Trust Co. for approval of acquisition of assets of The First National Bank of Coalville.

There has come before the Board of Governors, pursuant to the Bank Merger Act, as amended 12 U.S.C. 1828(c), an application by Walker Bank & Trust Co., Salt Lake City, Utah, a State member bank of the Federal Reserve System, for the Board's prior approval of that bank's acquisition of assets and assumption of deposit liabilities of The First National Bank of Coalville, Coalville, Utah (which is under the receivership of the Federal Deposit Insurance Corporation); and, as an incident thereto, Walker Bank & Trust Co. has applied, under section 9 of the Federal Reserve Act (12 U.S.C. 321), for the Board's prior approval of the establishment by that bank of a branch at the sole location of The First National Bank of Coalville.

Published notice of the proposed acquisition of assets and assumption of deposit liabilities and requests for reports on the competitive factors involved therein have been dispensed with as authorized by said Bank Merger Act.

Upon consideration of all relevant material in the light of the provision of said Act:

It is hereby ordered, For the reasons set forth in the Board's accompanying Statement,¹ that said applications be and hereby are approved and that said acquisition of assets and assumption of deposit liabilities and establishment of the branch may be consummated immediately, but not later than 3 months after the date of this order unless such period is extended for good cause by the Board or the Federal Reserve Bank of San Francisco pursuant to delegated authority.

Dated at Washington, D.C., this 9th day of October 1969.

By order of the Board of Governors.

[SEAL]

ROBERT P. FORRESTAL,
Assistant Secretary.

[F.R. Doc. 69-12504; Filed, Oct. 17, 1969;
8:47 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-2584 etc.]

MOBIL OIL CORP. ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates²

OCTOBER 10, 1969.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in

¹ Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of San Francisco.

² This notice does not provide for consolidation for hearing of the several matters covered herein.

the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 7, 1969, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authoriza-

tion for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. *Provided, however*, That pursuant to § 2.56 of the Commission's general policy and interpretations, as amended, all permanent certificates of public convenience and necessity granting applications, filed after July 1, 1967, without further notice, will contain a condition precluding any filing of an increased rate at a price in excess of that designated for the particular area of production for the period prescribed therein unless at the time of filing such certificate application, or within the time fixed for filing protests or petitions to intervene, the Applicant indicates in writing that it is unwilling to accept such a condition. In the event Applicant is unwilling to accept such condition the application will be set for formal hearing.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMS,
Acting Secretary.

Docket No. and date filed	Applicant	Purchaser, field, and location	Price per Mcf	Assignment
G-2584 D 9-23-69	Mobil Oil Corp. (Operator) et al., Post Office Box 1774, Houston, Tex. 77003.	Montana-Dakota Utilities Co., acreage in Washakie County, Wyo.	Assigned	
G-2604 D 9-23-69	Fennell United, Inc., Post Office Drawer 1588, Parkersburg, W. Va. 26101.	Consolidated Gas Supply Corp., acreage in Kanawha County, W. Va.	(*)	
G-2603 G-2602 E 9-24-69	Ladd Petroleum Corp. (Operator and Agent) et al. (successor to Alco Oil & Gas Corp. (Operator and Agent) et al.), 533 Deaver Club Bldg., Denver, Colo. 80202.	Tennessee Gas Pipeline Co., a division of Tennessee Inc., 2311 Field, Starr County, Tex.	14.6	
G-2629 E 9-24-69	Ladd Petroleum Corp. (Operator) et al. (successor to Alco Oil & Gas Corp. (Operator) et al.), 701 Fort Worth National Bank Bldg., Fort Worth, Tex. 76102.	Colorado Interstate Gas Co., a division of Colorado Interstate Corp., Greenwood Field, Morton County, Kans.	14.65	
G-2636 D 9-26-69	Sam Oil Co. (DX Division), Post Office Box 2038, Tulsa, Okla. 74120 (partial abandonment).	Cities Service Gas Co., acreage in Adair County, Okla.	Depleted	

Filing code: A—Initial service.
B—Abandonment.
C—Assignment to add acreage.
D—Assignment to delete acreage.
E—Succession.
F—Partial succession.
See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser, field, and location	Price Per Mcf	Assignment
G-1461 E 9-19-69	John B. Rich, Trustee, Agent for Trust; U.D. Donaldson Brown (Operator) et al. (successor to Brown Production Co., Agent for Neville G. Pennose and J. M. Zebert), 725 Mercantile Trust Bldg., Baltimore, Md. 21202.	Transcontinental Gas Pipe Line Corp., Oronous Field, Dural County, Tex.	7.21/81	14.65
G-1846 D 9-13-69	Mobil Oil Corp.	El Paso Natural Gas Co., South Erick Field, Beckham County, Okla.	(*)	Depleted
G-1851 D 9-20-69	James A. Rehler et al., 649 Milam Bldg., San Antonio, Tex. 78205 (partial abandonment).	United Gas Pipe Line Co., Cabena Creek Area, Goldsboro County, Tex.	14.5	14.65
G-2025 (G-18098) C 9-20-69	Mobil Oil Corp.	Lone Star Gas Co., Carter-Knox Field, Grady and Stephens Counties, Okla.	13.0	15.025
C169-826 C 9-11-69	Thomas J. Quigley et al., 17066 Bolinger Dr., Pacific Palisades, Calif. 90271.	El Paso Natural Gas Co., Blanno Fettered Cliffs Field, San Juan County, N. Mex.	(*)	
C181-56 D 9-25-69	A. L. Abernombie (Operator) et al., 10066 Amarillo, Tex. 79106.	Northern Natural Gas Co., Harret Ranch Field, Clark County, Kans.	17.85/69	15.025
C160-706 E 9-24-69	Ladd Petroleum Corp. (Operator) et al. (successor to Alco Oil & Gas Corp. (Operator) et al.).	El Paso Natural Gas Co., Recapture Creek Field, San Juan County, Okla.	17.0	14.65
C162-1539 E 9-26-69	PetroDynamics, Inc. (Operator) et al. (successor to Jas. F. Smith (Operator) et al.), Post Office Box 10066, Amarillo, Tex. 79106.	Northern Natural Gas Co., Moccasin-Lavener Gas Area, Beaver County, Okla.	Assigned	
C164-1115 D 9-23-69	Mobil Oil Corp.	Northern Natural Gas Co., acreage in Hanford and Hutchinson Counties, Tex.	15.0	14.65
C165-275 E 9-24-69	Ladd Petroleum Corp. (successor to Alco Oil & Gas Corp.).	Peabody Eastern Pipe Line Co., Will Field, Edwards County, Kans.	14.0	14.65
C165-1022 E 9-22-69	Melroy Oil Co. (successor to Thomas N. Berry & Co. (Operator) et al.), c/o Melroy McOwen, P.O. Office Box 316, Watkins, Okla. 74777.	Clisset Service Gas Co., Watkins Truss Field, Grant County, Okla.	15.0	14.65
C166-1077 C 9-26-69	John C. O'Leary et al., 1828-W Enterprise Bldg., Tulsa, Okla. 74133.	Arkansas Louisiana Gas Co., acreage in Pittsburg and Latimer Counties, Okla.	20.0	15.025
C166-1245 E 9-24-69	Ladd Petroleum Corp. (successor to Alco Oil & Gas Corp.).	Tennessee Gas Pipeline Co., a division of Tennessee Inc., South Crossley Field, Acadia Parish, La.	17.0	14.65
C167-134 C 9-26-69	Essex Oil Co. (Operator) et al., Post Office Box 18733, Oklahoms City, Okla. 73115.	Northern Natural Gas Co., West Sibarou Field, Woodward County, Okla.	13.0	14.65
C167-636 E 9-24-69	Ladd Petroleum Corp. (successor to Alco Oil & Gas Corp.).	Peabody Eastern Pipe Line Co., Richfield Field, Morton County, Kans.	13.5	15.025
C167-651 E 9-24-69	Ladd Petroleum Corp. (Operator) et al. (successor to Alco Oil & Gas Corp. (Operator) et al.).	Trunkline Gas Co., Lake Arthur Field, Jefferson Davis Parish, La.	13.5	14.65
C168-1305 C 9-26-69	Mobil Oil Corp.	Arkansas Louisiana Gas Co., Ames Area, Major County, Okla.	13.5	14.65
C170-14 (C170-113) C 9-26-69	Graham-Michaelis Drilling Co., 302 Graham Bldg., 211 North Broadway, Wichita, Kans. 67202.	Michigan Wisconsin Pipe Line Co., Northeast Cedarlands Field, Woodward County, Okla.	14.5	14.65
C170-266 A 9-16-69	Sun Oil Co., 1908 Walnut St., Philadelphia, Pa. 19103.	El Paso Natural Gas Co., acreage in Sutton County, Tex.	15.01/68	14.85
C170-320 (C186-633) F 9-26-69	B. J. Brown (successor to Himmle Oil & Refining Co. (Operator) et al.) and Austral Oil Co., Inc. et al.), 701 Fort Worth National Bank Bldg., Fort Worth, Tex. 76102.	Arkansas Louisiana Gas Co., Northeast Spuro Field, Le Flore County, Okla.	17.0	14.65
C170-325 A 9-26-69	Hurbs Seaward, 701 First National Bank Bldg., Amarillo, Tex. 79101.	Natural Gas Pipeline Co. of America, Comrick Field, Texas County, Okla.	27.0	15.325
C170-336 A 9-26-69	Apollo Petroleum Corp., Operator, c/o Stevenson & Berenson, 46th St., New York, N.Y. 10018.	United Fuel Gas Co., Elk District, Kanawha County, W. Va.	17.0	14.65
C170-387 A 9-26-69	Collier Diamond C Oils, Inc., et al., c/o Harry C. Marberry, Attorney, 1806 First National Bldg., Oklahoma City, Okla. 73102.	Peabody Eastern Pipe Line Co., Okabada Field, Woods County, Okla.		

Docket No. and date filed	Applicant	Purchaser, field, and location	Price Per Mcf	Pressure-base
CI70-308 A 9-26-69	Imperial-American Management Co., 777 Main Bldg., Houston, Tex. 77002.	Michigan Wisconsin Pipe Line Co., Woodward Area, Woodward County, Okla.	\$19.5	14.65
CI70-309 A 9-29-69	Ball, Frasure & Stutler Gas Co., c/o James F. Scott, Agent, 124 Valley St., Salem, W. Va. 26426.	Consolidated Gas Supply Corp., Grant District, Doddridge County, W. Va.	25.0	15.325
CI70-310 A 9-29-69	Pan American Petroleum Corp., Post Office Box 591, Tulsa, Okla. 74102.	United Fuel Gas Co., Eugene Island Block 273 Field, Offshore Louisiana.	21.25	16.025
AI70-311 A 9-29-69	do.	Texas Gas Transmission Corp., Eugene Island Block 273 Field, Offshore Louisiana.	21.25	15.025
CI70-313 A 9-29-69	Imperial-American Management Co.	Michigan Wisconsin Pipe Line Co., Laverne Field, Harper and Ellis Counties, Okla.	\$17.0	14.65
CI70-314 A 9-29-69	Exchange Oil & Gas Co., 1200 Oil & Gas Bldg., New Orleans, La. 70112.	Texas Gas Transmission Corp., Chalkley Field, Cameron Parish, La.	(19)	
CI70-315 B 9-25-69	A. L. Abercrombie (Operator) et al., 801 Union Center, Wichita, Kans. 67202.	Panhandle Eastern Pipe Line Co., acreage in Meade County, Kans.	Depleted	
CI70-316 A 9-29-69	Mobil Oil Corp.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., South Marsh Island Block 79 Field, Offshore (Federal), Louisiana.	20.0	15.025
CI70-317 (G-3101) F 9-29-69	Exchange Oil & Gas Co. (successor to Humble Oil & Refining Co.).	Texas Gas Transmission Corp., Chalkley Field, Cameron Parish, La.	13.5711	15.025
CI70-318 (C162-984) F 9-29-69	L. L. Wilkins E & O Co. (successor to Gulf Oil Corp. (Operator) et al.), Box 757, Healdton, Okla. 73438.	Lone Star Gas Co., Doyle Field, Stephens County, Okla.	15.0	14.65
CI70-319 A 9-30-69	Rudder Oil & Gas Co., Post Office Box 126, Belpre, Ohio 45714.	United Fuel Gas Co., Ravenswood Field, Jackson County, W. Va.	26.0	15.325

¹ Purchaser has no facilities in the area to take the gas expected to be produced and does not propose construction of facilities to take such gas.

² Subject to upward and downward B.I.U. adjustment.

³ A proposed rate to 16 cents per Mcf is currently suspended in Docket No. G-17437.

⁴ Applicant executed certain leases to El Paso Natural Gas Co.

⁵ Applicant requests that its certificate heretofore issued in Docket No. G-18098 be terminated and the authorization to sell gas thereunder be included under its certificate in Docket No. G-20226.

⁶ Well is no longer capable of producing gas in commercial quantities.

⁷ Includes 0.1249-cent tax reimbursement.

⁸ Applicant states its willingness to accept certificate at the rate of 15 cents per Mcf @ 14.65 p.s.l.a.

⁹ Pending—temporary authorization granted only.

¹⁰ Subject to deduction for compression, if required.

¹¹ Application was erroneously assigned Docket No. CI70-312 as an initial service application. Docket No. CI70-312 is canceled and application will be processed as an amendment to add acreage in Docket No. CI70-312.

¹² By letter filed Oct. 2, 1969, Applicant agreed to accept permanent certificate conditioned as Opinion No. 468, as modified by Opinion No. 468-A.

¹³ Applicable to acreage acquired from Humble Oil & Refining Co. Rate in effect subject to refund in Docket No. R158-346.

¹⁴ Applicable to acreage acquired from Austral Oil Co., Inc.

¹⁵ Contract provides for rate of 21.25 cents per Mcf; however, Applicant has agreed to accept certificate at 20 cents per Mcf (gas well gas) and 18.5 cents per Mcf (casinghead gas) in accordance with Opinion No. 546.

[F.R. Doc. 69-12420; Filed, Oct. 17, 1969; 8:45 a.m.]

[Docket No. CP70-80]

EL PASO NATURAL GAS CO.

Notice of Application

OCTOBER 10, 1969.

Take notice that on October 2, 1969, El Paso Natural Gas Co. (Applicant), Post Office Box 1492, El Paso, Tex. 79999, filed in Docket No. CP70-80 a "budget-type" application pursuant to section 7(c) of the Natural Gas Act as implemented by § 157.7 of the regulations thereunder, for a certificate of public convenience and necessity authorizing the construction and limited-term operation, during the calendar year 1970, of natural gas sales, and appurtenant facilities to be utilized for its Southern Division System Sales, on either a direct or resale basis, of natural gas for uses associated with the production of oil or gas. Applicant also requests authorization for the limited-term operation of existing facilities therefor, where available and the Southern Division System sale, on a limited-term basis, during the 1970 calendar year, of natural gas for resale for uses associated with the drilling of oil or gas wells, all as more fully set forth in the application which is on file with

the Commission and open to public inspection.

Applicant further requests that waiver of the 10-day reporting requirements of § 157.22 (c) and (e) of the Commission's regulations be granted and that Applicant be permitted to report data for direct drilling gas sales following expiration on December 31, 1970, of the "budget-type" authorizations requested.

Applicant states that it anticipates requests for short-term direct gas service for such purposes as pumping, injection, pressure maintenance, equipment fuel, various lease and camp uses, and emergency standby service. Applicant further states that it anticipates requests for both direct and resale gas service for use in drilling oil or gas wells. Under the authorizations requested Applicant would not install more than 25 sales facility installations, and their aggregate, installed cost would not exceed \$42,500.

Applicant proposes that all new sales initiated on either a direct or resale basis consistent with the limited-term, "budget-type" authorizations requested be made, for the respective terms thereof, at a rate identical to that in effect under Rate Schedule X-1 of Applicant's FPC

Gas Tariff, Original Volume No. 1, at the time each such sale is commenced. In addition, with respect to drilling gas sales, made on either a direct or resale basis, which would be for a very short duration, customarily not to exceed 120 days, and to any other new sale of similar short duration, a purchaser would be required to pay a connection charge of \$500 and a \$5 daily facility charge unless, as to direct drilling gas sales made in the San Juan Basin, the \$500 charge is waived in those instances where the gas well completed is dedicated to Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 7, 1969, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 69-12456; Filed, Oct. 17, 1969; 8:45 a.m.]

[Docket No. CP70-79]

EL PASO NATURAL GAS CO.

Notice of Application

OCTOBER 10, 1969.

Take notice that on October 2, 1969, El Paso Natural Gas Co. (Applicant), Box 1492, El Paso, Tex. 79999, filed in Docket No. CP70-79 a "budget-type" application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7 of the regulations thereunder, for a certificate of public convenience

and necessity authorizing the construction, during the calendar year 1970, and operation of gas-sales facilities, the sale and delivery of natural gas by means thereof, and the sale and delivery of natural gas by means of facilities to be constructed during the calendar year 1970, and operated by Pacific Gas Transmission Co. (PGT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed facilities are to be utilized for the sale and delivery of natural gas to Applicant's existing, authorized Northwest Division distributor customers for resale and general distribution to consumers situated in existing market areas in the States of Colorado, Utah, Wyoming, Idaho, Oregon, and Washington. The rates which shall apply to the proposed sales and deliveries are those contained in Applicant's FPC Gas Tariff Original Volume No. 3. To implement the foregoing sales and deliveries Applicant will utilize supplies of natural gas attached directly to its Northwest Division System or transported for the account of Applicant by PGT.

The application reflects that the maximum facilities for which authorization is sought consist of 20 taps at an aggregate cost not to exceed \$26,000; 20 measuring and regulating stations at an aggregate cost not to exceed \$190,000; and three lateral or loop pipelines, not to exceed a maximum diameter of 8 $\frac{1}{2}$ -inch O.D. and a maximum length of 7 miles, at an aggregate cost not to exceed \$84,000. The total cost of all the proposed facilities will not exceed \$300,000, and will be financed by working funds and supplemented by short-term loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 7, 1969, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a peti-

tion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 69-12457; Filed, Oct. 17, 1969;
8:45 a.m.]

[Docket No. CP70-83]

TENNESSEE GAS PIPELINE CO.

Notice of Application

OCTOBER 10, 1969.

Take notice that on October 6, 1969, Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Applicant), Post Office Box 2511, Houston, Tex. 77001, filed in Docket No. CP70-83 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport and deliver natural gas to Consolidated Gas Supply Corp. (CGS) for the account of United Fuel Gas Co. (UFG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to deliver natural gas to CGS for the account of UFG. Applicant will deliver such gas through mutual dispatching arrangements by increasing the volumes of gas currently sold and delivered to CGS at Applicant's Broad Run-Cornwell Sales Meter Station and by reducing the volumes of gas currently sold and delivered to UFG at Applicant's Broad Run-Cobb Sales Meter Station. Applicant states that the relatively small volumes of gas which will be delivered to CGS for the account of UFG will not alter the total daily volumes of gas delivered to these customers by Applicant through its existing measuring facilities and, thus, will have no impact on the operation of Applicant's existing transmission facilities. Applicant further states that authorization to render the proposed service is requested in order to complement the joint application of CGS and UFG in Docket No. CP70-31.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1969, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a peti-

tion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 69-12458; Filed, Oct. 17, 1969;
8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 7-3229]

AMERADA-HESS CORP.

Notice of Application for Unlisted Trading Privileges and of Oppor- tunity for Hearing

OCTOBER 13, 1969.

In the matter of application of the Boston Stock Exchange for unlisted trading privileges in a certain security,

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the preferred stock of the following company, which security is listed and registered on one or more other national securities exchange:

Amerada-Hess Corp., \$3.50 Cumulative Convertible Preferred Stock, Series, File No. 7-3229.

Upon receipt of a request, on or before October 28, 1969, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission

on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DuBOIS,
Secretary.

[P.R. Doc. 69-12467; Filed, Oct. 17, 1969;
8:45 a.m.]

[File No. 7-3228, etc.]

AMERADA-HESS CORP. ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 13, 1969.

In the matter of applications of the Boston Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Amerada-Hess Corp.	7-3228
Aguirre Co.	7-3230
Anthony Pools, Inc.	7-3231
Avnet, Inc.	7-3232
Baker Oil Tools, Inc.	7-3233
Cosmodyne Corp.	7-3234
Dymo Industries, Inc.	7-3235
Federal Sign and Signal Corp.	7-3236
Gale Industries, Inc.	7-3237
H & B American Corp.	7-3238
Head Ski Co., Inc.	7-3239

Upon receipt of a request, on or before October 28, 1969, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DuBOIS,
Secretary.

[P.R. Doc. 69-12468; Filed, Oct. 17, 1969;
8:45 a.m.]

[Files Nos. 7-3246—7-3256]

CALIFORNIA FINANCIAL CORP. ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 13, 1969.

In the matter of applications of the Midwest Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
California Financial Corp.	7-3246
Columbia Pictures Industries, Inc.	7-3247
Evans Products Co.	7-3248
Homestake Mining Co.	7-3249
Hercules Inc.	7-3250
Ingersoll-Rand Co.	7-3251
Leasco Data Processing Equipment Corp.	7-3252
The Lionel Corp.	7-3253
Loew's Theaters, Inc.	7-3254
National Industries, Inc.	7-3255
Natomas Co.	7-3256

Upon receipt of a request on or before October 28, 1969, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DuBOIS,
Secretary.

[P.R. Doc. 69-12469; Filed, Oct. 17, 1969;
8:45 a.m.]

[File No. 7-3267]

GENERAL PUBLIC UTILITIES CORP. (PENNSYLVANIA)

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 13, 1969.

In the matter of application of the Philadelphia-Baltimore-Washington

Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchanges:

General Public Utilities Corp. (Pennsylvania), File No. 7-3267.

Upon receipt of a request, on or before October 28, 1969, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DuBOIS,
Secretary.

[P.R. Doc. 69-12470; Filed, Oct. 17, 1969;
8:45 a.m.]

[Files Nos. 7-3240—7-3245]

LEHIGH VALLEY INDUSTRIES ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 13, 1969.

In the matter of applications of the Boston Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Lehigh Valley Industries	7-3240
Lionel Corp.	7-3241
Natomas Co.	7-3242
Northwest Industries, Inc.	7-3243
General Public Utilities Corp. (Pennsylvania)	7-3244
Vikoa Inc.	7-3245

Upon receipt of a request, on or before October 28, 1969, from any interested person, the Commission will determine whether the application with respect to

any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 69-12471; Filed, Oct. 17, 1969;
8:45 a.m.]

[59-102]

NEW ENGLAND ELECTRIC SYSTEM

Notice of Filing Regarding Request for Additional Extension of Time To Comply With Order

OCTOBER 13, 1969.

Notice is hereby given that New England Electric System ("NEES"), 441 Stuart Street, Boston, Mass. 02116, a registered holding company, has requested, pursuant to section 11(c) of the Public Utility Holding Company Act of 1935 ("Act"), an additional period of 6 months from October 3, 1969, to comply with this Commission's order of March 19, 1964 (Holding Company Act Release No. 15035). The order became final upon the entry, on April 3, 1968, of a judgment of the U.S. Court of Appeals for the First Circuit affirming the order of the Commission. That order directed, pursuant to section 11(b) (1) of the Act, that NEES dispose of all interests, direct or indirect, it holds in its subsidiary gas utility companies. By order of the Commission dated July 11, 1969 (Holding Company Act Release No. 16424), NEES was granted a 6-month extension from April 3, 1969.

It is stated, that during the past 6 months NEES has organized a Massachusetts business trust, Massachusetts Gas System ("Mass Gas"), to which, it is proposed, in a separate filing with the Commission (File No. 70-4796), all the debt and equity investments NEES holds in its gas utility subsidiary companies be transferred in exchange for Mass Gas common shares and notes to NEES. Mass Gas will become a subsidiary holding company of NEES pending ultimate divestment.

NEES asserts that it has been unable in the exercise of due diligence to comply with the divestment order within the 1 year period prescribed by section 11(c)

of the Act and that pursuant to that section, a further 6-month extension of such period is necessary or appropriate in the public interest or for the protection of investors or consumers.

Notice is further given that any interested person may, not later than November 6, 1969, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified should the Commission order a hearing in respect thereof. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the above-stated address, and proof of service thereof (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

8:45 a.m.]
[F.R. Doc. 69-12468; Filed, Oct. 17, 1969;

[Files Nos. 7-3257-7-3266]

PANHANDLE EASTERN PIPE LINE CO. ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 13, 1969.

In the matter of applications of the Midwest Stock Exchange for unlisted trading privileges in certain securities,

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f) (1) (B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Panhandle Eastern Pipe Line Co.	7-3257
Pennzoil United, Inc.	7-3258
Sanders Associates, Inc.	7-3259
Signal Companies, Inc.	7-3260
Stokely-Van Camp, Inc.	7-3261
Transitron Electronic Corp.	7-3262

	File No.
Vornado, Inc. (Delaware)	7-3263
Del E. Webb Corp.	7-3264
Whittaker Corp.	7-3265
Zapata Norness, Inc.	7-3266

Upon receipt of a request, on or before October 28, 1969, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 69-12472; Filed, Oct. 17, 1969;
8:45 a.m.]

[Release No. 8717]

NEW YORK STOCK EXCHANGE

Proposed Amendments to Constitution

The Securities and Exchange Commission announced today that the New York Stock Exchange ("NYSE") has submitted for Commission comment proposed amendments to its Constitution which would allow member firms to issue securities to the public.

There are presently a number of publicly held companies registered with the Commission as broker-dealers. Moreover, certain stock exchanges, although they require exchange approval for all voting shareholders, have permitted their members' or associate members' stock to be sold to publicly held corporations. Nevertheless, the fact that the NYSE accounts for approximately four-fifths of stock exchange trading volume underscores the importance of the policy considerations associated with its proposals to permit public ownership of member firms.

In a memorandum which accompanied the actual amendments, the NYSE set forth 20 conditions which it intends, through these amendments and through later rule changes, to impose on public ownership of member firms. The Exchange has further supplemented its submission with opinions of counsel indicating that, while the matter is not entirely free from doubt, the proposed conditions are related to matters within the scope of the Exchange's duty of self-regulation and are either necessary in

furtherance of the purposes of the Securities Exchange Act of 1934 or are sufficiently within the Commission's jurisdictional scope of review as to make the Exchange immune for liability under the antitrust laws. Since the Exchange proposals may have a significant impact upon New York Stock Exchange member firms, nonmember broker-dealers, institutional investors, other exchanges and the public, the Commission believes it appropriate that all interested persons have an opportunity to comment on these conditions. It has therefore appended to this release the Exchange Special Bulletin to members and allied members describing the conditions under which member firms are to be allowed to go public.

Interested persons are invited to submit their views and comments on the proposals in writing to the Secretary, Securities and Exchange Commission, at its principal office, 500 North Capitol Street, Washington, D.C. 20549, on or before October 31, 1969.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

NEW YORK STOCK EXCHANGE
11 WALL STREET
NEW YORK, N.Y. 10005

SEPTEMBER 18, 1969.

To: Members and Allied Members.
Subject: Board Action on Public Ownership.

The Board of Governors today adopted in principle, a series of proposed amendments to the Constitution of the Exchange to permit public ownership of securities of member corporations.

You will recall that at its July policy meeting the Board of Governors endorsed the principle of public ownership of equity securities of member corporations and directed the Committee on Permissive Public Ownership to report back to the Board in September with specific proposals. Today's action by the Board was based on the report received from the Committee which held a series of meetings over the past several months to complete the details of the plan.

The next step will be to discuss these proposals with the Securities and Exchange Commission and then the amendments will be submitted to the membership for a vote.

The overall program recommended to the Board by the Committee accomplishes the following objectives:

(1) Provides flexible alternatives to member corporations in raising needed permanent capital.

(2) Continues Exchange self-regulatory control over persons responsible for the management of member corporations.

(3) Limits majority ownership and control of member corporations to persons or organizations who are engaged primarily in the business of brokers or dealers in securities.

(4) Provides for corporate democracy and avoids potential conflicts of interest.

Member corporations would be permitted to issue freely transferable securities, including voting common stock, preferred stock, and debt securities. Members, allied members, employee stockholders, and employee pension, retirement, and similar plans would be required to own at least 51 percent of the stockholders' equity. No more than 49 percent of the outstanding voting stock could be initially offered to the pub-

lic. This percentage could be changed by the Exchange's Board of Governors after 3 years. The Board could also grant exceptions for experienced broker-dealers which had a greater percentage of publicly owned voting stock as of January 1, 1969. The transaction of business as a broker-dealer must remain the primary purpose of every firm and its parent, if any.

The Exchange would continue to exercise regulatory control over those responsible for the affairs of the member firm. The principal executive officers and directors employed by the firm would be required to be members or allied members and voting stockholders. Any person owning 5 percent or more of the voting stock of the member corporation would be required to be a member or allied member, or be approved (as an "approved person") by the Exchange. To enforce these requirements, member corporations must repurchase, or convert to a fixed income security, the voting stock held by any party which falls or ceases to be approved by the Exchange. While "outside" directors would be permissible, the Board of Directors would be required to have at least a majority of directors who are members or allied members. An "outside" director, however, must be approved (as an "approved person") by the Exchange. Other employees regulated by the Exchange would be called "stockholder associates." There would be no examination requirement for these persons and their applications would be processed by the Exchange staff. Officers would be qualified by supervisory persons examinations, as at present.

The proposed conditions would prevent interlocking directorates and potential conflicts of interest. No firm would be permitted to have as a customer any nonmember which participates in 5 percent or more of the profits of the member firm. Except in the case of a firm registered with the Exchange as a marketmaker in the outstanding securities of another member corporation, or in connection with a merger or acquisition, members, allied members, and stockholder associates would not be permitted to own stock in any other member firm. Further, a member corporation may not trade in (except on an unsolicited basis) or make recommendations with respect to its own securities.

The use of proceeds of any issuance of freely transferable securities would be limited to the raising of capital. However, secondary shareholder offerings would be permitted to a limited extent.

The proposals of the Committee on Public Ownership were embodied in 20 conditions recommended to the Board. Fifteen of the conditions are to be implemented by amendments to the Exchange Constitution and five solely by rules changes. The Board acted today only on the suggested constitutional amendments. The Committee has advised the Board that its present intention is not to bring the suggested rules before the Board of Governors until the proposed constitutional amendments have been passed by the membership.

A listing of the specific conditions for public ownership of securities issued by member corporations, which would be implemented by the proposed constitutional amendments approved in principle by the Board today follows:

(1) Member corporations, except those whose primary activity is that of a registered trader or a floor broker, may issue freely transferable:

(a) Voting common stock;

(b) Voting and nonvoting participating and/or nonparticipating preferred stock;

(c) Debt securities (including both subordinated debt qualifying as net capital un-

der Rule 325 and other debt securities which would not so qualify).

(2) Without prior approval of the Board of Governors, no member corporation having outstanding any nonvoting common stock may issue any freely transferable security until it has retired on redemption or converted to another security the outstanding nonvoting common stock.

(3) Directors who are active in the business of the member corporation and principal executive officers of the member corporation would be required to be members or allied members and beneficial owners of voting common stock of the member corporation.

(4) Any stockholder beneficially owning 5 percent or more of the voting stock of a member corporation who is employed by the member corporation would be required to be an allied member and, if he is not employed by the member corporation, would be required to be an "approved person" approved by the Board of Governors.

(5) Directors employed by the member corporation must comprise a majority of the Board of the corporation.

(6) Directors not employed by the member corporation would not be required to be allied members, but would be required to be beneficial owners of voting stock and "approved persons."

(7) All directors shall be prohibited from owning beneficially the stock of any other member corporation, except as approved by the Exchange.

(8) "Principal executive officers" would be defined to include persons designated by the directors as having senior principal executive responsibility for the member organization's business including the following areas: Operations, compliance with rules and regulations of regulatory bodies, finances and credit, sales, underwriting, research and administration. A single individual may have more than one, or all, of such responsibilities.

(9) All persons who, under the present Constitution and rules are allied members, but are not allied members under the new provisions, would be designated as "stockholder associates" and some of them would also be "supervisory persons." In addition, any employee of the member corporation approved by the Exchange could become a "stockholder associate." There would be no examination requirement for becoming a stockholder associate and applications for approval as such would be processed by the Exchange staff, rather than by the Board or any of its committees. "Supervisory persons" would be qualified as at present by a sales office manager examination, supervisory analyst examination, or the like.

(10) No member corporation shall have outstanding more than 49 percent of its voting stock or of its stockholders' equity owned by persons other than members, allied members, stockholder associates (or the estate of any such person), or employee pension, retirement, or similar plans of such corporation, and this percentage may not be increased during the first 3 years following the effective date of this amendment. Thereafter, the percentage may be increased from time to time by the Board of Governors. In addition, the Board may in its discretion grant an exception to this requirement in the case of a corporation making application to become a member corporation which—

(a) Establishes that, as of January 1, 1969, it was an experienced broker or dealer in securities and had been engaged primarily in such business in this country or Canada for at least 5 years; and establishes that, as of January 1, 1969, it had 49 percent or more of its outstanding voting stock or of its stockholders' equity, or both, owned by (1) persons other than those who would be (were it a member corporation) members, allied members or stockholder associates, and

(ii) any employee pension, retirement, or similar plan of such corporation; and

(b) Agrees that, for at least 3 years from the effective date of this amendment and for such further period as the board may require, (1) members, allied members, stockholder associates (or the estate of any such person) and employee pension, retirement, or similar plans of such corporations, as a group, will maintain not less than the percentage of such corporation's outstanding voting stock and stockholders' equity which the board excepted under this sentence and which such parties, as a group, owned as of January 1, 1969, and (ii) such corporation will not issue voting stock in an amount greater than 49 percent of its voting stock outstanding as of January 1, 1969.

(11) The primary purpose of the member corporation and any parent of such corporation must be the transaction of business as a broker or dealer in securities.

(12) No member firm or member corporation may have as a customer any non-member (other than any employee pension, retirement, or similar plan of such firm or corporation) which beneficially owns a participation of 5 percent or more in the profits of such firm or corporation. "Customer" would be defined as such an owner, and accounts controlled, directed, or serviced by, or under common control with or closely related to such owner.

(13) No party shall be a member, allied member or approved person in more than one member firm or member corporation.

(14) Whenever a party required to be approved by the Exchange as a member, allied member or approved person fails or ceases to be so approved, each member corporation having 5 percent or more of its outstanding voting stock owned by such party shall redeem or convert to a fixed income security such voting securities as may be necessary to reduce the holdings of such party below 5 percent.

(15) The chief executive officer of each member firm or member corporation shall submit to the Exchange at such times as the Exchange may require an affidavit listing to the best of his knowledge and belief the name of each nonmember beneficially owning (a) 5 percent or more of its outstanding voting stock or (b) a participation of 5 percent or more in the profits of such firm or corporation and certifying that none of such nonmembers (other than the firm's or corporation's employee pension, retirement, or similar plans) is a customer of the firm or corporation.

The following five proposals of the Public Ownership Committee do not require amending the Exchange Constitution but may be implemented solely by Exchange rule. The Board took no present action on these proposals.

(1) All directors must be elected at each annual meeting, but with no limitation on the number of terms a director may serve.

(2) No person who is a director, member, allied member or stockholder associate of any member corporation may beneficially own any stock of any other member corporation, except as a result of a merger into, or acquisition of assets, or other takeover by, or of such other member corporation, or except as otherwise specifically approved by the Exchange; and no member organization may own beneficially any stock of any other member corporation, except:

(a) As a result of any such merger, acquisition or other takeover;

(b) In connection with an underwriting of such stock;

(c) In connection with its activity as a marketmaker in such stock, in which event, the member organization shall be required to

be registered with the Exchange as a marketmaker in such stock.

(3) A member corporation shall not trade in (except on an unsolicited basis) or make recommendations with respect to its own securities.

(4) Member corporations which issue freely transferable securities must maintain a ratio of not more than 50 percent of properly subordinated debt to equity (including common and preferred stock) after giving the effect to any public financing.

(5) The use of the proceeds of any issuance by a member corporation of freely transferable securities shall be limited to raising capital. During either of the first 2 years following the effective date of this amendment, no more than 20 percent of a member corporation's stockholders' equity (as it exists immediately prior to the first public offering of such corporation's securities) may be sold by members, allied members or stockholder associates of such corporation, as a group, except by permission of the Board of Governors in the event of death, forced withdrawal, retirement, or hardship cases.

ROBERT W. HAACK.

[F.R. Doc. 69-12509; Filed, Oct. 17, 1969; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

OCTOBER 15, 1969.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41787—*Potassium (Potash) from Sylvite, Saskatchewan, Canada.* Filed by Canadian Freight Association (Western Lines) (No. 19), for interested rail carriers. Rates on potassium (potash), in carloads, as described in the application, from Sylvite, Saskatchewan, Canada, to points in Idaho, Oregon, and Washington.

Grounds for relief—Rate relationship. Tariff—G. H. Mitchell, agent, tariff ICC 183 (Revised Pages).

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 69-12512; Filed, Oct. 17, 1969; 8:47 a.m.]

[Notice 429]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 15, 1969.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-71622. By order of October 7, 1969, the Motor Carrier Board approved the transfer to Mid-City Warehouse Corp., New York, N.Y., that portion of the operating rights in certificate No. MC-1233 issued May 29, 1943, authorizing the transportation, over irregular routes, of general commodities, except those of unusual value, and except dangerous explosives, household goods, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between New York, N.Y., and points in Westchester and Nassau Counties, N.Y., on the one hand, and, on the other, points in Orange and Rockland Counties, N.Y. William D. Traub, 10 East 40th Street, New York, N.Y. 10016, representative for transferee. Bernard F. Flynn, Jr., York-Flynn Building, East Blackwell Street, Dover, N.J. 07801, attorney for transferor.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 69-12513; Filed, Oct. 17, 1969; 8:47 a.m.]

[Ex Parte No. 262; Special Permission 70-1600]

INCREASED FREIGHT RATES, 1969

At a General Session of the Interstate Commerce Commission held at its office in Washington, D.C., this 14th day of October 1969.

Upon consideration of a petition dated October 10, 1969, filed by Edward A. Kaier and other attorneys for and on behalf of substantially all Class I railroads of the United States and railroads of other classifications, and on behalf of certain water and motor carriers having joint rates with said railroads, for authority (1) to depart from the Commission's tariff publishing rules to the extent necessary to enable such carriers to publish a general increase in freight rates and charges by means of a master tariff and other short-form methods, (2) for authority to publish and establish such increases in rates on 1 day's notice to the Commission and to the public effective October 18, 1969, and (3) for modification of all outstanding orders of the Commission to the extent necessary to permit only the publication of the aforesaid increases in rates and charges;

For good cause shown: *It is ordered:*

1. Carriers for and on whose behalf the above-mentioned petition was filed and their tariff publishing agents be, and they are hereby, authorized to depart from the Commission's tariff publishing

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