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Education Office
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Railroad Retirement Board
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1949–1963

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Reference to this list will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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[Rev. 9]

PART 121—SMALL BUSINESS SIZE STANDARDS

Revision 9, of Part 121, rescinds Revision 8, including amendments 1 through 7 thereof, of the Code of Federal Regulations. As distinguished from previous revisions, which simply incorporated amendments to an earlier revision into a new revision, this revision includes procedural changes and clarifying language as described below.

1. Section 121.3(c) has been deleted in view of the expiration of the priority payment program under section 213(a) of the War Claims Act of 1948, as amended.

2. In § 121.3–1(a) reference to the War Claims Act of 1948, as amended, has been deleted in view of the expiration of the priority payment program under such Act.

3. Section 121.3–1(b)(1)(i) has been deleted in view of the fact that, in determining whether to adopt a size standard for a class of products and field of operation, SBA no longer applies such restricted criteria.

4. Section 121.3–1(b)(2) has been amplified so as to explain the meaning of certain terms used therein.

5. Section 121.3–1(b)(3) has been amplified to include interpretive rules established by the Administrator as the result of decisions of the Size Appeals Board in cases involving the classification of products or services into industries for size determination purposes.

6. Section 121.3–1(b)(4) has been amended to clarify the rule that, except for procurement purposes, product classification decisions are made by the Area Administrator or his delegatee of the SBA region in which the principal office of the size determination applicant (not including its affiliates) is located.

7. Section 121.3–2(b) has been amended to make it clear that, in determining whether a concern qualifies as a small business under an annual sales or receipts size standard, both sales and receipts must be included. It also reflects an interpretive decision by the Size Appeals Board that, if a concern has been in business less than 1 year, its annual sales and receipts shall be computed by determining its average weekly sales and receipts for the period in which it has been in business and multiplying such figure by 52.

8. In § 121.3–2(i) all reference to §121.3–13 has been deleted in view of the expiration of the priority payment program under section 213(a) of the War Claims Act of 1948, as amended.

9. Section 121.3–2(e) has been amended to reflect the amendment of subsection (a) of section 4 of the Small Business Act adding the Trust Territory of the Pacific Islands to the definition of the term United States.

10. Section 121.3–2(t) has been revised to permit protests not only by bidders and offerors on a particular procurement but also by other interested parties such as Small Business Administration officials and by admittedly ineligible concerns who question the eligibility of the apparently low bidder. It also has been revised to recognize that an untimely protest shall be acted upon by SBA but that the resultant determination shall not apply to the procurement in question.

11. Section 121.3–2(w) has been amended to clarify that an opinion concerning the size status of a concern rendered to a contracting officer for presolicitation purposes, on the basis of published or commonly known information and without the benefit of a formal SBA inquiry, is not a "size determination" as that term is used in Part 121.

12. Section 121.3–2(x) has been amended to include the Trust Territory of the Pacific Islands in the definition of the term "United States" as used in Part 121. This reflects the similar amendment of subsection (a) of section 4 of the Small Business Act (Public Law 90–448, 90th Congress, S. 3497, Aug. 1, 1968).

13. Section 121.3–4 has been amended to make it clear that a size determination on a particular concern is made by the Area Administrator or his delegatee serving the area in which the principal office of the concern, not including its affiliates, is located. It also has been amended to provide that, for procurement purposes, a formal size determination shall be made only in the event of a protest pursuant to § 121.3–5, a request for a redetermination pursuant to § 121.3–14 (e) or a request for a Certificate of Competency, or on request by the U.S. General Accounting Office.

14. Section 121.3–5(a) has been amended so as to provide that a protest can be filed not only by another bidder or offeror on the same procurement but also by any interested party such as an SBA official or a concern which itself is ineligible to self-certify but which questions the size status of one of the bidders or offerors. It also has been amended to make it clear that a size determination on a concern is made by the Area Administrator or his delegate serving the area in which the principal office of the protested concern, not including its affiliates, is located. It also has been amended to make it clear that a contracting officer's protest as to the eligibility of a bidder or offeror, is timely if it is made at any time prior to the award. Further, it has been amended so that the "head of the procuring activity" can file a protest at any time after award, and such protest would be timely for the purpose of the procurement in question.

15. Section 121.3–5(b) has been reworded to clarify that, if in a protest case, SBA forwards an SBA Form 355, Application for Small Business Size Determination, to a bidder or offeror, and such bidder or offeror does not submit the completed form to SBA within three days of its receipt, or within any additional period granted by SBA for cause, SBA will rule such protested concern to be other than a small business.

16. Section 121.3–5(d) has been added to provide that, if a concern's size status has been protested in connection with a particular procurement, and it has been determined to be ineligible as a small business for the purpose of such procurement, it cannot become eligible as a small business for the purpose of such procurement by changing its organization before award.

17. Section 121.3–8 has been amended to provide that, if a procurement calls for more than one item and a bidder is required to bid on all or none of such items, the bidder can qualify as a small business for such procurement if he meets the size standard for the item which accounts for the greatest percentage of the total contract value. This reflects a decision of the Size Appeals Board as approved by the Administrator. It also has been amended to reflect the addition of the Trust Territory of the Pacific Islands to the definition of the term United States as used in the Small Business Act.

18. Section 121.3–8(c) has been amended by deleting the designation "Reserved" and also the preamble designated "Note."

19. Section 121.3–13 has been deleted in view of the expiration of the priority payment program under section 213(a) of the War Claims Act of 1948, as amended.

20. Sections 121.3–14 and 121.3–15 are renumbered as §§ 121.3–13 and 121.3–14, respectively.

21. Section 121.3–14(e) (formerly § 121.3–15(e)) has been amended to clarify the circumstances under which a concern can no longer self-certify as a small business, and the circumstances under which such a concern can again become eligible to self-certify as a small business.

22. Section 121.3–14(h) has been added to interpret the meaning of the term "manufacturer" as used in the definition of the term "nonmanufacturer" in §§ 121.3–2(q) and 121.3–8(c) of Part 121.

Part 121 of Chapter I of Title 13 of the Code of Federal Regulations is hereby revised to read as follows:

Sec.
121.3 Statutory provisions.
121.3-1 Purpose and method of establishing size standards.
121.3-2 Definition of terms used in this part.
121.3-3 Organization—size functions.
121.3-4 Size determinations.
121.3-5 Protest of small business status.
121.3-6 Appeals.
121.3-7 Differentials.
121.3-8 Definition of small business for Government procurement.
121.3-9 Definition of small business for sales of Government property.
121.3-10 Definition of small business for SBA loans.
121.3-11 Definition of small business for assistance by small business investment companies or by development companies.
121.3-12 Definition of small business Government subcontractors.
121.3-13 Definition of small business for the purpose of lease guarantee.
121.3-14 Interpretations.

AUTHORITY: The provisions of this Part 121 issued under Public Law 85-536, sec. 5(b)6, 72 Stat. 385.

§ 121.3 Statutory provisions.

(a) *Small Business Act, as amended.*

SEC. 3. For the purpose of this Act, a small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others. Number of employees and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees which a small business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

* * * * *

SEC. 8(b). It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

* * * * *

(6) To determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small business concern." Offices of the Government having procurement or lending powers, or engaged in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small business concerns," as authorized and directed under this paragraph.

(b) *Small Business Investment Act of 1958, as amended.*

SEC. 103. As used in this Act—

* * * * *

(5) The term "small business concern" shall have the same meaning as in the "Small Business Act."

* * * * *

§ 121.3-1 Purpose and method of establishing size standards.

(a) *Purpose.* This part defines "small business concerns" and establishes standards, criteria, and procedures to determine which concerns are "small business concerns" within the meaning of the Small Business Act, as amended (hereinafter referred to as the "Act") and the Small Business Investment Act of 1958, as amended (hereinafter referred to as the "Investment Act").

(b) *Method of establishing size standards*—(1) *Use of Standard Industrial Classification Manual.* The Standard Industrial Classification Manual, as amended, prepared and published by the Bureau of the Budget, Executive Office of the President, shall be used by SBA in defining industries.

(2) *Factors in formulating size standards.* The following factors shall be considered in formulating industry size standards:

(i) Concentration of output; that is, the portion of the total output of an industry which is accounted for by a limited number of companies.

(ii) Coverage ratio; that is, the ratio of the industry's shipments of its primary products, to the total shipments by all industries of the primary products of the industry in question.

(iii) Specialization ratio; that is, the ratio of the industry's shipments of its primary products to its total shipments of primary and secondary products.

(iv) The total number of concerns in the industry.

(v) The size of industry leaders.

(vi) The SBA program for which the size standard is established.

In formulating industry size standards for the purpose of Government procurement, the additional factor of Government procurement history shall be used. The use of this additional factor may cause the size standards for the purpose of Government procurement and the size standards for the purpose of financial assistance to differ for the same industry.

(3) *Product classification.* For size standards purposes, a product shall be classified into only one industry, even though, for other purposes, it could be classified into more than one industry. In determining the SIC industry into which particular products shall be classified for size standard purposes, consideration shall be given to all appropriate factors including:

(i) Alphabetic indices published by the Bureau of the Budget, Bureau of the Census, and the Business and Defense Services Administration.

(ii) Description of the product under consideration.

(iii) Previous Government procurements for the same or similar products, and

(iv) Published information concerning the nature of companies which manufacture such products.

A product or service shall be classified in the industry whose definition best describes the principal nature of the product or service being procured. The end use of a product does not govern the industry into which it is to be classified. In a borderline situation, the product or service shall be classified in the industry whose size standard would best serve to accomplish the purposes of the Small Business Act. When a procurement is for two or more items with different size standards a bidder must qualify as a small business under the definition of a small business applicable to any item on which it bids. If a multi-item procurement requires the successful bidder to deliver all items and/or perform all services being procured the applicable size standard is that for the industry whose products or services account for the greatest proportion of the contract price.

(4) *Product classification decision.* The SBA Area Administrator or his delegatee of the SBA region in which the principal office of the applicant, not including its affiliates, is located shall determine the appropriate SIC classification except that for procurement purposes the determination shall be made by the official specified in § 121.3-8. Such determination shall be subject to appeal in the manner provided in § 121.3-6.

§ 121.3-2 Definition of terms used in this part.

(a) Affiliates: Concerns are affiliates of each other when either directly or indirectly (1) one concern (other than an investment company licensed under the Small Business Investment Act of 1958 or registered under the Investment Company Act of 1940, as amended), controls or has the power to control the other, or (2) a third party or parties (other than an investment company licensed under the Small Business Investment Act of 1958 or registered under the Investment Company Act of 1940, as amended), controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships: *Provided, however*, That restraints imposed on a franchisee by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure.

(b) "Annual sales and annual receipts" means the annual sales and receipts, less returns and allowances, of a concern and its affiliates during its most recently completed fiscal year. If a concern has been in business less than 1 year its annual sales and receipts shall be computed by determining its average weekly sales and receipts for the period in which it has been in business and multiplying such figure by 52.

(c) "Appeal" means a written communication addressed to the Size Appeals Board requesting it to review a determination relating to a size matter

made by an Area Administrator or his delegatee, or by a Contracting Officer.

(d) "Area of substantial unemployment," for the purpose of small business size determination, means a geographical area within the United States which:

(1) Is classified by the Department of Labor either as an "Area of Substantial Unemployment," or an "Area of Substantial and Persistent Unemployment," and such classification has been listed in that Department's publication "Area Labor Market Trends" continuously from September 15, 1961, until a size determination is made; or

(2) Is individually certified by the Department of Labor as an "Area of Substantial Unemployment" and has been eligible for such certification continuously since September 15, 1961. If an area has been removed from the publication, "Area Labor Market Trends," or if an area becomes ineligible for certification at any time, such area is excluded from the above definition and cannot be reinstated for the purpose of size determinations unless it is designated as a Redevelopment Area by the Department of Commerce. (See paragraph (u) of this section.)

(e) "Base maintenance" means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia, three or more services which may include but are not limited to such maintenance activities as janitorial and custodial services, protective guard services, commissary services, base housing maintenance, fire prevention services, refuse collection services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air-conditioning and refrigeration maintenance: *Provided, however*, That whenever the contracting officer determines prior to the issuance of bids that the estimated value of one of the foregoing services constitutes more than 50 percent of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such service is classified.

(f) "Bona fide feed stocks" means crude and any other hydrocarbon material actually charged to refinery processing units, as distinguished from materials used as components in products to be delivered after merely filtering, settling, or blending.

(g) "Crude-oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.

(h) "Certificate of competency" means a certificate issued by SBA pursuant to the authority contained in section 8(b)(7) of the Act stating that the holder of the certificate is competent as to capacity and credit to perform a specific Government procurement or sales contract.

(i) "Concern" means any business entity organized for profit with a place of business located in the United States, including, but not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see paragraph (a) of this section) any business entity, whether organized for profit or not, and any foreign business entity shall be included.

(j) "Contracting officer" means the person executing a particular contract on behalf of the Government and any other employee who is properly designated contracting officer; the term includes the authorized representative of a contracting officer acting within the limits of his authority.

(k) "Convalescent or nursing home" means those facilities for the accommodation of convalescents or other persons who are not acutely ill or not in need of hospital care but who may require nursing care and related medical services, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(l) "Department store" means a concern employing twenty-five (25) or more persons engaged in the retail sale of some items in each of the following merchandise lines: (1) Furniture, home furnishings, appliances, radio and television sets; (2) a general line of apparel for the family; and (3) household linens and dry goods: *Provided, however*, That sales within any one of the preceding merchandise lines do not exceed eighty percent (80%) of the concern's total sales and the aggregate of such merchandise lines accounts for at least fifty percent (50%) of the concern's total sales.

(l–1) "Forest products industry" as used in § 121.3–9(b) means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw material.

(m) "Gross leasable area" means the total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines, and upper floors, if any, expressed in square feet measured from the centerline of a joint partition and from outside wall faces.

(n) "Hospital" means a health facility duly licensed as a hospital providing in-patient medical or surgical care of the sick or injured, including obstetrics, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefits of its owners, stockholders or members.

(o) "Industry" means a grouping of establishments primarily engaged in similar lines of activity as listed and described in the Standard Industrial Classification Manual, as amended (SIC Manual), prepared and published by the Bureau of the Budget, Executive Office of the President.

(p) "Medical and dental laboratory" means those facilities which provide services to doctors, dentists, hospitals, and similar health facilities, which facilities are privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(q) "Nonmanufacturer" means any concern which in connection with a specific Government procurement contract, other than a construction or service contract, does not manufacture or produce the products required to be furnished by such procurement. Nonmanufacturer includes a concern which can manufacture or produce the products referred to in the specific procurement but does not do so in connection with that procurement.

(r) A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(s) "Number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month.

(t) "Protest" means a statement in writing from any bidder or offeror on a particular procurement or disposal (or from any other party interested therein) alleging that another bidder or offeror on such procurement is not a small business concern. Such statement shall contain the basis for the protest, together with specific detailed evidence in support of the protestant's claim. A protest received after the time limits set forth in § 121.3–5(a) shall be acted on but such determination shall not apply to the procurement in question.

(u) "Redevelopment area" for the purpose of small business size determinations means a geographical area within the United States which has been designated as a "redevelopment area" in accordance with the Public Works and Economic Development Act of 1965 (Public Law 89–136, sec. 401, 75 Stat. 48).

(v) "Shopping center" means a group of commercial establishments planned, developed, owned, and managed as a unit with off-street parking provided on the property.

(w) "Size determination" means an SBA ruling, in writing, that a concern is or is not, or was or was not, a small business within the meaning of this part. An

opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of a formal SBA inquiry, is not a "size determination" as that term is used in this part.

(x) "United States" as used in this regulation includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

§ 121.3–3 Organization—size functions.

The Associate Administrator for Procurement and Management Assistance shall:

(a) Develop and recommend small business size standards to the Administrator of SBA for promulgation;

(b) Conduct industry hearings pertaining to size matters;

(c) In concert with the Office of General Counsel, issue interpretations of the Size Standards Regulation;

(d) Consider and take appropriate action on written petitions objecting to or requesting amendments or recission of a published size standard;

(e) Establish procedures for the implementation of all size programs; and

(f) Perform such other related functions as may be appropriate to administer the SBA size program.

§ 121.3–4 Size determinations.

Original size determinations shall be made by the Area Administrator, or his delegatee, serving the area in which the principal office of the concern (not including its affiliates) whose size is in question is located. For the purpose of Government procurements a size determination shall be made only in the event of a protest pursuant to § 121.3–5, a request for a redetermination pursuant to § 121.3–14(e), a request for a Certificate of Competency, or on request by the U.S. General Accounting Office. The Area Administrator, or his delegatee, promptly shall, in writing by certified mail, return receipt requested, notify the concern in question and other interested persons of his decision. Such determination shall be final unless appealed in the manner provided in § 121.3–6.

§ 121.3–5 Protest of small business status.

(a) How to protest: Any bidder or offeror or other interested party may challenge the small business status of any other bidder or offeror on a particular procurement or disposal. Such challenge shall be made by delivering a protest to the contracting officer responsible for the particular procurement involved, such protest must be filed prior to the close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening, except that in the case of negotiated procurements, a protest may be filed by a bidder or offeror within five (5) days, exclusive of Saturdays, Sundays, and legal holidays after receipt of the identity of another bidder or offeror from a contracting officer: *Provided, however,* That a protest received after such time shall be deemed to be timely for the purpose of the procurement in question, if, in the case of mailed protests, such protest is sent by registered or certified mail and the postmark thereon indicates that the protest would have been delivered within this time limit but for delasy beyond the control of the protestant or, in the case of telegraphed protests, the telegram date and time line indicate that the protest would have been delivered within this time limit but for delays beyond the control of the protestant. Any Contracting Officer who receives a protest shall promptly forward such protest to the SBA regional office serving the geographical area in which the principal office of the protested concern, not including its affiliates, is located. A Contracting Officer may question the small business status of any bidder or offeror by filing a protest with the SBA regional office serving the area in which the principal office of the protested concern, not including its affiliates, is located. In order to be applicable to the procurement in question such protest must be filed before contract award. Further, at any time after award, the head of the procuring activity can challenge the eligibility of the awardee as a small business for the purpose of the award by filing a written protest with the SBA regional office serving the area in which the principal office of such concern, not including its affiliates, is located. For the purpose of this section, the "procuring activity" is as defined in § 1–201.14 of the Armed Services Procurement Regulation or § 1–1.205 of the Federal Procurement Regulations. The "head of the procuring activity" is as defined in § 1–201.7 of the Armed Services Procurement Regulation or § 1–1.206 of the Federal Procurement Regulations.

(b) Notification of protest: Upon receipt of such protest, the SBA regional director or his delegatee shall immediately notify the Contracting Officer and the protestant of the date such protest has been received and that the size of the concern being protested is being considered by SBA. The regional director or his delegatee shall also advise the protested bidder or offeror of the receipt of the protest and shall forward to the protested bidder or offeror a copy of the protest and a blank SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested. Such bidder must, within three (3) working days after receipt of the copy of the protest and SBA Form 355, file the completed form as directed by SBA, and must attach thereto a statement in answer to the allegations of the letter of protest, together with evidence to support such position. If such bidder or offeror does not submit the completed SBA Form 355 within the filing period provided above, or within any additional period of time granted by SBA for cause, SBA will rule that the protested concern is other than a small business.

(c) Notification of determination: After recepit of a protest and responses thereto, SBA shall determine the small business status of the protested bidder or offeror and, by certified mail, return receipt requested, notify the Contracting Officer, the protestant, and the protested bidder or offeror of its decision within 10 working days if possible.

(d) If SBA has determined that a concern is ineligible as a small business for the purpose of a particular procurement, it cannot thereafter become eligible for the purpose of such procurement by taking affirmative acts to constitute itself a small business.

§ 121.3–6 Appeals.

(a) *Organization.* The Size Appeals Board shall review appeals from size determinations made pursuant to §§ 121.3–4 and 121.3–5 and from product classifications made pursuant to § 121.3–8 and shall make recommendations to the Administrator whether such determinations or classifications should be affirmed, reversed or modified. The Size Appeals Board shall conduct such proceedings as it determines appropriate to enable it to discharge its duties.

(1) The Size Appeals Board shall consist of four members; to wit: The Deputy Administrator (Chairman), the Associate Administrator for Procurement and Management Assistance, the Associate Administrator for Financial Assistance, and the Assistant Administrator for Planning, Research and Analysis.

(2) Each member of the Size Appeals Board may, in writing, designate one or more alternates to serve in his stead in the event of absence or disability.

(b) *Method of appeal*—(1) *Who may appeal.* An appeal may be filed by:

(i) Any concern or other interested party which has protested the small business status of another concern pursuant to § 121.3–5 and whose protest has been denied by an Area Administrator or his delegatee;

(ii) Any concern or other interested party which has been adversely affected by a decision of an Area Administrator or his delegatee pursuant to §§ 121.3–4 and 121.3–5;

(iii) Any concern or other interested party which has been adversely affected by a decision of a Contracting Officer regarding product classification pursuant to § 121.3–8; and

(iv) The Small Business Administration Associate Administrator for the Small Business Administration program involved.

(2) *Where to appeal.* Written notices of appeal shall be addressed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) *Time for appeal.* (i) An appeal from a size determination or product classification by an Area Administrator, or his delegatee, may be taken at any time, except that because of the urgency of pending procurements, appeals concerning the small business status of a bidder or offerer in a pending procurement may be taken within five (5) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision

by an Area Administrator or his delegatee. Unless written notice of such appeal is received by the Size Appeals Board before the close of business on the fifth day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned.

(ii) An appeal from a product classification determination by a Contracting Officer may be taken: (*a*) Not less than 10 days, exclusive of Saturdays, Sundays, and legal holidays, before bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations, or (*b*) not less than five (5) days, exclusive of Saturdays, Sundays, and legal holidays, before the bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations, and

(iii) The timeliness of an appeal under subdivisions (i) and (ii) of this subparagraph shall be determined by the time of receipt of the appeal by the Size Appeals Board: *Provided, however,* That an appeal received after such time limits have expired shall be deemed to be timely and shall be considered if, in the case of mailed appeals, such appeal is sent by registered or certified mail and the postmark thereon indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant, or in the case of telegraphed appeals, the telegram date and time line indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant.

(4) *Notice of appeal.* No particular form is prescribed for the notice of appeal. However, the appellant shall submit to the Board an original and four legible copies of such notice and, to avoid time-consuming correspondence, the notice should include the following information:

(i) Name and address of concern on which the size determination was made;

(ii) The character of the determination from which appeal is taken and its date;

(iii) If applicable, the IFB or contract number and date, and the name and address of the contracting officer;

(iv) A concise and direct statement of the reasons why the decision of an Area Administrator, or his delegatee, or Contracting Officer is alleged to be erroneous;

(v) Documentary evidence in support of such allegations; and

(vi) Action sought by the appellant.

(c) *Notice to interested parties.* The Size Appeals Board shall promptly acknowledge receipt of the notice of appeal and shall send a copy of such notice of appeal to the appropriate Area Administrator or his delegatee, the contracting officer (if a pending procurement is involved) and to other parties known to be interested in the appeal.

(d) *Statement of interested parties.* After receipt of a copy of appellant's notice of appeal, interested parties may file with the Board a signed statement, together with four legible copies thereof, as to why the appeal should or should not be denied. Such statement shall be accompanied by appropriate evidence. Copies of such statements and appropriate evidence will be furnished to the appellant. Such statements and supporting evidence shall be mailed or delivered to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416, within five (5) days of the receipt of the copy of the notice of appeal unless an extension is for cause granted by the Chairman of the Size Appeals Board.

(e) *Consideration by the Size Appeals Board.* The Size Appeals Board shall consider the appeal on the written submission of the appellant, or may, in its discretion, permit oral presentations by interested parties. The Board shall promptly recommend in writing to the Administrator a proposed decision which shall state the reasons for the recommendation.

(f) *Decision of the Administrator.* The Administrator's decision shall be predicated upon the entire record after giving such weight to the recommendation of the Size Appeals Board as he shall deem appropriate: *Provided, however,* That, should he not concur with the recommendation of the Size Appeals Board, he shall state in writing the basis for his findings and conclusions.

(g) *Notification of final decision.* The Chairman shall promptly notify, in writing, the appellant and the other interested parties of the Administrator's decision together with the reasons therefor.

§ 121.3–7 Differentials.

(a) *Alaska.* If an applicant for a size determination is a concern which has fifty percent (50%) or more of its annual sales or receipts attributable to business activity within Alaska then, whenever "annual sales or annual receipts" are used in any size definition contained in this part, said dollar limitation is increased by twenty-five percent (25%) of the amount set forth therein.

(b) *Substantial or persistent unemployment areas; areas of concentrated unemployment or underemployment; certified eligible concerns; and redevelopment areas*—(1) *Assistance under sections 7(a) and 8(a) of the Small Business Act.* Notwithstanding any other provision of this part, the applicable size standards for the purposes of assistance under sections 7(a) and 8(a) of the Act are increased by twenty-five percent (25%) whenever the concern maintains or operates a plant, facility, or other business establishment within an Area of Substantial Unemployment or Underemployment or Redevelopment Area as defined in § 121.3–2 (d) and (u) or is designated as a Certified Eligible concern by the Department of Labor and agrees to use the assistance within such area or, if it does not maintain a plant, facility, or other business establishment within such area, agrees to utilize the assistance for the establishment and/or operation of a plant, facility, or other business establishment within such area.

(2) *Small business investment companies and development companies.* Notwithstanding any other provision of this part, the size standard for a small business concern receiving assistance from a small business investment company or receiving assistance from a development company in connection with a section 501 or section 502 loan is increased by twenty-five percent (25%) whenever such concern qualifies for a similar differential under subparagraph (1) of this paragraph.

(3) *Government procurement assistance, sales of Government property and Government subcontracting.* Except as is provided in subparagraphs (1) and (2) of this paragraph, this paragraph is not applicable to size determinations for the purpose of Government procurement assistance, sales of Government property or Government subcontracting.

§ 121.3–8 Definition of small business for Government procurement.

A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts and can further qualify under the criteria set forth in this section. When computing the size status of a bidder or offerer, the number of employees, annual sales or receipts, or other applicable standards of the bidder or offerer and all of its affiliates shall be included. In the submission of a bid or proposal on a Government procurement, a concern which meets the criteria provided in this section may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the Contracting Officer shall accept the self-certification at face value for the particular procurement involved. If a procurement calls for more than one item and the bidder can bid on any or all items, the bidder must meet the size standard for each item for which it submits a bid. If the procurement calls for more than one item and a bidder is required to bid on all or none of such items, the bidder can qualify as small business for such procurement if it meets the size standard for the item accounting for the greatest percentage of the total contract value. The determination of the appropriate classification of a product or service shall be made by the contracting officer and his determination shall be final unless appealed in the manner provided in § 121.3–6. If no standard for an industry, field of operation or activity (e.g., animal specialty; fin fish; anthracite mining; management-logistics support to be performed outside of the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands,

or the District of Columbia) has been set forth in this section, a concern bidding on a Government contract is a small business if, including its affiliates, it is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and has 500 employees or less.

(a) *Construction.* Any concern bidding on a contract for work which is classified in Division C, Contract Construction of the Standard Industrial Classification Manual, as amended, prepared and published by the Bureau of the Budget, Executive Office of the President, is:

(1) Small if its average annual receipts for its preceding three (3) fiscal years do not exceed $7½ million.

(2) Small if it is bidding on a contract for dredging and its average annual receipts for its preceding three (3) fiscal years do not exceed $5 million.

(b) *Manufacturing.* Any concern bidding on a contract for a product it manufactured is classified:

(1) As small if it is bidding on a contract for food canning and preserving and its number of employees does not exceed 500 persons, exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(2) As small if it is bidding on a contract for a product classified within an industry set forth in Schedule B of this part and its number of employees does not exceed the size standard established for that industry.

(3) As small if it is bidding on a contract for a product classified within an industry not set forth in Schedule B of this part and its number of employees does not exceed 500 persons.

(4) As small if it is bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112: *Provided,* That (i) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture, (ii) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than five percent (5%) of the value of all such tires manufactured in the United States during said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than ten percent (10%) of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(5) As small if it is bidding on a contract for passenger cars within Census Classification Code 37171: *Provided,* That (i) the value of the passenger cars within Census Classification Code 37171 which it manufactured or otherwise produced in the United States during the preceding calendar year is more than fifty percent (50%) of the value of its total worldwide manufacture or production of such passenger cars, (ii) the value of the passenger cars within Census Classification Code 37171, which it manufactured or otherwise produced during the preceding calendar year was less than five percent (5%) of the total value of all such cars manufactured or produced in the United States during the said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than ten percent (10%) of the total value of such product manufactured or otherwise produced or sold in the United States during said period.

(6) Rebuilding on a factory basis or equivalent: As small if it is bidding on a contract for rebuilding machinery or equipment on a factory basis, the purpose of which is to restore such machinery or equipment to as serviceable and as like new condition as possible and its number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item.

NOTE: The size standard contained herein is not limited to concerns who are manufacturers of the original item but is applicable to all bidders or offerers. The term "rebuilding on a factory basis" as used in this subsection does not include ordinary repair services such as those involving minor repair and/or preservation operations.

(c) *Nonmanufacturing.* Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product not manufactured by said bidder or offerer, is deemed to be a small business concern when:

(1) Its number of employees does not exceed 500 persons, and

(2) (i) In the case of Government procurement reserved for or involving the preferential treatment of small businesses, such nonmanufacturer furnishes in the performance of the contract the products of a small business manufacturer or producer which products are manufactured or produced in the United States; *Provided, however,* If the goods to be furnished are woolen, worsted, knitwear, duck, and webbing, dealers and converters shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear), and if finishing is required, by a small finisher. If the procurement is for thread, dealers and converters shall furnish such products which have been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specifications but excluding mercerizing, spinning, throwing, or twisting operations.")

(ii) If the procurement is for a refined petroleum product, other than a product classified in Standard Industrial Classification Industries No. 2951, Paving Mixtures and Blocks; No. 2952, Asphalt Felts and Coatings; No. 2992, Lubricating Oils and Greases; or No. 2999, Products of Petroleum and Coal, Not Elsewhere Classified; paragraph (g) of this section is for application.

(d) *Research, development, and testing.* Any concern bidding on a contract for research, development, and/or testing is classified:

(1) As small if it is bidding on a contract for research and/or development which requires delivery of a manufactured product and (i) it qualifies as a small business manufacturer within the meaning of paragraph (b) of this section for the industry into which the product is classified, or (ii) it qualifies as a small business nonmanufacturer within the meaning of paragraph (c) of this section.

(2) As small if it is bidding on a contract for research and/or development which does not require delivery of a manufactured product or on a contract for testing and its number of employees does not exceed 500 persons.

(e) *Services.* Any concern bidding on a contract for services, not elsewhere defined in this section, is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $1 million.

(1) Any concern bidding on a contract for engineering services other than marine engineering services is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $5 million.

(2) Any concern bidding on a contract for motion picture production or motion picture services is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $5 million.

(3) Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $3 million.

(4) Any concern bidding on a contract for base maintenance is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $5 million.

(5) Any concern bidding on contracts for marine cargo handling services is classified as small if its annual sales or receipts do not exceed $5 million for the preceding three (3) fiscal years.

(6) Any concern bidding on a contract for naval architectural and marine engineering services is classified as small if its average annual sales or receipts for it preceding three (3) fiscal years do not exceed $6 million.

(7) Any concern bidding on a contract for food services is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $3 million.

(8) (i) Any concern bidding on a contract for laundry services including linen supply, diaper services, and industrial laundering is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $3 million.

(ii) Any concern bidding on a contract for cleaning and dyeing including rug cleaning services is classified as small if its average annual sales or receipts for the preceding three (3) fiscal years do not exceed $1 million.

(9) Any concern bidding on a contract for computer programming services

is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $3 million.

(10) Any concern bidding on a contract for flight training services is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $5 million.

(11) Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $5 million.

(12) Any concern bidding on a contract for tire recapping services is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $3 million.

(13) Any concern bidding on a contract for data processing services is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $3 million.

(14) Any concern bidding on a contract for computer maintenance services is classified as small if its average annual sales or receipts for its preceding three (3) fiscal years do not exceed $5 million.

(f) *Transportation.* Any concern bidding on a contract for passenger or freight transportation, not elsewhere defined in this section, is classified:

(1) As small if its number of employees does not exceed 500 persons.

(2) As small if it is bidding on a contract for air transportation and its number of employees does not exceed 1,000 persons.

(3) As small if it is bidding on a contract for either trucking (local and long-distance), warehousing, packing, and crating, and/or freight forwarding, and its annual receipts do not exceed $5 million.

(g) *Refined petroleum products.* Any concern bidding on a contract for a refined petroleum product other than a product classified in Standard Industrial Classification Industries No. 2951, Paving Mixtures and Blocks; No. 2952, Asphalt Felts and Coatings; No. 2992, Lubricating Oils and Greases; or No. 2999, Products of Petroleum and Coal, Not Elsewhere Classified; is classified as small if (1) (i) its number of employees does not exceed 1,000 persons; (ii) it does not have more than 30,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities; and (iii) the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feed stocks: *Provided, however,* That a petroleum refining concern which meets the requirements in subdivisions (i) and (ii) of this subparagraph may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which requires exchanges in a stated ratio on a refined petroleum product for a refined petroleum product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in subdivision (iii) of this subparagraph: *And, provided further,* That the exchange of products for products to be delivered to the Government, will be completed within 90 days after the expiration of the delivery period under the Government contract; or (2) its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under subparagraph (1) of this paragraph.

§ 121.3–9 Definition of small business for sales of Government property.

In the submission of a bid or proposal for the purchase of Government-owned property, a concern which meets the criteria provided in this section may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved.

(a) *Sales of Government-owned property other than timber.* A small business concern for the purpose of the sale of Government-owned property, other than timber is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field operation, and can further qualify under the following criteria.

(1) *Manufacturers.* Any concern which is primarily engaged in manufacturing is small if its number of employees does not exceed 500 persons: *Provided, however,* That a concern primarily engaged in SIC Industry 2911, Petroleum Refining, is small if its number of employees does not exceed 1,000 persons and it does not have more than 30,000 barrels-per-day crude oil capacity from owned or leased facilities.

(2) *Other than manufacturers.* Any concern which is primarily not a manufacturer (except as specified in subparagraph (3) of this paragraph) is small if its annual sales or annual receipts for its preceding three (3) fiscal years do not exceed $5 million.

(3) *Stockpile purchasers.* Any concern primarily engaged in the purchase of materials which are not domestic products is small if its average annual sales or annual receipts for its preceding three (3) fiscal years do not exceed $25 million.

(b) *Sales of Government-owned timber.* (1) In connection with the sale of Government-owned timber a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 500 persons.

(2) In the case of Government sales of timber reserved for or involving preferential treatment of small businesses, when the Government timber being purchased is to be resold, a concern is a small business when:

(i) It is a small business within the meaning of subparagraph (1) of this paragraph, and

(ii) It agrees that it will not sell to a concern which is not a small business within the meaning of this paragraph more than thirty percent (30%) of such timber or, in the case of timber from certain geographical areas set forth in Schedule E of this part, more than the percentage established therein for such area.

(3) In the case of Government sales reserved for or involving preferential treatment of small businesses, when the Government timber purchased is not to be resold in the form of saw logs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in subparagraph (1) of this paragraph, and

(ii) It agrees that in manufacturing lumber or timbers from such saw logs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under subparagraph (1) of this paragraph as a small business.

§ 121.3–10 Definition of small business for SBA loans.

A small business concern for the purpose of receiving an SBA loan is a concern, including its affiliates which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the criteria set forth below. A concern which is a small business under § 121.3–8 which has applied for or received a Certificate of Competency is a small business eligible for an SBA loan to finance the contract covered by the Certificate of Competency. If no standard for an industry, field of operation, or activity has been set forth in this section, a concern seeking a size determination shall submit SBA Form 355 to the Associate Administrator for Procurement and Management Assistance, Washington, D.C. 20416. If an applicant for an SBA loan is engaged in the production of a number of products or the providing of a variety of services or other activities which are classified into different industries, the appropriate standard to be used is that which has been established for the industry in which the applicant, not including its affiliates, is primarily engaged. An applicant's primary industry is that which produced the greatest percentage of gross sales or receipts for the past fiscal year. When computing the size status of an applicant its affiliates' number of employees, annual sales or receipts or other applicable standards shall be included.

(a) *Construction.* Any construction concern is small if its average annual receipts do not exceed $5 million for the preceding three (3) fiscal years.

(b) *Manufacturing.* Any manufacturing concern is classified:

(1) As small if its number of employees does not exceed 250 persons;

(2) As large if its number of employees exceeds 1,500 persons;

(3) Either as small or large depending on its industry and in accordance with the employment size standards set forth in Schedule "A" of this part, if its number of employees exceeds 250 persons, but not more than 1,500 persons;

(4) As small if it is primarily engaged in the food canning and preserving industry and its number of employees does not exceed 500 persons exclusive of agricultural labor as defined in subsection (k) of the Federal Employment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(c) *Retail.* (1) Any retailing concern is classified:

(i) As small if it is primarily engaged in an industry or subindustry set forth in Schedule D of this part and its annual sales do not exceed the size standard established therein for that industry or subindustry.

(ii) As small if it is primarily engaged in an industry or subindustry not set forth in Schedule D of this part and its annual sales do not exceed $1 million.

(d) *Services.* Any service concern is classified:

(1) As small if its annual receipts do not exceed $1 million;

(2) As small if it is primarily engaged in the hotel and motel industry and its annual receipts do not exceed $2 million;

(3) As small if it is primarily engaged in the power laundry industry and its annual receipts do not exceed $2 million;

(4) As small if it is primarily engaged in the trailer court and parks industry and its annual receipts do not exceed $1 million: *Provided*, That a minimum of fifty percent (50%) of the annual receipts is derived from the rental of space to tourist trailers for periods not in excess of thirty (30) days.

(5) As small if it is primarily engaged in owning and operating a hospital and its capacity does not exceed 150 beds (excluding cribs and bassinets);

(6) As small if it is primarily engaged in owning and operating a convalescent or nursing home and its annual receipts do not exceed $1 million;

(7) As small if it is primarily engaged in owning and operating a medical or dental laboratory and (i) it is operated in connection with an eligible proprietary hospital or (ii) it is not operated in connection with an eligible proprietary hospital and its annual receipts do not exceed $1 million;

(8) As small if it is primarily engaged in the motion picture production industry and its annual receipts do not exceed $5 million;

(9) As small if it is primarily engaged in the motion picture services industry and its annual receipts do not exceed $5 million;

(10) As small if it is primarily engaged in rendering engineering services and its annual receipts do not exceed $2.5 million.

(e) *Shopping centers.* (1) Any concern primarily engaged in operating shopping centers is small if (i) it does not have assets exceeding $5 million, (ii) it does not have net worth in excess of $2½ million, (iii) it does not have an average net income, after Federal Income Taxes, for the preceding two (2) fiscal years in excess of $250,000 (average net income to be computed without benefit of any carryover loss), and (iv) it does not lease more than twenty-five percent (25%) of the gross leasable area to concerns which do not meet the small business definitions contained in this section.

(2) For the purpose of size determinations, shopping center operators will not be considered affiliated with their tenants merely because of lease agreements.

(f) *Transportation and warehousing.* Any concern primarily engaged in passenger and freight transportation or warehousing is classified:

(1) As small if its annual receipts do not exceed $1 million;

(2) As small if it is primarliy engaged in the air transportation industry and its number of employees does not exceed 1,000 persons;

(3) As small if it is primarily engaged in the storage of grain and it does not have more than 1 million bushels capacity in owned and leased facilities, and its annual receipts do not exceed $1 million;

(4) As small if it is primarily engaged in trucking, warehousing, packing, and crating and/or freight forwarding and its annual receipts do not exceed $5 million.

(g) *Wholesale.* (1) Any wholesaling concern is classified:

(i) As small if it is primarily engaged in an industry or subindustry set forth in Schedule C of this part and its annual sales do not exceed the size standard established therein for that industry or subindustry.

(ii) As small if it is primarily engaged in an industry or subindustry not set forth in Schedule C of this part and its annual sales do not exceed $5 million.

(2) Any concern primarily engaged in wholesaling, but also engaged in manufacturing, is not a "small business concern" unless it qualifies under both the manufacturing and wholesaling standards.

§ 121.3–11 Definition of small business for assistance by small business investment companies or by development companies.

A small business concern for the purpose of receiving financial or other assistance from small business investment companies or development companies is a concern which:

(a) Together with its affiliates, is independently owned and operated, is not dominant in its field of operation, does not have assets exceeding $5 million, does not have net worth in excess of $2½ million, and does not have an average net income, after Federal Income Taxes, for the preceding 2 years in excess of $250,000 (average net income to be computed without benefit of any carryover loss); or

(b) Qualifies as a small business concern under § 121.3–10.

§ 121.3–12 Definition of small business Government subcontractors.

(a) Any concern in connection with subcontracts of $2,500 or less which relate to Government procurements will be considered a small business concern if, including its affiliates, its number of employees does not exceed 500 persons.

(b) Any concern in connection with subcontracts exceeding $2,500 which relate to Government procurements will be considered a small business concern if it qualifies as such under § 121.3–8: *Provided, however*, That a nonmanufacturer is considered as small business for the purpose of Government subcontracting if, including its affiliates, its number of employees does not exceed 500 persons.

§ 121.3–13 Definition of small business for the purpose of lease guarantee.

A small business concern for the purpose of lease guarantee is a concern that qualifies as a small business under § 121.3–11.

§ 121.3–14 Interpretations.

(a) *Section 121.3–2(b) of Part 121, "Annual sales or annual receipts."* When computing annual sales or annual receipts, intercompany transactions between affiliated concerns are excluded. To include such intercompany transactions in effect would mean that the receipts of a concern, including its affiliates, would be counted more than once.

(b) *Section 121.3–9(b) of Part 121, "Sales of Government-owned timber."* Any concern which self-certifies as a small business concern for the purpose of the sale of Government-owned timber is expected to maintain sufficient documentary evidence to show that it did so in good faith. This means that a concern which sells more than 30 percent (30%) of the purchased timber will have to maintain the names and addresses of the concerns to whom the timber is sold and the size status of such concerns, unless an exemption has been granted on sales of mixed stumpage of hardwood and softwood species. Further, if the timber purchased is not to be resold in the form of saw logs, but is to be manufactured into lumber and timber by a concern other than the bidder, the bidder must maintain records to show the name, address, and size status of the concern manufacturing the timber into lumber or timbers.

(c) *Section 121.3–2(a) of Part 121, "Affiliates"*—(1) *Nature of control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. A party owning 50 percent of the voting stock of a concern would have negative power to control such concern since he can block any action of the other stockholders. Also, the bylaws of a corporation may be drawn up in such a manner which would permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties

have the power to control a concern while at the same time another party, or other parties, may be in control of the concern at the will of the party or parties with the power to control.

(2) *Meaning of "party or parties."* The term "party or parties" includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(3) *Control through stock ownership.* (i) A party is considered to control or have the power to control a concern if he controls or has the power to control 50 percent or more of its voting stock.

(ii) A party is considered to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock if the block of stock he owns, controls, or has the power to control is large as compared with any other outstanding block of stock. If two or more parties each own, control or have the power to control less than 50 percent of the voting stock of a concern and such minority blocks are (*a*) equal or substantially equal in size, and (*b*) large as compared with any other block outstanding, there is a presumption that each of such parties controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(iii) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

Example. In a corporation where the officers and directors own various size blocks of stock totalling 40 percent of a concern's voting stock but no officer or director has a block sufficient to give him control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control.

(4) *Stock options, convertible debentures, and agreements to merge.* Stock options and convertible debentures exercisable at the time of, or within a relatively short time after a size determination, and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised prior to the date of the determination.

Example. If, on the date of the determination, Company "A" holds an option to purchase a controlling interest in Company "B" and such option can be exercised at any time by Company "A", the situaton is treated as though Company "A" had exercised its rights and had become owner of a controlling interest in Company "B" prior to the determination. Further, if, as of the date of a determination, Company "A" has entered into an agreement to merge with Company "B" in the future, the situation is treated as though the merger had taken place prior to the date of the determination.

(5) *Voting trusts.* If the purpose of a voting trust or similar agreement is to separate voting power from beneficial ownership of voting stock, for the purpose of shifting control of, or the power to control a concern, in order that such concern or another concern may qualify as a small business within the size regulation, such voting trust shall not be considered valid for this purpose, regardless of whether the trust is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is a valid trust within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(6) *Control through common management.* A concern is considered as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence the operation of such other concern.

(i) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(ii) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(iii) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or other facilities, whether for a fee or otherwise.

(7) *Control through contractual relationships*—(i) *Definition of a joint venture for size determination purposes.* A joint venture, for size determination purposes, is an association of persons or concerns with interest in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single business venture, such as a Government contract, for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but without creating a corporation or partnership in the legal or technical sense of the term.

(ii) *Joint ventures—financial assistance.* For the purpose of financial assistance to a joint venture, the parties thereto are considered as controlling or having the power to control each other and are considered as being affiliated. For the purpose of financial assistance to a concern which has requested assistance for its own use, but which is incidentally a party to a joint venture, such concern is not considered as being affiliated with its joint venturer.

(iii) *Joint venture—procurement assistance.* Concerns bidding on a particular procurement as joint venturers are considered as controlling or having the power to control each other with regard to performance of the contract, and therefore are considered as being affiliated. However, a concern which is a party to one or more joint ventures, but which is bidding on a procurement as an individual concern, is not considered as being affiliated with its joint venturers since they have no power to control its performance of the contract being bid on. Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual sales or annual receipts, etc., for the purpose of applying size standards to include such concern's share of the joint venture sales or receipts (as distinguished from its share of the profits of such venture).

(iv) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the resrtaints imposed on a franchisee by its franchise agreement shall not be considered provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virture of the contractual relationship between them, the francisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(d) *Section 121.3–8 of Part 121, Definition of small business for Government procurement*—(1) *Sawmills.* For the purpose of a size determination, a sawmill is considered as the manufacturer of treated lumber, even if it contracts out the treatment of the lumber. Therefore, a small business sawmill can deliver in the performance of a set-aside procurement lumber which has been treated by a concern which does not qualify as a small business concern.

(2) *Oxygen converters.* For the purpose of a size determination, a concern which converts liquid oxygen to gaseous oxygen with or without additives, is a nonmanufacturer of the gaseous oxygen and therefore must furnish gaseous oxygen converted from liquid oxygen manufactured by a small business concern.

(e) *Section 121.3–8 of Part 121.* Section 121.3–8 provides that, in the submission of a bid or proposal on a Government procurement, a concern which meets the size standards criteria provided in § 121.-3–8, may represent that it is a small business, provided further, however, that a concern which has been determined by SBA to be ineligible as a small business under a particular size standard, (1)

shall if he has self-certified as a small business on a pending procurement subject to the same or lower number of employees or annual sales or receipts size standard (whichever is applicable) immediately notify the contracting officer of such adverse size determination and (2) shall not thereafter self-certify on a procurement subject to the same or a lower employee or annual sales or receipts size standard (whichever is applicable) until it has been determined eligible as a small business under such size standards by either the regional office which issued the adverse determination or the Small Business Size Appeals Board.

(f) *Section 121.3–4 of Part 121 "Application for small business size status determination."* Contracting officers, in order to determine whether to set particular contracts aside for exclusive award to small business concerns or whether to send invitations for bids to particular concerns, may require information from SBA concerning the small business size status of such concerns and be unable to wait for a formal small business size determination. In such cases informal advice or information may be given based on the best evidence available concerning the small business size of such a concern. However, such informal advice is not a small business size determination within the meaning of that term in the Small Business Size Standards Regulation and is not binding with respect to eligibility as a small business for the purpose of a particular Government procurement. Further, an opinion as to a concern's future small business size status, based on proposed but unexecuted changes in its organization, management or contractual relations, is not a small business size determination.

(g) *Section 121.3–6 of Part 121 "Appeals."* The Size Appeals Board only has jurisdiction to consider apeals from formal determinations as to a concern's small business size status. It has no jurisdiction to consider an appeal from an informal opinion or advice concerning a company's small business size status, an opinion as to a company's future small business size status based on proposed but unexecuted changes in its organization, management or contractual relations, or an appeal based on an allegation that the small business size standard established by SBA for a particular industry or field of operation is improper for the purpose intended.

(h) *Sections 121.3–2(q) and 121.3–8(c) "Definition of nonmanufacturer."* For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which with its own forces transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item.

Effective date. This revision shall become effective upon publication in the FEDERAL REGISTER.

Dated: November 17, 1969.

HILARY SANDOVAL, Jr.,
Administrator.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING

(The following size standards are to be used when determining the size status of applicants for SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for sections 501 and 502 loans, and SBIC assistance)

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
	Major Group 23—Apparel and Related Products (except men's dress shirts and nightwear)	250
2321	Men's dress shirts and nightwear	500
	Major Group 28—Chemicals and Allied Products:	
2879	Agricultural chemicals, n.e.c	500
2873	Agricultural pesticides and other agricultural chemicals, n.e.c	500
2812	Alkalies and chlorine	1,000
2831	Biological products	250
2895	Carbon, black	500
2823	Cellulose man-made fibers	1,000
2899	Chemicals and chemical preparations, n.e.c. (except fatty acids)	250
28151	Cyclic (coal tar) crudes	500
2815	Cyclic intermediates, dyes, organic pigments (lakes and toners) except cyclic (coal tar) crudes	750
2892	Explosives	750
28002	Fatty acids	500
2871	Fertilizers	500
2872	Fertilizers, mixing only	500
2891	Glue and gelatin	250
2861	Gum and wood chemicals	500
2813	Industrial gases	1,000
2819	Industrial inorganic chemicals, n.e.c	1,000
2818	Industrial organic chemicals, n.e.c	1,000
2816	Inorganic pigments	1,000
2833	Medicinal chemicals and botanical products	750
2851	Paints, varnishes, lacquers, enamels and allied products	250
2844	Perfumes, cosmetics, and other toilet preparations	500
2834	Pharmaceutical preparations	750
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2893	Printing ink	250
2841	Soap and other detergents, except specialty cleaners	750
2842	Specialty cleaning, polishing, and sanitation preparations, except soap and detergents	500
2843	Surface active agents, finishing agents, sulfonated oils and assistants	250
2824	Synthetic organic fibers, except cellulosic	1,000
2822	Synthetic rubber (vulcanizable elastomers)	1,000
	Major Group 36—Electrical Machinery, Equipment, and Supplies:	
3624	Carbon and graphite products	750
3672	Cathode ray picture tubes	750
3643	Current carrying wiring devices	500
3634	Electric housewares and fans	750
3641	Electric lamps	1,000
3611	Electric measuring instruments and test equipment	500
3694	Electrical equipment for internal combustion engines	750
3629	Electrical industrial apparatus, n.e.c	500
3699	Electrical machinery, equipment and supplies, n.e.c	500
3679	Electronic components and accessories, n.e.c	500
3639	Household appliances, n.e.c	500
3631	Household cooking equipment	750
3633	Household laundry equipment	1,000
3632	Household refrigerators and home and farm freezers	1,000
3635	Household vacuum cleaners	750
3822	Industrial controls	750
3642	Lighting fixtures	250
3621	Motors and generators	1,000
3644	Noncurrent carrying wiring devices	500
3652	Phonograph records	750
3612	Power, distribution and specialty transformers	750
3692	Primary batteries, dry and wet	1,000

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
3651	Radio and television receiving sets, except communication types	750
3671	Radio and television receiving type electron tubes, except cathode ray	1,000
3662	Radio and television transmitting—signaling, and detection equipment, and apparatus [2]	750
3693	Radiographic X-ray, fluoroscopic X-ray, therapeutic X-ray, and other X-ray apparatus and tubes	500
3674	Semiconductors and related devices	500
3636	Sewing machines	750
3691	Storage batteries	500
3613	Switchgear and switchboard apparatus	750
3661	Telephone and telegraph apparatus	1,000
3673	Transmitting, industrial and special purpose electron tubes	750
3623	Welding apparatus	250
	Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment:	
3446	Architectural and ornamental metal work	250
3452	Bolts, nuts, screws, rivets and washers	500
3479	Coating, engraving, and allied services, n.e.c	250
3496	Collapsible tubes	250
3421	Cutlery	500
3471	Electroplating, plating, polishing, anodizing and coloring	250
3431	Enameled iron and metal sanitary ware	750
3499	Fabricated metal products, n.e.c	250
3498	Fabricated pipe and fabricated pipe fittings	250
3443	Fabricated platework (boiler shops)	250
3441	Fabricated structural steel	250
3423	Hand and edge tools, except machine tools and hand saws	250
3425	Hand saws and saw blades	250
3429	Hardware, n.e.c	250
3433	Heating equipment, except electric	500
3411	Metal cans	1,000
3442	Metal doors, sash, frames, molding, and trim	250
3497	Metal foil and leaf	500
3491	Metal shipping barrels, drums, kegs, and pails	500
3461	Metal stampings	250
3481	Miscellaneous fabricated wire products	250
3449	Miscellaneous metal work	250
3432	Plumbing fixture fittings and trim (brass goods)	500
3492	Safes and vaults	500
3451	Screw machine products	250
3444	Sheet metal work	250
3493	Steel springs	500
3494	Valves and pipe fittings, except plumbers' brass goods	500
	Major Group 20—Food and Kindred Products:	
2094	Animal and marine fats and oils	250
2063	Beet sugar	750
2052	Biscuit, crackers, and pretzels	750
2045	Blended and prepared flour	500
2086	Bottled and canned soft drinks and carbonated waters	250
2051	Bread and other bakery products, except biscuit, crackers, and pretzels	250
2071	Candy and other confectionery products	250
2061	Cane sugar, except refining only	250
2062	Cane sugar refining	750
2031	Canned and cured seafoods	250
2033	Canned fruits, vegetables, preserves, jams, and jellies	500
2032	Canned specialties	1,000
2043	Cereal preparations	1,000
2022	Cheese, natural and processed	250
2073	Chewing gum	500
2072	Chocolate and cocoa products	500
2023	Condensed and evaporated milk	500
2091	Cottonseed oil mills	250
2021	Creamery butter	250
2085	Distilled, rectified, and blended liquors	750

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
2034	Dried and dehydrated fruits and vegetables	500
2087	Flavoring extracts and flavoring sirups, n.e.c.	500
2041	Flour and other grain mill products	500
2026	Fluid milk	500
2099	Food preparations, n.e.c.	250
20991	Desserts (ready-to-mix)	500
20994	Baking powder and yeast	500
2036	Fresh or frozen packaged fish	250
2037	Frozen fruits, fruit juices, vegetables and specialities	500
2024	Ice cream and frozen desserts	500
2098	Macaroni, spaghetti, vermicelli, and noodles	250
2083	Malt	250
2082	Malt liquors	500
2097	Manufactured ice	250
2011	Meatpacking plants	500
2035	Pickled fruits and vegetables; vegetable sauces and seasonings; salad dressings	250
2015	Poultry and small game dressing and packing, wholesale	250
2042	Prepared feeds for animals and fowls	250
2044	Rice milling	250
2095	Roasted coffee	250
2013	Sausage and other prepared meat products	500
2006	Shortening, table oils, margarine, and other edible fats and oils, n.e.c.	750
2092	Soybean oil mills	500
2068	Vegetable oil mills, except cottonseed and soybean	1,000
2046	Wet corn milling	750
2084	Wines, brandy, and brandy spirits	250
	Major Group 25—Furniture and Fixtures:	
2599	Furniture and fixtures, n.e.c.	250
2519	Household furniture, n.e.c.	250
2515	Mattresses and bedsprings	250
2514	Metal household furniture	250
2522	Metal office furniture	500
2542	Metal partitions, shelving, lockers, and office and store fixtures	250
2531	Public building and related furniture	250
2591	Venetian blinds and shades	250
2511	Wood household furniture, except upholstered	250
2512	Wood household furniture, upholstered	250
2521	Wood office furniture	250
2541	Wood partitions, shelving, lockers, and office and store fixtures	250
	Major Group 31—Leather and Leather Products:	
3131	Boot and shoe cut stock and findings	250
3141	Footwear, except house slippers and rubber footwear	500
3142	House slippers	250
3121	Industrial leather belting and packing	250
3151	Leather dress, semidress, and work gloves	250
3199	Leather goods, n.e.c.	250
3111	Leather tanning and finishing	250
3161	Luggage	250
3172	Personal leather goods, except handbags and purses	250
3171	Women's handbags and purses	250
	Major Group 24—Lumber and Wood Products, Except Furniture	250
	Major Group 35—Machinery, Except Electrical:	
3581	Automatic merchandising machines	250
3562	Ball and roller bearings	750
3564	Blowers, exhaust and ventilating fans	250
3574	Calculating and accounting machines, except electronic computing equipment	1,000
3582	Commercial laundry, drycleaning, and pressing machines	250
3531	Construction machinery and equipment	750
3535	Conveyors and conveying equipment	250

See footnotes at end of table.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
3573	Electronic computing equipment	1,000
3534	Elevators and moving stairways	500
3522	Farm machinery and equipment	500
3551	Food products machinery	250
3569	General industrial machinery and equipment, n.e.c.	250
3536	Hoists, industrial cranes and monorail systems	500
3565	Industrial patterns	250
3567	Industrial process furnaces and ovens	250
3537	Industrial trucks, tractors trailers, and stackers	750
3519	Internal combustion engines, n.e.c.	1,000
3545	Machine tool accessories and measuring devices	250
35452	Precision-measuring tools	500
3541	Machine tools, metal cutting types	500
3542	Machine tools, metal forming types	500
3586	Measuring and dispensing pumps	500
3566	Mechanical power transmission equipment, except ball and roller bearings	500
3548	Metal working machinery, except machine tools	500
3532	Mining machinery and equipment, except oilfield machinery and equipment	500
3599	Miscellaneous machinery, except electrical	250
3579	Office machines, n.e.c.	500
3533	Oilfield machinery and equipment	500
3554	Paper industries machinery	250
3555	Printing trades machinery and equipment	500
3561	Pumps, air and gas compressors, and pumping equipment	500
3585	Refrigerators; refrigeration machinery, except household; and complete air-conditioning units	750
3576	Scales and balances, except laboratory	250
3589	Service industry machines, n.e.c.	250
3544	Special dies and tools, die sets, jigs, and fixtures	250
3550	Special industry machinery, n.e.c.	250
3511	Steam engines; steam, gas, and hydraulic turbines; and steam, gas, and hydraulic turbine generator set units	1,000
3552	Textile machinery	250
3572	Typewriters	1,000
3553	Woodworking machinery	250
	Major Group 39—Miscellaneous Manufacturing Industries:	
3991	Brooms and brushes	250
3963	Buttons	250
3955	Carbon paper and inked ribbons	250
3943	Children's vehicles, except bicycles	250
3961	Costume jewelry and costume novelties, except precious metal	250
3942	Dolls	250
3962	Feathers, plumes and artificial flowers	250
3941	Games and toys, except dolls and children's vehicles	250
3912	Jewelers' findings and materials	250
3911	Jewelry; precious metal	250
3913	Lapidary work and cutting and polishing diamonds	25
3952	Lead pencils, crayons, and artists' materials	250
3996	Linoleum, asphalted-felt base, and other hard surface floor coverings, n.e.c.	750
3999	Manufacturing industries, n.e.c.	250
3953	Marking devices	250
39993	Matches	500
3994	Morticians' goods	250
3931	Musical instruments and parts	500
3964	Needles, pins, hooks and eyes, and similar notions	250
3951	Pens, pen points, fountain pens, ball point pens, mechanical pencils and parts	500
3993	Signs and advertising displays	250
3914	Silverware and plated ware	500

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
3949	Sporting and athletic goods, n.e.c.	250
	Major Group 19—Ordnance and Accessories:	
1929	Ammunition, except for small arms, n.e.c.	250
1955	Guided missiles and space vehicles, completely assembled	250
1911	Guns, howitzers, mortars, and related equipment	250
1999	Ordnance and accessories, n.e.c.	250
1941	Sighting and fire-control equipment	250
1951	Small arms	1,000
1961	Small arms ammunition	1,000
1931	Tanks and tank components	1,000
	Major Group 26—Paper and Allied Products:	
2643	Bags, except textile bags	500
2661	Building paper and building board mills	750
2649	Converted paper and paperboard products, n.e.c.	500
2653	Corrugated and solid-fiber boxes	250
2645	Die cut paper and paperboard; and cardboard	250
2642	Envelopes	250
2655	Fiber cans, tubes, drums, and similar products	250
2651	Folding paperboard boxes	250
2641	Paper coating and glazing	500
2621	Paper mills, except building-paper mills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2611	Pulp mills	750
2654	Sanitary food containers	750
2647	Sanitary paper products	500
2652	Set-up paperboard boxes	250
2644	Wallpaper	250
	Major Group 29—Petroleum Refining and Related Industries:	
2952	Asphalt felts and coatings	750
2992	Lubricating oils and greases	500
2951	Paving mixtures and blocks	250
2911	Petroleum refining [2]	1,000
2999	Products of petroleum and coal, n.e.c.	250
	Major Group 33—Primary Metal Industries:	
3361	Aluminum castings	250
3312	Blast furnaces (including coke ovens) steel works, and rolling mills	1,000
3362	Brass, bronze, copper, copper base alloy castings	250
3316	Cold rolled sheet, strip and bars	1,000
3357	Drawing and insulating of nonferrous wire	1,000
3313	Electrometallurgical products	750
3321	Gray iron foundries	500
3391	Iron and steel forgings	500
3322	Malleable iron foundries	500
3369	Nonferrous castings, n.e.c.	250
3392	Nonferrous forgings	250
3399	Primary metal industries, n.e.c.	750
3334	Primary production of aluminum	1,000
3331	Primary smelting and refining of copper	1,000
3332	Primary smelting and refining of lead	1,000
3339	Primary smelting and refining of nonferrous metals, n.e.c.	750
3333	Primary smelting and refining of zinc	750
3352	Rolling, drawing, and extruding of aluminum	750
3351	Rolling, drawing, and extruding of copper	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3341	Secondary smelting, refining, and alloying of nonferrous metals and alloys	250
3323	Steel foundries	500
3317	Steel pipe and tubes	1,000
3315	Steel wire drawing and steel nails and spikes	1,000
	Major Group 27—Printing and Publishing Industries	250
	Major Group 38—Professional, Scientific and Controlling Instruments: Photographic and Optical Goods: Watches and Clocks:	

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
3822	Automatic temperature controls	500
3843	Dental equipment and supplies	250
3811	Engineering, laboratory, and scientific and research instruments and associated equipment	500
3821	Mechanical measuring and controlling instruments, except automatic temperature controls	500
3851	Ophthalmic goods	250
3831	Optical instruments and lenses	250
3842	Orthopedic, prosthetic, and surgical appliances and supplies	250
3861	Photographic equipment and supplies	500
3841	Surgical and medical instruments and apparatus	250
3872	Watchcases	250
3871	Watches, clocks, and parts except watchcases	500
	Major Group 30—Rubber and Miscellaneous Plastics Products:	
3069	Fabricated rubber products, n.e.c.	500
3079	Miscellaneous plastics products	250
3031	Reclaimed rubber	750
3021	Rubber footwear	1,000
3011	Tires and inner tubes	1,000
	Major Group 32—Stone, Clay, and Glass Products:	
3291	Abrasive products	250
3292	Asbestos products	750
3251	Brick and structural clay tile	250
3241	Cement, hydraulic	750
3253	Ceramic wall and floor tile	500
3255	Clay refractories	250
3271	Concrete block and brick	250
3272	Concrete products, except block and brick	250
3281	Cut stone and stone products	250
3263	Fine earthenware (whiteware), table and kitchen articles	500
3211	Flat glass	1,000
3221	Glass containers	750
3231	Glass products, made of purchased glass	250
3275	Gypsum products	1,000
3274	Lime	500
3296	Mineral wool	750
3295	Minerals and earths, ground or otherwise treated	250
3297	Nonclay refractories	750
3299	Nonmetallic mineral products, n.e.c.	250
3264	Porcelain electrical supplies	500
3269	Pottery products, n.e.c.	250
3229	Pressed and blown glass and glassware, n.e.c.	750
3273	Ready-mixed concrete	250
3293	Steam and other packing and pipe and boiler covering	500
3259	Structural clay products, n.e.c.	250
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3262	Vitreous china table and kitchen articles	500
	Major Group 22—Textile Mill Products:	
2295	Artificial leather, oilcloth, and other impregnated and coated fabrics, except rubberized	250
2211	Broad-woven fabric mills, cotton	1,000
2221	Broad-woven fabric mills, man-made fiber and silk	500
2231	Broad-woven fabric mills, wool: including dyeing and finishing	250
2279	Carpets, rugs, and mats, n.e.c.	500
2298	Cordage and twine	250
2269	Dyeing and finishing textiles, n.e.c.	250
2291	Felt goods, except woven felts and hats	250
2301	Finishers of broad-woven fabrics of cotton	500
2262	Finishers of broad-woven fabrics of man-made fiber and silk	500
2251	Full-fashioned hosiery mills	250
2256	Knit fabric mills	250
2253	Knit outerwear mills	250
2254	Knit underwear mills	250
2259	Knitting mills, n.e.c.	250
2202	Lace goods	250
2241	Narrow fabrics and other smallwares mills: cotton, wood, silk, and man-made fiber	250
2392	Paddings and upholstery filling	250

See footnotes at end of table.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
2294	Processed waste and recovered fibers and flock	250
2252	Seamless hosiery mills	250
2299	Textile goods, n.e.c.	250
2284	Thread mills	500
2296	Tire cord and fabric	1,000
2272	Tufted carpets and rugs	500
2297	Wool scouring, worsted combing, and tow to top mills	250
2271	Woven carpets and rugs	750
2283	Yarn mills, wool, including carpet and rug yarn	250
2281	Yarn spinning mills, cotton, man-made fibers and silk	500
2282	Yarn throwing, twisting, and winding mills, cotton, man-made fibers and silk	250
	Major Group 21—Tobacco Manufactures:	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Tobacco (chewing and smoking) and snuff	500
2141	Tobacco stemming and redrying	500
	Major Group 37—Transportation Equipment:	
3721	Aircraft [4]	1,500
3722	Aircraft engines and engine parts [2]	1,000
3729	Aircraft parts and auxiliary equipment, n.e.c. [2]	1,000
3723	Aircraft propellers and propeller parts	1,000
3732	Boat building and repairing	250
3741	Locomotives and parts	1,000
3717	Motor vehicles and parts [5]	1,000
3751	Motorcycles, bicycles, and parts	500
3742	Railroad and street cars	750
3731	Shipbuilding and repairing	1,000
3791	Trailer coaches	250
3799	Transportation equipment, n.e.c.	250
3713	Truck and bus bodies	250
3715	Truck trailers	500

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

[2] Guided missile engines and engine parts are classified in SIC 3722. Missile control systems are classified in SIC 3662.

[3] Together with its affiliates does not employ more than 1,000 persons and does not have more than 30,000 barrels-per-day capacity from owned and leased facilities.

[4] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations "'Maintenance' means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. 'Preventive maintenance' means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

[5] The three Standard Industrial Classification industries (3711, 3712, and 3714) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)

Census classification code	Industry	Employment size standard (number of employees) [1]
	Major Group 19—Ordnance and Accessories:	
1925	Guided missiles and space vehicles, completely assembled	1,000
1931	Tanks and tank components	1,000
1951	Small arms	1,000
1961	Small arms ammunition	1,000
	Major Group 20—Food and Kindred Products:	
2011	Meat packing plants	750
2026	Fluid milk	750
2032	Canned specialties	1,000

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
2043	Cereal preparations	1,000
2046	Wet corn milling	750
2052	Biscuits, crackers, and pretzels	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2085	Distilled, rectified, and blended liquors	750
2093	Vegetable oil milk, except cottonseed and soybean	1,000
2096	Shortening, table oils, margarine and other edible fats and oils, n.e.c.	750
	Major Group 21—Tobacco Manufactures:	
2111	Cigarettes	1,000
	Major Group 22—Textile Mill Products:	
2211	Broad-woven fabric mills, cotton	1,000
2261	Finishers of broad-woven fabrics of cotton	1,000
2271	Woven carpets and rugs	750
2295	Artificial leather, oilcloth, and other impregnated and coated fabrics, except rubberized	1,000
2296	Tire cord and fabric	1,000
	Major Group 26—Paper and Allied Products:	
2661	Building paper and building board mills	750
2621	Papermills, except building papermills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2611	Pulp mills	750
2654	Sanitary food containers	750
	Major Group 28—Chemicals and Allied Products:	
2812	Alkalies and chlorine	1,000
2823	Cellulose man-made fibers	1,000
2815	Dyes, dye (cyclic) intermediates and organic pigments (lakes and toners)	750
2892	Explosives	750
2813	Industrial gases	1,000
2819	Industrial inorganic chemicals, n.e.c.	1,000
2818	Industrial organic chemicals, n.e.c.	1,000
2816	Inorganic pigments	1,000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2841	Soap and other detergents, except specialty cleaners	750
2824	Synthetic organic fibers, except cellulosic	1,000
2822	Synthetic rubber (vulcanizable elastomers)	1,000
	Major Group 29—Petroleum Refining and Related Industries: [3]	
2952	Asphalt felts and coatings	750
	Major Group 30—Rubber and Miscellaneous Plastics Products:	
3011	Tires and innertubes	1,000
30111	Passenger car and motorcycle pneumatic tires (castings)	(3)
30112	Truck and bus (and off-the-road) pneumatic tires	(3)
3031	Reclaimed rubber	750
3021	Rubber footwear	1,000
	Major Group 32—Stone, Clay, and Glass Products:	
3211	Flat glass	1,000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, n.e.c.	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3275	Gypsum products	1,000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750
	Major Group 33—Primary Metal Industries:	
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1,000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1,000
3316	Cold rolled sheet, strip and bars	1,000
3317	Steel pipe and tubes	1,000

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)—Con.

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
3331	Primary smelting and refining of copper	1,000
3332	Primary smelting and refining of lead	1,000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1,000
3339	Primary smelting and refining of nonferrous metals, n.e.c.	750
3351	Rolling, drawing, and extruding of copper	750
3352	Rolling, drawing, and extruding of aluminum	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1,000
3369	Primary metal industries, n.e.c.	750
	Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment:	
3411	Metal cans	1,000
3431	Enameled iron and metal sanitary ware	750
	Major Group 35—Machinery, Except Electrical:	
3511	Steam engines; steam, gas, and hydraulic turbines; and steam, gas, and hydraulic turbine-generator set units	1,000
3519	Internal combustion engines, n.e.c.	1,000
3531	Construction machinery and equipment	750
3537	Industrial Trucks, Tractors, Trailers and Stackers	750
3562	Ball and roller bearings	750
3574	Calculating and accounting machines, except electronic computing equipment	1,000
3573	Electronic computing equipment	1,000
3572	Typewriters	1,000
3585	Refrigerators; refrigeration machinery, except household; and complete air-conditioning units	750
	Major Group 36—Electrical Machinery, Equipment and Supplies:	
3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1,000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1,000
3633	Household laundry equipment	1,000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3641	Electric lamps	1,000
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records	750
3661	Telephone and telegraph apparatus	1,000
3662	Radio and television transmitting, signaling, and detection equipment and apparatus [4]	750
3673	Cathode ray picture tubes	750
3694	Electrical equipment for internal combustion engines	750
3692	Primary batteries, dry and wet	1,000
3671	Radio and television receiving type electron tubes, except cathode ray	1,000
3673	Transmitting, industrial, and special purpose electron tubes	750
	Major Group 37—Transportation Equipment:	
3721	Aircraft [5]	1,500
3722	Aircraft engines and engine parts [6] [8]	1,000

See footnotes at end of table.

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)—Con.

Census classification code	Industry or class of products	Employment size standard (number of employees) [1]
3723	Aircraft propellers and propeller parts	1,000
3729	Aircraft parts and auxiliary equipment, n.e.c. [6]	1,000
3741	Locomotives and parts	1,000
3717	Motor vehicles and parts [8]	1,000
37171	Passenger cars (knocked down or assembled)	(3)
3742	Railroad and street cars	750
3731	Shipbuilding and repairing	1,000
	Major Group 39—Miscellaneous Manufacturing Industries:	
3996	Linoleum, asphalted-felt-base, and other hard surface floor coverings, n.e.c.	750

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

[2] The size standard for SIC 2911 is set forth in § 121.3-8(g).

[3] The size standards for SIC 30111, 30112, and 37171 are set forth in § 121.3-8(b)(4) and § 121.3-8(b)(5), respectively, of this part.

[4] Guided missile engines and engine parts are classified in SIC 3722. Missile control systems are classified in SIC 3662.

[5] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations: "'Maintenance' means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. 'Preventive maintenance' means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

[6] The three Standard Industrial Classification industries (3711, 3712, and 3714) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

SCHEDULE C—ANNUAL SALES SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN WHOLESALING

(The following size standards are to be used when determining the size status of wholesaling concerns for the purpose of SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for sections 501 and 502 loans and SBIC assistance.) Where code is followed by letter, size standard applies only to class of product designated.)

Industry or subindustry code	Industry, subindustry or class of products	Annual sales size standard (maximum) (in millions)
5099a	Amusement, sporting goods	$10
5091a	Coal	10
5086b	Construction materials (excluding lumber and millwork)	10
5082	Construction and mining machinery and equipment	10
5043	Dairy products	10
5022	Drugs, drug proprietaries, druggists' sundries	10
5064	Electrical appliances, television, and radio sets	10
5039	Footwear	10
5053	Grain	10
5049	Groceries and related products, not elsewhere classified	10
5097b	Home furnishings, floor coverings	10
5084	Industrial machinery and equipment	10
5085	Industrial supplies	10
5054	Livestock (except horses and mules)	10
5047	Meats and meat products	10
5091b	Metal service centers	10

SCHEDULE C—ANNUAL SALES SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN WHOLESALING—Continued

Industry or subindustry code	Industry, subindustry or class of products	Annual sales size standard (maximum) (in millions)
5034	Notions and other dry goods	10
5033	Piece goods (woven fabrics)	10
5096a	Printing and writing paper	10
5094	Tobacco and its products	10
5012	Automobiles and other motor vehicles	15
5029	Chemicals and allied products, not elsewhere classified	15
5081	Commercial machines and equipment	15
5052	Cotton	15
5063	Electrical apparatus and equipment, wiring supplies and construction materials	15
5083	Farm machinery and equipment	15
5042	Frozen foods	15
5041	Groceries, general line	15
5096b	Industrial and personal service paper only	15
5091c	Metal sales offices	15
5028	Paints and varnishes	15
5002	Petroleum and petroleum products	15
5014	Tires and tubes	15
5095b	Wines and distilled alcoholic spirits	15

SCHEDULE D—ANNUAL SALES SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN RETAILING

(The following size standards are to be used when determining the size status of retailing concerns for the purpose of SBA loans, displaced business loans, economic opportunities loans, and as alternate standards for sections 505 and 502 loans SBIC assistance.) Where code is followed by letter, size standard applies only to class of product designated.

Industry or subindustry code	Industry, subindustry or class of products	Annual sales size standard (maximum) (in millions)
	Major Group 56—Apparel and Accessory Stores:	
5651	Family clothing stores	$1.5
5611	Men's and boys' clothing and furnishings	1.5
5661	Shoe stores	1.5
5621	Women's ready-to-wear stores	1.5
	Major Group 55—Automotive Dealers and Gasoline Service Stations:	
5599a	Aircraft (a part of aircraft and automotive dealers, not elsewhere classified)	3.0
5511	Motor vehicle dealers (new and used cars)	3.0
5521	Motor vehicle dealers (used cars only)	3.0
	Major Group 54—Food Stores:	
5411	Grocery stores	5.0
5421a	Meat markets (a part of meat and fish (seafood) markets)	5.0
	Major Group 57—Furniture, Home Furnishings and Equipment Stores:	
5722	Household appliance stores	1.5
5732	Radio and television stores	1.5
	Major Group 53—General Merchandise:	
5311	Department stores	5.0
5321	Mail order houses	5.0
5331	Variety stores	2.0

SCHEDULE E—GOVERNMENT-OWNED TIMBER RESALE STANDARDS FOR SPECIFIC GEOGRAPHICAL AREAS

Area from which timber is cut	*Percentage of timber purchased that may be sold to other than small business*
Alaska	50 percent.

[F.R. Doc. 69-13834; Filed, Nov. 21, 1969; 8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 27—CANNED FRUITS AND FRUIT JUICES

Canned Grapefruit; Definitions and Standards of Identity, Quality, and Fill of Container

In the matter of establishing definitions and standards of identity, quality, and fill of container for canned grapefruit:

Two comments were received in response to the notice of proposed rule making in the above-identified matter that was published in the FEDERAL REGISTER of October 28, 1967 (32 F.R. 14966), on the initiative of the Commissioner of Food and Drugs. Included in the comments were suggestions, which have been substantially incorporated in the standard below, that the proposed standard be changed in certain compositional and labeling aspects to better reflect long-established grapefruit canning practice.

Therefore, on the basis of the comments received and other relevant information, the Commissioner concludes that it will promote honesty and fair dealing in the interest of consumers to adopt the proposal as set forth below. Accordingly, 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 Part 27 be amended by adding the following new sections:

§ 27.90 Canned grapefruit; identity; label statement of optional ingredients.

(a) Canned grapefruit is the food prepared from one of the optional grapefruit ingredients specified in paragraph (b) of this section and one of the optional packing media specified in paragraph (c) of this section. Such food may also contain one or more of the following optional ingredients:

(1) Spices.

(2) Flavoring, other than artificial flavoring.

(3) Lemon juice.

(4) Citric acid.

(5) Calcium chloride or calcium lactate or a mixture of the two calcium salts in a quantity reasonably necessary to firm the grapefruit sections, but in no case in a quantity such that the calcium contained in such calcium salt or mixture is more than 0.035 percent by weight of the finished food.

Such food is sealed in a container and, either before or after sealing, is so processed by heat as to prevent spoilage.

(b) The optional grapefruit ingredients referred to in paragraph (a) of this section are prepared from sound, mature grapefruit (*Citrus paradisi*) of the white-, pink-, or red-fleshed varietal group and are in the following forms of units: Whole sections or broken sections. Each such form of units prepared from a varietal group or a mixture of such forms of units is an optional grapefruit ingredient. The core, seeds, and major portions of membrane of such ingredient are removed. For the purpose of this section, a grapefruit section is considered whole when the unit is intact or an intact portion of such unit is not less than 75 percent of its apparent original size and is not excessively trimmed.

(1) For the purpose of paragraph (d) of this section, the name of the optional grapefruit ingredient is:

(i) "Sections" or "segments," if 50 percent or more of the drained weight of the food consists of whole sections.

(ii) "Broken sections" or "broken segments," if less than 50 percent of the drained weight of the food consists of whole sections.

(2) The drained weight is determined by the method prescribed in the standard of fill of container for canned grapefruit set forth in § 27.92(b).

(c) (1) The optional packing media referred to in paragraph (a) of this section are:

(i) Water.

(ii) Grapefruit juice.

(iii) Slightly sweetened water.

(iv) Sirup.

(v) Slightly sweetened grapefruit juice.

(vi) Grapefruit juice sirup.

As used in this subparagraph the term "water" means, in addition to water, any mixture of water and grapefruit juice; and the term "grapefruit juice" means the fresh or canned expressed juice of mature grapefruit to which no water is added, directly or indirectly.

(2) Each of the packing media in subdivisions (iii) to (vi), inclusive, in subparagraph (1) of this paragraph is prepared with a liquid ingredient and a sweetening ingredient. Water is the liquid ingredient from which packing media in subdivisions (iii) and (iv) are prepared, and grapefrut juice is the liquid ingredient from which packing media in subdivisions (v) and (vi) are prepared. The sweetening ingredient from which packing media in subdivisions (iii) to (vi), inclusive, are prepared is one or more of the following: Sugar, invert sugar sirup, dextrose, corn sirup, dried corn sirup, glucose sirup, or dried glucose sirup. A packing medium prepared with grapefruit juice and any invert sugar sirup or corn sirup other than dried corn sirup, or glucose sirup other than dried glucose sirup, is considered to be prepared with water as the liquid ingredient.

(3) The respective densities of packing media in subparagraph (1) (iii) to (vi), inclusive, of this paragraph as measured on the Brix hydrometer 15 days or more after the grapefruit are canned, are as follows:

(i) Packing media in subparagraph (1) (iii) and (v) of this paragraph: Brix measurement 12° or more, but less than 16°.

(ii) Packing media in subparagraph (1) (iv) and (vi) of this paragraph: Brix measurement 16° or more.

(d) The name of the food is "grapefruit," "pink grapefruit," or "red grapefruit," as appropriate for the varietal group used, preceded or followed by the designation of the optional form of the grapefruit ingredient as set forth in paragraph (b)(1) of this section. Further, the principal display panel of the label shall bear the name of the optional packing medium used as designated in paragraph (c) of this section preceded by "in" or "packed in." Whenever the packing media in paragraph (c)(1) (iii) through (vi) of this section are used, the optional sweetening ingredients from which they are prepared shall be declared on the label in order of predominance by weight by their common or usual names. Wherever the word "sirup" is used, it may be alternately spelled "syrup." When any of the optional ingredients permitted by one of the following specified subparagraphs of paragraph (a) of this section are used, the label shall bear the words set forth below after the number of such subparagraph:

(1) "Spiced" or "spice added" or "with added spice," or in lieu of the word "spice," the common name of the spice.

(2) "Flavoring added" or "with added flavoring," or in lieu of the word "flavoring," the common name of the flavoring.

(3) "Seasoned with lemon juice."

(4) "Citric acid added" or "with added citric acid."

(5) "Calcium _____ added to improve firmness," the blank being filled in with the word "salt" or "salts," or in lieu thereof, the word "chloride" or "lactate" or the words "chloride and lactate," as the case may be.

When two or more of the optional ingredients specified in paragraph (a) (1), (2), (3), and (4) of this section are used, such words may be combined; for example, "with added cloves, cinnamon oil, and citric acid, and seasoned with lemon juice."

(e) The words and statements specified in paragraph (d) of this section showing the optional ingredients present shall be listed on the principal display panel or panels or any appropriate information panel without obscuring design, vignettes, or crowding. The declaration shall appear in conspicuous and easily legible letters of boldface print or type the size of which shall be not less than one-half of that required by Part 1 of this chapter for the statement of net quantity of contents appearing on the label, but in no case less than one-sixteenth of an inch in height. The entire ingredient statement shall appear on at least one panel of the label and in lines generally parallel to the base on which the container rests as it is designed to be displayed.

§ 27.91 Canned grapefruit; quality; label statement of substandard quality.

(a) The standard of quality for canned grapefruit is as follows:

(1) The food is free from extraneous material such as leaves, portions of leaves, and pieces of peel.

(2) Each 20 ounces of the finished food contains not more than:

(i) An aggregate area of 3 square inches of tough membrane or albedo on the units.

(ii) Twelve seeds including not more than three large seeds. A seed, whether or not fully developed, is considered a seed when any portion thereof measures more than three-sixteenths inch in any dimension. A seed is considered a large seed when it measures more than three-eights inch in any dimension.

(3) Not more than 15 percent by weight of the drained grapefruit may be blemished units. A unit is considered blemished when a grapefruit section or any portion thereof is damaged by lye peeling, by discoloration, or by other visible injury. The drained weight is determined by the method prescribed in the standard of fill of container for canned grapefruit set forth in § 27.92(b).

(b) If the quality of canned grapefruit falls below the standard prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard quality specified in § 10.7(a) of this chapter, in the manner and form therein specified; but in lieu of such general statement of substandard quality, the label may bear the alternative statement "Below standard in quality ----------," the blank being filled in with the words specified after the corresponding number of each clause of paragraph (a) of this section which such canned grapefruit fails to meet, as follows:

(1) Contains extraneous material.
(2) (i) Excessive tough membrane.
(ii) Excessive seeds.
(3) Excessive blemished units.

Such alternative statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "grapefruit" and any other words and statements required or authorized to appear with such name by § 27.90.

§ 27.92 Canned grapefruit; fill of container; label statement of substandard fill.

(a) The standard of fill of container for canned grapefruit is a fill such that:

(1) The fill of grapefruit and packing medium, as determined by the general method for fill of container prescribed in § 10.6(b) of this chapter, is not less than 90 percent of the total capacity of the container.

(2) The drained weight of the grapefruit ingredient, as determined by the method prescribed in paragraph (b) of this section, is not less than 53 percent of the water capacity of the container, as determined by the general method for water capacity of containers prescribed in § 10.6(a) of this chapter.

(b) Drained weight is determined by the following method: Tilt the opened container so as to distribute the contents evenly over the meshes of a circular sieve which has previously been weighed. The diameter of the sieve is 8 inches if the quantity of contents of the container is less than 3 pounds and 12 inches if such quantity is 3 pounds or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth under "2380 Micron (No. 8)" in table I of "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards. Without shifting the material on the sieve, incline the sieve at an angle of 17° to 20° to facilitate drainage. Two minutes after the drainage begins, weigh the sieve and drained grapefruit. The weight so found, less the weight of the sieve, shall be considered to be the weight of the drained grapefruit.

(c) If canned grapefruit falls below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the statement of substandard fill specified in § 10.7(b) of this chapter, in the manner and form therein specified.

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 120 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.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: November 13, 1969.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 69-13891; Filed, Nov. 21, 1969; 8:46 a.m.]

Title 7—AGRICULTURE

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

[Orange Reg. 63, Amdt. 1]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905, 34 F.R. 12426), regulating the handling of oranges, grapefruits, tangerines, and tangelos grown 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 of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendation by the committees reflects their appraisal of the potential marketing situation during the week in which Thanksgiving Day occurs and for the period immediately following. Historically, there has been heavy purchasing of fresh oranges in the terminal markets prior to Thanksgiving Day followed by a period of slow movement immediately following the holiday. Inordinate shipments in the period of slow movement tend to depress market prices and returns to growers. Hence, the curtailment of orange shipments, as hereinafter specified, is necessary to prevent a buildup of orange supplies in the markets during and immediately following the Thanksgiving Day week in order to prevent unduly depressed market prices and returns to growers.

(3) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than November 25, 1969. Domestic shipments of Florida oranges are currently regulated pursuant to Orange Regulation 63 (34 F.R. 14379) and, unless sooner terminated or modified, will continue to be so regulated through September 13, 1970; determinations as to need for, and extent of, regulation under § 905.52(a)(3) of the order must await the development of the crop and the availability of information about the demand for such fruit; the recommendation and supporting information for limiting the total quantity of fresh oranges by prohibiting the shipment thereof, pursuant to said section, during the period November 25 through November 27, 1969, as herein provided, were promptly submitted to the Department after an open meeting on November 11, 1969, to consider recommendations for such regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; supplemental information was submitted on November 18, 1969; information regarding the provisions of the regulation recommended by the committee has been disseminated among shippers of oranges grown in the production area, and this regulation, including the effective time thereof, is identical with

the recommendation of the committees; and compliance with this regulation will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective time hereof.

Order. In paragraph (a) of § 905.513 (Orange Regulation 63; 34 F.R. 14379) the provisions of paragraph (a)(1) preceding subdivision (i) thereof are revised and a new paragraph (a)(2) is added reading as follows:

§ 905.513 Orange Regulation 63.

(a) * * *

(1) Except as otherwise provided in paragraph (a)(2), during the period September 15, 1969, through September 13, 1970, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

* * * * *

(2) During the period November 25 through November 27, 1969, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any oranges grown in the production area.

* * * * *

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

Dated, November 20, 1969, to become effective November 25, 1969.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69–13954; Filed, Nov. 21, 1969; 8:50 a.m.]

[Tangelo Reg. 38, Amdt. 1]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905; 34 F.R. 12426), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown 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 of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangelos, 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 amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the handling of tangelos grown in Florida.

Order. In § 905.518 (Tangelo Regulation 38; 34 F.R. 18354) paragraph (a)(2)(ii) is amended to read as follows:

§ 905.518 Tangelo Regulation 38.

(a) * * *

(2) * * *

(ii) Any tangelos, grown in the production area, which are smaller than $2^{9}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangelos smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the U.S. Standards for Florida Oranges and Tangelos: *Provided,* That during any week of the periods specified in this subparagraph (2), any handler may ship a quantity of tangelos which are smaller than the size prescribed in this subdivision (ii) if (*a*) the number of standard packed boxes of such smaller tangelos does not exceed 30 percent of the total shipments of tangelos by such handler during the last previous week, within the current fiscal period, in which he shipped tangelos; and (*b*) such smaller tangelos are of a size not smaller than $2^{5}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangelos smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said U.S. Standards for Florida Oranges and Tangelos.

* * * * *

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

Dated, November 19, 1969, to become effective November 24, 1969.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69–13955; Filed, Nov. 21, 1969; 8:50 a.m.]

[Tangerine Reg. 38]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905, 34 F.R. 12426), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown 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 of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendation by the committees, as to the minimum grade and sizes of tangerines in fresh shipments, reflects their appraisal of current crop and market conditions. More restrictive size regulation should be made effective no later than November 24, 1969, because fresh tangerine shipments have increased substantially during the past week and the sizes of tangerines in the developing crop have increased since the inception of seasonal regulation. Hence, a larger minimum size together with continuation of the current minimum grade, as hereinafter specified, is needed to maintain or increase returns to producers through a reduction in the marketable supply for fresh shipment while providing consumers with more desirable tangerines of larger sizes. The recommendation by the committees also reflects their appraisal of the potential marketing situation during the week in which Thanksgiving Day occurs and for the period immediately following. Historically, there has been heavy purchasing of fresh tangerines in the terminal markets prior to Thanksgiving Day followed by a period of slow movement immediately following the holiday. Inordinate shipments in the period of slow movement tend to depress market prices and returns to growers. Hence, the curtailment of tangerine shipments, as hereinafter specified, is necessary to prevent a buildup of tangerine supplies in the markets during and immediately following the Thanksgiving Day week in order to prevent unduly depressed market prices and returns to growers.

(3) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than November 24, 1969. Domestic shipments of Florida tangerines are currently regulated by grade and size pursuant to Tangerine Regulation 37 (34 F.R. 14379, 18089), and, unless sooner terminated or modified, will continue to be so regulated through September 13, 1970; determinations as to need for, and extent of, regulation under § 905.52(a)(3) of the order must await the development of the crop and the availability of information about the demand for such fruit; the recommendation and supporting information for more restrictive regulation of tangerine shipments subsequent to November 23, 1969, and for limiting the total quantity of fresh tangerines by prohibiting the shipment thereof pursuant to § 905.52(a)(3) during the period November 25 through November 27, 1969, as herein provided, were promptly submitted to the Department after an open meeting on November 18, 1969, to consider recommendations for such regulation, after

giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; information regarding the provisions of the regulation recommended by the committee has been disseminated among shippers of tangerines, grown in the production area, and this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

§ 905.519 Tangerine Regulation 38.

(a) Order: (1) Tangerine Regulation 37 (34 F.R. 14379, 18089) is hereby terminated November 24, 1969.

(2) Except as otherwise provided in subparagraph (3) of this paragraph, during the period November 24, 1969, through September 13, 1970, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, which do not grade at least U.S. No. 1; or

(ii) Any tangerines, grown in the production area, which are smaller than 2$^{2}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the U.S. Standards for Florida Tangerines: *Provided*, That during any week of the period specified in this subparagraph (2), any handler may ship a quantity of tangerines which are smaller than the size prescribed in this subdivision (ii) if (*a*) the number of standard packed boxes of such smaller tangerines does not exceed 25 percent of the total shipments of tangerines by such handler during the last previous week, within the current fiscal period, in which he shipped tangerines; and (*b*) such smaller tangerines are of a size not smaller than 2$^{1}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said U.S. Standards for Florida Tangerines.

(3) During the period November 25 through November 27, 1969, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any tangerines, grown in the production area.

(b) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade and diameter, as used herein, shall have the same meaning as is given to the respective term in the U.S. Standards for Florida Tangerines (§§ 51.1810—51.1834 of this title); the term "week" shall mean the 7-day period beginning at 12:01 a.m., local time, on Monday of one calendar week and ending at 12:01 a.m., local time, on Monday of the following calendar week.

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

Dated: November 20, 1969.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-13956; Filed, Nov. 21, 1969; 8:50 a.m.]

PART 909—GRAPEFRUIT GROWN IN ARIZONA; IMPERIAL COUNTY, CALIF.; AND THAT PART OF RIVERSIDE COUNTY, CALIF., SITUATED SOUTH AND EAST OF WHITE WATER, CALIF.

Expenses, Rate of Assessment, and Carryover of Unexpended Funds

On November 4, 1969, notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 17776) regarding proposed expenses, the proposed rate of assessment, and the proposed carryover of unexpended assessment funds, for the fiscal period August 1, 1969, through July 31, 1970, pursuant to the marketing agreement, as amended, and Order No. 909, as amended (7 CFR Part 909), regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, Calif.; and in that part of Riverside County, Calif., situated south and east of White Water, Calif. 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 Administrative Committee (established pursuant to the said amended marketing agreement and order), it is hereby found and determined that:

§ 909.208 Expenses, rate of assessment, and carryover of unexpended funds.

(a) *Expenses.* The expenses that are reasonable and necessary to be incurred by the Administrative Committee during the period August 1, 1969, through July 31, 1970, will amount to $144,750.

(b) *Rate of assessment.* The rate of assessment for such period, payable by each handler in accordance with § 909.41, is hereby fixed at $0.03 per carton, or equivalent quantity of grapefruit.

(c) *Operating reserve.* Unexpended assessment funds, in excess of expenses incurred during such period, shall be carried over as a reserve in accordance with the applicable provisions of § 909.42.

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 grapefruit grown in the designated production area 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 grapefruit handled during the aforesaid period; and (3) such period began on August 1, 1969, and said rate of assessment will automatically apply to all such grapefruit beginning with such date.

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

Dated: November 19, 1969.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-13914; Filed, Nov. 21, 1969; 8:48 a.m.]

[Lemon Reg. 402]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.702 Lemon Regulation 402.

(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.

(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 November 18, 1969.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period November 23, 1969, through November 29, 1969, are hereby fixed as follows:

(i) District 1: 18,600 cartons;

(ii) District 2: 46,500 cartons;

(iii) District 3: 134,850 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: November 20, 1969.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-13994; Filed, Nov. 21, 1969; 8:50 a.m.]

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

Expenses and Rate of Assessment

On November 7, 1969, notice of rule making was published in the FEDERAL REGISTER (34 F.R. 18043) regarding proposed expenses and the related rate of assessment for the period August 1, 1969, through July 31, 1970, 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. 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 Indian River Grapefruit Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 912.209 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Indian River Grapefruit Committee during the period August 1, 1969, through July 31, 1970, will amount to $25,000.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 912.41, is fixed at $0.005 per standard packed box of grapefruit.

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 grapefruit 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 grapefruit handled during the aforesaid period, and (3) such period began on August 1, 1969, and said rate of assessment will automatically apply to all such grapefruit beginning with such date.

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

Dated: November 19, 1969.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-13915; Filed, Nov. 21, 1969; 8:48 a.m.]

PART 959—ONIONS GROWN IN SOUTH TEXAS

Expenses and Rate of Assessment

Notice of rule making regarding the proposed expenses and rate of assessment, to be effective under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR Part 959; 34 F.R. 6439) regulating the handling of onions grown in designated counties in South Texas, was published in the October 17, 1969, FEDERAL REGISTER (34 F.R. 16627). 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 data, views, or arguments pertaining thereto not later than 30 days following publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters, including the proposals set forth in the aforesaid notice, which were recommended by the South Texas Onion Committee, established pursuant to the said marketing agreement and this part, it is hereby found and determined that:

§ 959.210 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending July 31, 1970, by the South Texas Onion Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate, will amount to $55,000.

(b) The rate of assessment to be paid by each handler in accordance with the Marketing Agreement and this part shall be one cent ($0.01) per 50-pound sack of onions, or equivalent quantity, handled by him as the first handler thereof during said fiscal period.

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

(d) Terms used in this section have the same meaning as when used in the said 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 said marketing agreement and this part require that rates of assessment fixed for a particular fiscal period shall be applicable to all assessable onions from the beginning of such period, and (2) the current fiscal period began August 1, 1969, and the rate of assessment herein fixed will automatically apply to all assessable onions beginning with such date.

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

Dated: November 18, 1969.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-13884; Filed, Nov. 21, 1969; 8:46 a.m.]

PART 967—CELERY GROWN IN FLORIDA

Expenses and Rate of Assessment

Notice of rule making regarding the proposed expenses and rate of assessment, to be effective under Marketing Agreement No. 149 and Order No. 967, both as amended (7 CFR Part 967) regulating the handling of celery grown in Florida was published in the FEDERAL REGISTER November 11, 1969 (34 F.R. 18126). 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, including the proposals set forth in the aforesaid notice which were unanimously recommended by the Florida Celery Committee, established pursuant to said marketing agreement and this part, it is hereby found and determined that:

§ 967.205 Expenses and rate of assessment.

(a) The expenses that are reasonable and likely to be incurred during the fiscal year August 1, 1969, through July 31, 1970, by the Florida Celery Committee for its maintenance and functioning and for such purposes as the Secretary may determine to be appropriate, will amount to $39,250.

(b) The rate of assessment to be paid by each handler in accordance with the marketing agreement and this part shall be one half of one cent ($0.005) per crate of celery handled by him as the first handler thereof during said fiscal year.

(c) As provided in § 967.62, unexpended income in excess of expenses for the fiscal year ending July 31, 1970, may be carried over as an operating reserve.

(d) Terms used in this section have the same meaning as when used in the 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 said marketing agreement and this part require that the rate of assessment fixed for a particular fiscal year shall be applicable to all assessable celery from the beginning of such fiscal year, and (2) the current fiscal year began on August 1, 1969, and the rate of

assessment herein fixed will automatically apply to all assessable celery beginning with such date.

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

Dated: November 19, 1969.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-13916; Filed, Nov. 21, 1969; 8:48 a.m.]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

HANDLING OF MILK IN CERTAIN DESIGNATED MARKETING AREAS

Order Amending Orders

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 in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

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

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended;

(The following determination is made with respect to the order amending the separate 62 orders regulating the handling of milk in all markets except those specified in the parenthetical phrase immediately preceding subparagraph (4) below.)

(3) The issuance of the order amending the order is favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area; and

(The following determination is made with respect to the order amending the orders regulating the handling of milk in the Michigan Upper Peninsula, North Central Iowa, Memphis, Fort Smith, and Austin-Waco marketing areas.)

(4) The issuance of the order amending the order is favored by at least three-fourths of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

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:

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 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 exis not proved to have been made from cluded from pool milk only because it 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 percent 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 8c(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 "nonpool 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 cooperatvie 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 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.

(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 § 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.

(a) * * *

(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:

* * * * *

(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 § 1003.46, subparagraphs (2), (3), (4), (7) and the introductory text of subparagraph (8) preceding subdivision (i) of paragraph (a) are revised to read as follows:

§ 1003.46 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:

(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)(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; 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 paragraph, 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 8(c)(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 (i) 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:

(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 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 cooperative 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) (*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 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 § 1004.46(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 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 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 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 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 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 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 § 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 nonmilk 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)(vi) 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 that 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.

* * * * *

(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 § 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 SOUTHEASTERN 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 subparagraphs (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 transferor 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 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 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(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 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 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 § 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:

(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;

(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 (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) (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) 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)(i);

(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.

* * * * *

(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 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 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 administrator 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 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 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, 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 § 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 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; 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 regulation 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(i).

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 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.

* * * * *

(b) * * *

(1) * * *

(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) (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)(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

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 subparagraph, 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 § 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 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 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 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.

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 (iii) 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 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 (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)(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 subparagraph, 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 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 (in-

(a) Disposed of during the month in

processing plant other than a pool plant

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 eggnog), 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 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:

(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.

* * * * *

(b) * * *

(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.

* * * * *

(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

* * * * *

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.

* * * * *

(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 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 pursuant 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 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 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 poducts 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) * * *

(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 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 sub-

12. In § 1040.66, paragraphs (a)(1)(i), total and determine

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(l) 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 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 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 NORTHWESTERN 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 paragraph (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 requalifies 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, eggnog, 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.

* * * * *

(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 (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)(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 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;

(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 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 apropriately 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 receives 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 I 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 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 (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 (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 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 8c(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 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.

2. 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, flavored 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 nonmilk 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 is 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 1046.86 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 monies 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*) (*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 § 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 (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;

* * * * *

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 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.

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; or

(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 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 paragraph 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(i).

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 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 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, concentrated 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 products 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; and

(e) Each handler operating a plant specified in paragraph (a), (b) or (c) of this section if such plant is subject to the 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)(i) 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 similiar provision of another order issud 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 qauntity 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 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 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 (i) 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 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 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 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 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-Dubuque 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 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 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;

* * * * *

(h) 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.

* * * * *

(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 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 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 an other 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:

(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 § 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 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 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.

* * * * *

(a) * * *

(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) * * *

(5) 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 (i) 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 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.

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 products 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 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 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 (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.

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 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 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 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 assocation 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 obligation 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

(i) 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

(ii) During five of the six immediately preceding delivery periods, such plant was a pool plant by virtue of meeting the specifications pursuant to subdivision (i) 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:

(i) 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

(ii) 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 asso-

ciation'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 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 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 sub-

paragraph (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 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:

* * * * *

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.

(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 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)(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;

(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:

(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 § 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 (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.

(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 (i) 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 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 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 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.

* * * * *

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 subpargaraph (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(l) 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 specified 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) * * *

(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 § 1078.46, subparagraphs (3), (4), and (7) of paragraph (a) are revised as follows:

§ 1078.46 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;

(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:

§ 1079.10 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 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) (*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 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;

(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.

* * * * *

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 pool plants qualified under § 1079.10 and 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 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 calender 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 CHATTANOOGA, 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 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, substract 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 § 1094.12(b) who operates a partially regulated distributing plant shall report in the same manner as required in paragraph (a) of this section with respect to all receipts and utilization, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk and base and excess milk. Such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively in fluid milk products and the quantity thereof which is reconstituted skim milk.

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, buttermilk, 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 6 percent or more nonmilk 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 (i) 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 subparagraph (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 areas 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)(ii) 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 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 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 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 graph (a) of this section except that

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(e), (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 (i) 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:

(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:

(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)(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;

* * * * * *

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 disposed 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, 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 § 1101.30, paragraphs (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 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 § 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) * * *

(2) 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:

(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 (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 producer 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 area 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 tranfers 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 § 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 nonmilk 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 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 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 vision (f) of paragraph (a) are revised the pounds of skim milk remaining

(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 bases 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 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 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 [illegible] § 1106.10 Fill[illegible]

(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 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 accounting period.

9. In § 1106.44, paragraph (e)(5) is revised as follows:

§ 1106.44 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 § 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 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 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

§ 1106.63 Producer-settlement fund.

(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 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 two 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 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, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i) 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.

* * * * *

(a) * * *

(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 §§ 1108.61, 1108.62, 1108.82, 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 step 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)(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 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 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:

* * * * *

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 § 1120.88, paragraphs (a) and (d) are revised as follows:

§ 1120.88 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 contains 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)(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 (4)(v) of this paragraph; and

(ii) 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)(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 § 1121.22(o) 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 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

(2) Located outside the marketing

4. Section 1125.12 is revised to read as

5. In § 1125.14, the introductory text

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 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 received 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 § 1125.80(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 (a)(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 therafter 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;

(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;

(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; and

(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(c) 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 (c) 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; and

(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, paragraphs (a)(1) and (b)(7) are 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;

* * * * *

(b) * * *

(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;

(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 § 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 by 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 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 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 (i) 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)(iv) 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 subparargaph; 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.

* * * * *

(a) * * *

(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 transferor 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 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).

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 than is disposed of on routes in such other Federal order 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 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 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 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 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)(iv) 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 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 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 nonmilk 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 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).

§ 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) * * *

(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 § 1132.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i), of paragraph (a) are revised as follows:

§ 1132.46 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 invidiual-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 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.

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 administrator, 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 transfered 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

§ 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 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 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 subtracted pursuant to subparagraphs (3)(v) or (4)(ii) 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)(i) 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 pant 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, eggnog, 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.

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;

(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)(iv) 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(l); 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 repective 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 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 other 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)(i)(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 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.

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 § 1137.46, 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 pro rata 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 pursuan. 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) * * *

(6) 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.

* * * * *

(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 § 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.

* * * * *

(a) * * *

(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 (ii) 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 subparagrpah (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) 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.

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

Effective date: January 1, 1970.

Signed at Washington, D.C., on November 18, 1969.

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 69-13837; Filed, Nov. 21, 1969; 8:45 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of the Interior

Section 213.3312 is amended to show that one position of Special Assistant to the Director, National Park Service, is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (4) is added to paragraph (h) of § 213.3312 as set out below.

§ 213.3312 **Department of the Interior.**

* * * * *

(h) *National Park Service.* * * *

(4) One Special Assistant to the Director.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 69-13886; Filed, Nov. 21, 1969; 8:46 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Q]

PART 217—INTEREST ON DEPOSITS

Miscellaneous Amendments; Correction

The document amending § 217.3(g) of this part, published in the FEDERAL REGISTER on November 13, 1969, at 34 F.R. 18157, is corrected by changing the reference in paragraph 2 from "Section 217.12" to "Section 217.128".

BOARD OF GOVERNORS,
[SEAL] ROBERT P. FORRESTAL,
Assistant Secretary.

NOVEMBER 14, 1969.

[F.R. Doc. 69-13875; Filed, Nov. 21, 1969; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 69-SW-62]

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 Raton, N. Mex., transition area.

On October 4, 1969, a notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 15488) stating the Federal Aviation Administration proposed to alter the transition area at Raton, N. Mex., which was designated (34 F.R. 13590) effective October 16, 1969.

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

Subsequent to issuance of the proposal, it was learned that the U.S. Coast and Geodetic Survey had changed the final approach radial of the VOR instrument approach procedure from the Cimarron VORTAC 038° magnetic (051° true) radial to the 037° magnetic (050° true) radial. Action is taken herein to substitute the Cimarron 050° radials for the 051° and 231° radials respectively.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., January 8, 1970, as hereinafter set forth.

In § 71.181 (34 F.R. 4637, 13590), the Raton, N. Mex., transition area is amended to read:

RATON, N. MEX.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Crews Field (lat. 36°44'30" N., long. 104°30'00" W.) excluding that portion northwest of a line 5 miles northwest of and parallel to the Cimarron VORTAC 050° radial, within 3.5 miles northwest and 6 miles southeast of the Cimarron VORTAC 050° radial extending from the 8.5-mile radius area to 17.5 miles northeast of the VORTAC, and within 3.5 miles each side of the Cimarron VORTAC 050° radial extending from 17.5 miles northeast to 8 miles northeast of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within 6.5 miles northwest of the Cimarron VORTAC 050° radial extending from the VORTAC to 45 miles northeast, within 16.5 miles southeast of the Cimarron VORTAC 050° and 230° radials extending from 1.5 miles southwest to 29 miles northeast of the VORTAC, and within 8.5 miles southeast of the Cimarron VORTAC 050° radial extending from 29 miles northeast to 45 miles northeast of the VORTAC.

(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 November 6, 1969.

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

[F.R. Doc. 69-13893; Filed, Nov. 21, 1969; 8:46 a.m.]

[Airspace Docket No. 69-SO-100]

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

Designation of Transition Area and Alteration of Control Zone and Transition Area

On October 9, 1969, a notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 15660), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Statesville, N.C., transition area and alter the Hickory, N.C., 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.

Subsequent to publication of the notice, the geographic coordinate (lat. 35°-45'36" N., long. 80°57'15" W.) for Statesville Municipal Airport was obtained from Coast and Geodetic Survey. It is necessary to alter the Statesville transition area description by inserting the geographic coordinate for the airport. 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 0901 G.m.t., February 5, 1970, as hereinafter set forth.

In § 71.181 (34 F.R. 4637), the following transition area is added:

STATESVILLE, N.C.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Statesville Municipal Airport (lat. 35°-45'36" N., long. 80°57'15" W.); within 2 miles each side of Hickory VOR 114° radial, extending from the 5-mile radius area to 3.5 miles southeast of the VOR; excluding the portion within the Hickory transition area.

In § 71.171 (34 F.R. 4557), the Hickory, N.C., control zone is amended to read:

HICKORY, N.C.

Within a 5-mile radius of Hickory Municipal Airport (lat. 34°44'30" N., long. 81°23'20" W.); within 2.5 miles each side of the 042° bearing from Hickory RBN (lat. 35°44'00" N., long. 81°23'30" W.), extending from the 5-mile radius zone to 8.5 miles northeast of the RBN; within 2 miles each side of Hickory VOR 222° radial, extending from the 5-mile radius zone to the VOR.

In § 71.181 (34 F.R. 4637), the Hickory, N.C., transition area is amended to read:

HICKORY, N.C.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Hickory Municipal Airport (lat. 35°44'30" N., long. 81°23'20" W.); within 9.5 miles southeast and 4.5 miles northwest of the 042° bearing from Hickory RBN (lat. 35°44'00" N., long. 81°23'30" W.), extending from the RBN to 18.5 miles northeast; within 3 miles each side of Hickory VOR 058° and 222° radials, extending as a corridor from the 8.5-mile radius area to 8.5 miles northeast of the VOR.

(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 November 14, 1969.

CHESTER W. WELLS,
Acting Director, Southern Region.

[F.R. Doc. 69-13894; Filed, Nov. 21, 1969; 8:46 a.m.]

[Airspace Docket No. 69-WE-68]

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

Designation of Transition Area

On October 11, 1969, a notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 15760) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a transition area for Buffalo, Wyo., airport.

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

Effective date. This amendment shall be effective 0901 G.m.t., February 5, 1970.

Issued in Los Angeles, Calif., on November 13, 1969.

LEE E. WARREN,
Acting Director, Western Region.

In § 71.181 (34 F.R. 4637) the following transition area is added:

BUFFALO, WYO.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Buffalo, Wyo., Airport (latitude 44°22'48" N., longitude 106°43'02" W.) and within 4.5 miles each side of the Crazy Woman, Wyo., VORTAC 332° radial, extending from the 6-mile radius area to 12 miles northwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 9.5 miles northeast and 5.5 miles southwest of the Crazy Woman VORTAC 332° radial, extending from 4 miles to 30 miles northwest of the VORTAC.

[F.R. Doc. 69-13895; Filed, Nov. 21, 1969; 8:47 a.m.]

[Airspace Docket No. 69-WA-57]

PART 73—SPECIAL USE AIRSPACE

Designation of Restricted Area

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to designate a new restricted area at Albemarle Sound, N.C., superjacent to Restricted Area R-5301B.

The Department of the Navy has requested, as a matter of urgent military necessity, that the ceiling of Restricted Area R-5301B be increased from 5,000 feet MSL to 12,000 feet MSL for the period November 24, 1969, through November 26, 1969, to permit the initiation, pursuance and completion of a classified defense project involving surface-to-air ordnance. The Navy stated that the classification and nature of the activity generating this requirement dictate use of this area only.

Since the Navy has stated that an urgent military need exists to accomplish a classified defense project, the Administrator finds that notice and public procedure are impractical and good cause exists for making this regulation effective in less than 30 days.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended as hereinafter set forth.

Section 73.53 (34 F.R. 4841) is amended by adding the following:

R-5301C, ALBEMARLE SOUND, N.C.

Boundaries: A circular area within a 1½-nautical-mile radius centered at lat. 36°05'25" N., long. 76°18'30" W.

Designated altitude: From 5,000 feet MSL to 12,000 feet MSL.

Time of designation: 0800 to 1700 local time, November 24, 1969, through November 26, 1969.

Using agency: Comander, Flet Air Norfolk, NAS Norfolk, Va.

This amendment becomes effective immediately, and is adopted under the authority of section 307 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 November 20, 1969.

WILLIAM M. FLENER,
Director, Air Traffic Service.

[F.R. Doc. 69-14005; Filed, Nov. 21, 1969; 10:10 a.m.]

[Docket No. 9026; Amdt. 135-11]

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

Deviation Authority

The purpose of this amendment to Part 135 of the Federal Aviation Regulations is to correct an inadvertent omission which was made in Amendment 135-9, published in the FEDERAL REGISTER on September 16, 1969 (34 F.R. 14423), and clarify existing regulations by explicitly declaring which persons are authorized to be granted deviation authority under § 135.2(e).

Section 135.2(e) states that the Administrator may authorize a deviation in operations specifications issued to an applicant under § 135.2(a) for large aircraft, from compliance with certain specified equipment requirements prescribed in Part 121 of the Federal Aviation Regulations. It has come to our attention that reference to §§ 121.312 "Materials for compartment interiors," 121.313 "Miscellaneous equipment," and 121.343 "Flight recorders," was inadvertently omitted from that section and this amendment corrects that omission. In so doing, this amendment excludes § 121.312 from those sections from which deviation will not be authorized after November 15, 1970, and will permit deviation from compliance with § 121.312 to be authorized until the first major overhaul of the aircraft cabin or refurbishing of the cabin interior is accomplished.

The preamble of Amendment 135-9 explicitly states that the deviation authority set out in § 135.2(e) will be granted only to those ATCO certificate holders who have Part 135 operating authority on the effective date of the amendment to use large aircraft in air taxi operations. However, that limitation is not clearly expressed in the wording of § 135.2(e). Accordingly, § 135.2(e) is being amended to clarify the limitation intended.

Since this amendment merely corrects an inadvertent omission, clarifies existing regulations, and imposes no additional burden on any person, I find that notice and public procedure are unnecessary, and that good cause exists for making this amendment effective on less than 30 days notice.

In consideration of the foregoing, § 135.2 of the Federal Aviation Regulations is amended effective November 15, 1969, as follows:

§ 135.2 Air taxi operations with large aircraft.

* * * * *

(c) The Administrator may authorize a deviation in operations specifications issued to an applicant under paragraph (a) of this section who is an ATCO certificate holder having authority on November 15, 1969, to operate large aircraft. However, the authority to deviate may only be granted for large aircraft identified in the operations specifications by registration number and from compliance with the requirements of §§ 121.310 (c) through (j) of this chapter "Additional emergency equipment," 121.312 of this chapter, "Materials for compartment interiors," 121.313 of this chapter, "Miscellaneous equipment," 121.343 of this chapter "Flight recorders," 121.357 of this chapter "Airborne weather radar equipment requirements," and 121.359 of this chapter "Cockpit voice recorders." Except as to § 121.312, these deviations will not be authorized in operations beyond November 15, 1970. Deviation from compliance with § 121.312 may be authorized until the date of the first major overhaul of the aircraft cabin or refurbishing of the cabin interior.

(Secs. 313(a), 601, 604, 605, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1424, 1425; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

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

J. H. SHAFFER,
Administrator.

[F.R. Doc. 69-13896; Filed, Nov. 21, 1969; 8:47 a.m.]

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NON-CONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS STANDARDS ACT)

Variation Concerning Priority in Payment of Unpaid Wages and Liquidated Damages From Withheld Funds

Pursuant to authority in section 105 of the Contract Work Hours Standards

Act (40 U.S.C. 331), having found it necessary and proper in the public interest to prevent injustice, I hereby amend § 5.14(d) of Title 29 of the Code of Federal Regulations by adding a new subparagraph as set forth below in order to establish a priority of payments for unpaid wages to affected employees and liquidated damages to the United States.

The provisions of 5 U.S.C. 553, which require notice of proposed rule making, opportunity for public participation, and delay in effective date are not applicable because these rules relate to public contracts, loans, grants, and benefits. Further, I do not believe that such procedures would serve a useful purpose here. Accordingly, this amendment shall become effective immediately.

As amended, § 5.14(d) reads as follows:

§ 5.14 Limitations, variations, tolerances, and exemptions under the Contract Work Hours Standards Act.

* * * * *

(d) *Variations.* * * *

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(Sec. 105, 76 Stat. 359; 40 U.S.C. 331)

Signed at Washington, D.C., this 18th day of November 1969.

GEORGE P. SHULTZ,
Secretary of Labor.

[F.R. Doc. 69-13921; Filed, Nov. 21, 1969; 8:49 a.m.]

Chapter V—Wage and Hour Division, Department of Labor

PART 671—COMMUNICATIONS, UTILITIES, AND TRANSPORTATION INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 607 (34 F.R. 9346), the Secretary of Labor appointed and convened Industry Committee No. 87-B for the communications, utilities and transportation industry in Puerto Rico, referred to the Committee the question of the minimum wage rate or rates to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour and Public Contracts Divisions of the Department of Labor a report containing its findings of fact and recommendation with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 87-B are hereby published, to be effective December 8, 1969, in this order amending § 671.2 of Title 29, Code of Federal Regulations. As amended, § 671.2 reads as follows:

§ 671.2 Wage rates.

* * * * *

(a) *Employments covered prior to 1961 amendments.* * * *

(1) *Other workers in motor carrier transport and express classification.* (i) The minimum wage for this classification is $1.60 an hour.

* * * * *

(b) *1961 coverage classifications.* * * *

(2) *Other seamen classification.* (i) The minimum wage for this classification is $1.60 an hour.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour for the period beginning February 1, 1970, and ending January 31, 1971, and $1.60 per hour thereafter.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064 as amended; 29 U.S.C. 205, 206, 208)

Signed at Washington, D.C., this 18th day of November 1969.

ROBERT D. MORAN,
Administrator, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor.

[F.R. Doc 69-13922; Filed, Nov. 21, 1969; 8:49 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 7—Agency for International Development, Department of State

MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter 7 of Title 41 is amended as follows:

PART 7-16—PROCUREMENT FORMS

Subpart 7-16.9—Illustrations of Forms

1. New paragraph (c) is added to Clause 17 of § 7-16.952 as follows:

(c) If (i) the effective use of printed or audiovisual teaching materials depends upon their being in the local language, and (ii) such materials are intended for technical assistance projects or activities financed by AID in whole or in part, and (iii) other funds, including U.S.-owned or U.S.-controlled local currencies, are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources in order of preference:

Countries selected from Geographic Code (see AIDPR 7-6.5201-1):

(1) 000 United States, including the AID Regional Technical Aid Centers.
(2) --- Cooperating Country, identified, when applicable, by specific reference to the name and corresponding AID geographic code.
(3) 901 Limited Free World.
(4) 899 Free World.

2. Clause 44 of § 7-16.952 is deleted in its entirety, and the following substituted therefor:

44. CONVERSION OF U.S. DOLLARS TO LOCAL CURRENCY

Upon arrival in the Cooperating Country, and from time to time as appropriate, the Contractor's Chief of Party shall consult with the Mission Director who shall provide, in writing, the procedure the Contractor and his employees shall follow in the conversion of U.S. dollars to local currency. This may include, but is not limited to, the conversion of said currency through the cognizant U.S. Disbursing Officer or Mission Controller, as appropriate.

3. Clause 8 of § 7-16.953 is deleted in its entirety, and the following substituted therefor:

8. CONVERSION OF U.S. DOLLARS TO LOCAL CURRENCY

Upon arrival in the Cooperating Country, and from time to time as appropriate, the Contractor's Chief of Party shall consult with the Mission Director who shall provide, in writing, the procedure the Contractor and his employees shall follow in the conversion of U.S. dollars to local currency. This may include, but is not limited to, the conversion of said currency through the cognizant U.S. Disbursing Officer or Mission Controller, as appropriate.

4. New paragraph (c) is added to Clause 13 of § 7-16.953 as follows:

(c) If (i) the effective use of printed or audiovisual teaching materials depends upon their being in the local language, and (ii) such materials are intended for technical assistance projects or activities financed by AID in whole or in part, and (iii) other funds, including U.S.-owned or U.S.-controlled local currencies, are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources in order of preference:

Countries selected from Geographic Code (see AIDPR 7-6.5201-1):

(1) 000 United States, including the AID Regional Technical Aid Centers.
(2) --- Cooperating Country, identified, when applicable by specific reference to the name and corresponding AID geographic code.
(3) 901 Limited Free World.
(4) 899 Free World.

5. Clause 7 of § 7-16.954 is deleted in its entirety, and the following substituted therefor:

7. CONVERSION OF U.S. DOLLARS TO LOCAL CURRENCY

Upon arrival in the Cooperating Country, and from time to time as appropriate, the Contractor's Chief of Party shall consult with the Mission Director who shall provide, in writing, the procedure the Contractor and

his employees shall follow in the conversion of U.S. dollars to local currency. This may include, but is not limited to, the conversion of said currency through the cognizant U.S. Disbursing Officer or Mission Controller, as appropriate.

6. New paragraph (c) is added to Clause 11 of § 7-16.954 as follows:

(c) If (i) the effective use of printed or audiovisual teaching materials depends upon their being in the local language, and (ii) such materials are intended for technical assistance projects or activities financed by AID in whole or in part, and (iii) other funds, including U.S.-owned or U.S.-controlled local currencies, are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources in order of preference:

Countries selected from Geographic Code (see AIDPR 7-6.5201-1):

(1) 000 United States, including the AID Regional Technical Aid Centers.
(2) --- Cooperating Country, identified, when applicable, by specific reference to the name and corresponding AID geographic code.
(3) 901 Limited Free World.
(4) 899 Free World.

PART 7-30—CONTRACT FINANCING

1. The Table of Contents for Part 7-30 is deleted in its entirety, and the following substituted therefor:

Subpart 7-30.4—Advance Payments

Sec.	
7-30.400	Scope of subpart.
7-30.403	Interest.
7-30.405	Statutory authorities.
7-30.406	Responsibility—delegation of authority.
7-30.407	The Act of August 20, 1968, Public Law 85-804—Formally advertised contracts.
7-30.410	Findings, determinations, and authorization.
7-30.413	Security, supervision, covenants.
7-30.45	Federal Reserve Letter of Credit method of disbursing advances to nonprofit institutions.
7-30.4500	Scope and applicability.
7-30.4501	Guidelines for use of the Federal Reserve Letter of Credit.
7-30.4501-1	Special provisions in a Federal Reserve Letter of Credit.
7-30.4501-2	Procedure to establish Federal Reserve Letter of Credit.
7-30.4501-3	Suspension or revocation of the Federal Reserve Letter of Credit.
7-30.4502	Contract clause—Federal Reserve Letter of Credit.

AUTHORITY: The provisions of this Part 7-30 issued under sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

2. Subpart 7-30.4 is deleted in its entirety, and the following substituted therefor:

Subpart 7-30.4—Advance Payments

§ 7-30.400 Scope of subpart.

References to nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, include nonprofit contracts with nonprofit institutions, including international organizations, for technical assistance services provided to or for another country.

§ 7-30.403 Interest.

Rates of interest may be fixed by heads of procuring activities.

§ 7-30.405 Statutory authorities.

Section 635(b) of the Foreign Assistance Act and Executive Order 11223, May 12, 1965, 30 F.R. 6635, permit the making of advance payments with respect to functions authorized by the Foreign Assistance Act. Advance payments may also be made under section 305 of the Property Act, which provides authority, not otherwise available to AID, to take a paramount lien. (See § 7-30.410.)

§ 7-30.406 Responsibility—delegation of authority.

(a) The Agency head includes the officers who are included in the definition of "Head of the Agency" set forth in AIDPR 7-1.204. The authority of the Agency head may be delegated by him to the heads of procuring activities. The authority to make the required determination and findings may be delegated to the Chiefs of Contracting Offices with respect to nonprofit contracts with nonprofit educational or research institutions, including international organizations.

(b) Prior to committing the Government to the making of an advance payment, whether by issuance of a Federal Reserve Letter of Credit or otherwise, the Contracting Officer shall obtain the advice and concurrence of the AID Auditor General (AG/AUD). If the Auditor General supplies negative advice and the Contracting Officer does not agree, the Contracting Officer shall refer the matter for a decision to the head of the procuring activity. The decision by the head of the procuring activity is considered final.

§ 7-30.407 The Act of August 28, 1968, Public Law 85-804—Formally advertised contracts.

The Act referred to does not apply to AID.

§ 7-30.410 Findings, determinations, and authorization.

(a) Except as provided in paragraph (b) of this section, the authorities to be cited for advance payments under AID contracts are section 635(b) of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223.

(b) Section 305 of the Federal Property and Administrative Services Act of 1949, as amended, should also be cited as authority in those cases in which the Contracting Officer determines that the security for advance payments should be in the form of liens in favor of the Government, paramount to all other liens, on (1) the property contracted for, (2) the balance in the account in which such advance payments are deposited, or (3) property acquired for the performance of the contract.

§ 7-30.413 Security, supervision, covenants.

The deposit of advances of funds into special bank accounts will not be required for advance payments provided under AID direct contracts with State and local governments in the United States.

§ 7-30.45 Federal Reserve Letter of Credit method of disbursing advances to nonprofit institutions.

§ 7-30.4500 Scope and applicability.

The Federal Reserve Letter of Credit, Standard Form 1193, is used to provide advances of funds under AID direct contracts with State and local governments in the United States and with educational and other nonprofit institutions, including international organizations. The Federal Reserve Letter of Credit method shall not apply unless (a) the Agency has, or expects to have, a continuing relationship of at least 1 year with a recipient organization; and (b) the annual amount required for advance financing will be at least $250,000. Documents drawing on Federal Reserve Letters of Credit, e.g., payment vouchers (Form TUS 5401) ordinarily will not be in amounts less than $10,000 or more than $1 million, but within the dollar ceiling on monthly or quarterly drawings specified in the contract. Normally the amount drawn down, including unexpended amounts previously drawn down, will not exceed $10,000 by more than the anticipated amount by which expenditures will exceed $10,000 during the 7 calendar days following the date of submission of such payment.

§ 7-30.4501 Guidelines for use of the Federal Reserve Letter of Credit.

In authorizing advance payments under the Federal Reserve Letter of Credit procedures, the Contracting Officer shall be guided by the following considerations:

(a) The cost principles contained in FPR 1-15 and AIDPF 7-15 should not be incorporated in the Federal Reserve Letter of Credit.

(b) The Federal Reserve Letter of Credit language given in § 7-30.4502 should be modified to the extent necessary to adapt its payment provisions to those of the contract for which it provides advances.

(c) Federal Reserve Letter of Credit provisions incorporated into a contract shall not, in any way, alter or eliminate any fiscal reporting requirements contained in the contract.

(d) Contracts should require such security for funds advanced as may be considered appropriate for the protection of the Government under the circumstances of each case, as set forth in FPR 1-30.413 and AIDPR 7-30.413.

(e) Manual Order 789.1, "Federal Reserve Letter of Credit Method of Disbursing Advances to Nonprofit Institutions", sets forth internal AID procedures for issuing the Federal Reserve Letter of Credit.

§ 7–30.4501–1 Special provisions in a Federal Reserve Letter of Credit.

(a) Subadvances (i.e., advances by the contractor to subcontractors) may be authorized under prime contracts with universities or other nonprofit organizations subject to the requirements of FPR 1–30.414–2(q).

(b) The salary, commissions and bonus provision in FPR 1–30.414–2(r) may also be included in Federal Reserve Letter of Credit provisions, modified as appropriate. This provision will normally be used in contracts with nonprofit organizations which are not educational institutions.

(c) Provisions, such as a limitation on the amount which may be drawn during a specified period, a limitation on the forward period for which an advance may be requested (see Treasury Circular 1075) or a limitation in the rate of disbursements, may be incorporated in the Federal Reserve Letter of Credit.

§ 7–30.4501–2 Procedure to establish Federal Reserve Letter of Credit.

When an advance of funds to finance a contract is required and the Contracting Officer decides that the Federal Reserve Letter of Credit is a suitable method, the following procedures shall be employed by the procuring activity prior to the execution of the contract:

(a) The Contracting Officer shall advise the Office of the Auditor General in writing (pursuant to § 7–30.406(b)) as early as possible in the negotiation cycle, of the name and address of the proposed contractor, the type of contract and the estimated amount thereof, the total amount and the estimated dollar ceiling of withdrawals by month of the Federal Reserve Letter of Credit, the reasons the Contracting Officer deems an advance is required, and shall request his advice and concurrence. The following additional material shall be furnished along with the request:

(1) For nonprofit educational institutions and their related organizations:

(i) Copy of the contractor's proposal.

(ii) Copy of the PIO/T.

(iii) Cash flow forecasts for the contract or grant to be financed by the advance.

(2) For all other nonprofit institutions:

(i) The material required in subparagraph (1) of this paragraph.

(ii) Copy of the balance sheet, income and expense statement, and cash flow statement for the most recent fiscal year, preferably prepared and certified by an independent public accountant, and, if available, similar financial data for the 2 previous years.

(iii) Copy of the latest available interim balance sheet and income and expense statement of the current fiscal year.

(b) (1) The Auditor General's concurrence in the amount requested or a different amount and/or rate of withdrawal, or his nonconcurrence, shall be supplied by memorandum to the Contracting Officer within 5 working days from receipt of this request.

(2) If the Auditor General does not concur, or recommends a different amount or rate of withdrawal, he shall set forth the reasons for such action. If the Contracting Officer does not agree, then the matter shall be referred to the head of the procuring activity or his delegate for final decision.

(3) In every instance, the Contracting Officer transmits for the signature of the head of the procuring activity (or his delegate pursuant to § 7–30.406(a)) appropriate findings, determinations and authorization in support of an advance, including a copy of the written advice provided by the Auditor General. If the Auditor General did not concur in the requested advance, the approval of the head of the procuring activity shall be considered the decision referred to in subparagraph (2) of this paragraph. A copy of each signed determination shall be furnished to the Office of the Auditor General.

(c) Before, or at the time of execution of the Contract, the Contractor shall furnish the name of its commercial bank and the Federal Reserve Bank or branch serving the commercial bank to the Contracting Officer. The Contractor shall also supply the specimen signature(s) of the official(s) authorized to sign payment vouchers against the Federal Reserve Letter of Credit and a specimen signature of the official of the institution who has authorized them to sign on two original Standard Forms 1194, "Authorized Signature Card for Payment Vouchers on Letters of Credit". The Contracting Officer shall then forward the following to the Controller for processing:

(1) The two signed signature cards (Standard Form 1194),

(2) A signed or conformed copy of the Contract,

(3) The name and address of the Contractor's commercial bank, and the Federal Reserve Bank or branch,

(4) A recommended dollar ceiling on monthly or quarterly drawings for inclusion on the Federal Reserve Letter of Credit when such limitation is considered desirable by the Contracting Officer, and

(5) A copy of the determination cited in paragraph (b)(3) of this section.

§ 7–30.4501–3 Suspension or revocation of the Federal Reserve Letter of Credit.

(a) The Office of the Controller notifies the Contracting Officer whenever it appears that the institution is drawing in excess of current needs or if it is delinquent more than 30 days in submitting required reports and documentation. The Contracting Officer may direct the institution to suspend issuance of payment vouchers until the credits are in line with anticipated needs or to submit the reports and documentation immediately and promptly notifies the Controller of any such action. The Contracting Officer may request the Controller to amend the Federal Reserve Letter of Credit to provide further appropriate limitation on the amount and frequency of submissions, and if the Controller concurs, the Federal Reserve Letter of Credit will be so amended.

(b) The Contracting Officer may, upon finding that the Contractor has presented payment vouchers in excess of the amount allowable or otherwise has misused the Federal Reserve Letter of Credit, request the Controller to revoke the Federal Reserve Letter of Credit. Upon receipt of such request from the Contracting Officer, the Controller, if concurring, issues a letter revoking the Federal Reserve Letter of Credit, giving it the same distribution as the original Federal Reserve Letter of Credit.

(c) If the Controller does not concur, he shall set forth the reasons for such action. If the Contracting Officer does not agree, then the matter shall be referred for a decision to the head of the procuring activity or his delegate for final decision.

§ 7–30.4502 Contract clause—Federal Reserve Letter of Credit.

The following language shall be incorporated in the Schedule of all contracts in which a Federal Reserve Letter of Credit is to be used to provide advance payments. Any substantial modification to the clause shall be treated as a deviation and processed in accordance with AIDPR 7–1.107. However, special provisions may be added to the clause, as indicated in AIDPR 7–30.4501–1.

FEDERAL RESERVE LETTER OF CREDIT FOR ADVANCE PAYMENT

A. AID shall open a Federal Reserve Letter of Credit in favor of the Contractor in the amount of $ ------ (for amending existing contracts, add the word "remaining" here) available for obligation under this Contract against which the Contractor may present payment vouchers. The amount drawn by Contractor during any calendar (month or quarter) of this Contract shall not exceed $ ------, without the prior written authorization of the Contracting Officer. The amount of the payment voucher shall not be in an amount less than $10,000 nor more than $1 million, but within the specific dollar ceiling on (monthly or quarterly) withdrawals. The amount drawn down including unexpended amounts previously drawn down, will not exceed $10,000 by more than the anticipated amount by which expenditures will exceed $10,000 during the 7[1] calendar days following the date of presentation of such payment voucher.

B. In no event shall the accumulated total of all such payment vouchers exceed the amount of the Federal Reserve Letter of Credit.

C. If at any time, the Contracting Officer determines that the Contractor has presented payment vouchers in excess of the amount or amounts allowable in A and B above, the Contracting Officer may: (1) Cause the Federal Reserve Letter of Credit to be suspended or revoked; or (2) direct the Contractor to withhold submission of payment vouchers until such time as, in the judgment of the Contracting Officer, an appropriate level of actual, necessary and allowable expenditures has occurred or will occur under this Contract; and/or (3) request the Contractor to repay to AID the amount of such excess. Upon receipt of the Contracting Officer's request for repayment of excess advance payments, the Contractor shall promptly comply with such request.

[1] May be varied—see Treasury Circular 1075.

D. Procedure for Contractor.

1. After arranging with a commercial bank of its choice for operation under this arrangement and obtaining the name and address of the Federal Reserve Bank or branch serving the commercial bank, the Contractor shall deliver three originals of Standard Form 1194, "Authorized Signature Card for Payment Vouchers on Letters of Credit" signed by those official(s) authorized to sign payment vouchers against the Federal Reserve Letter of Credit and by an official of the institution who has authorized them to sign.

2. Upon execution of the Contract, the Contractor shall receive one certified copy of the Federal Reserve Letter of Credit.

3. The Contractor shall confirm with his commercial bank that the Federal Reserve Letter of Credit has been opened and is available if funds are needed.

4. To receive payment, the Contractor shall:

(a) Periodically, although normally not during the last 5 days of the month, prepare payment vouchers (Form TUS 5401) in an original and three copies.

(b) Have the original and two copies of the voucher signed by the authorized official(s) whose signature(s) appear on the Standard Form 1194.

(c) Present the original and duplicate copy of the Form TUS 5401 to his commercial bank.

(d) Simultaneously, send the triplicate copy of the voucher to the Office of the Controller (C/FRD), AID, Washington, D.C. 20523.

(e) Retain the quadruplicate copy of the voucher.

5. After the first payment voucher (Form TUS 5401) has been processed, succeeding payment vouchers shall not be presented until the existing balance of previous payments has been expended or is insufficient to meet current needs.

6. In preparing each payment voucher, the institution assigns a voucher number in numerical sequence beginning with 1 and continuing in sequence on all subsequent payment vouchers submitted under the Federal Reserve Letter of Credit. The current status of the funds advanced under the Federal Reserve Letter of Credit shall be presented on the reverse side of the last two copies of the Form TUS 5401 in the following format:

Balance of earlier advances on hand at time of last advance	$
Plus amount of last advance	
Less disbursements subsequent to last advance	
Equals balance of all earlier advances on hand prior to receiving requested current advance	

7. A report of expenditures is prepared and submitted to the Controller at intervals specified in the Contract. This report, submitted on Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal", and supported by certifications, listing of withdrawals, and documentation as required, itemizes expenditures made, identifying funds expended by line item of the approved budget and/or category supporting the agreement.

8. The report of expenditures on Standard Form 1034 is reviewed against the contract provisions, and any disbursement improper under the Contract is disallowed. The Contractor is notified of the reason for the disallowance and is directed to adjust the next periodic report of expenditures to reflect the disallowance and to reduce its next payment voucher against the Federal Reserve Letter of Credit by the amount of the disallowance.

9. Simultaneously with the submission of the report of expenditures, the Contractor submits to the Controller a status report on the Federal Reserve Letter of Credit as of the close of the period covered by the report of expenditures. The report is prepared in the following format:

FEDERAL RESERVE LETTER OF CREDIT NO. _____

1. Total Amount of Federal Reserve Letter of Credit	$
2. Payment Vouchers present against Federal Reserve Letter of Credit	
a. Credited prior to reporting period	$
b. Credited during reporting period, TUS 5401 Nos. _____ through _____, inclusive	$
c. Presented but not credited, TUS 5401 Nos. _____ through _____, inclusive[1]	$

[1] Itemize any payment vouchers reported in Item 2c as presented but not credited.

E. Refund of excess funds.

(1) If all costs have been settled under the Contract and the Contractor fails to comply with the Contracting Officer's request for repayment of excess Federal Reserve Letter of Credit funds, the Government shall have the right, on other contracts held with the Contractor, to withhold payment of Federal Reserve Letter of Credit or other advances and/or withhold reimbursements due the Contractor in the amount of the excess being held by the Contractor.

(2) If the Contractor is still holding excess Federal Reserve Letter of Credit funds on a Contract under which the work has been completed or terminated but all costs have not been settled, the Contractor agrees to:

(a) Provide within 30 days after requested to do so by the Contracting Officer, a breakdown of the dollar omounts which have not been settled between the Government and the Contractor. (The Contracting Officer will assume no costs are in dispute if the Contractor fails to reply within 30 days);

(b) Upon written request of the Contracting Officer, return to the Government the sum of dollars, if any, which represents the difference between (1) the Contractor's maximum position on claimed costs which have not been reimbursed and (2) the total amount of unexpended funds which have been advanced under the Contract; and

(c) If the Contractor fails to comply with the Contracting Officer's request for repayment of excess Federal Reserve Letter of Credit funds, the Government shall have the right, on other contracts held with the Contractor, to withhold payment of Federal Reserve Letter of Credit or other advances and/or withhold reimbursements due the Contractor in the amount of the excess being held by the Contractor.

This amendment cancels AIDPR Notice No. 66-3 in its entirety.

This regulation is effective 90 days after publication in the FEDERAL REGISTER, but may be observed earlier.

Dated: November 14, 1969.

LANE DWINELL,
Assistant Administrator for Administration.

[F.R. Doc. 69-13878; Filed, Nov. 21, 1969; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 240]

GROUNDFISH FISHERIES

Notice of Proposed Rule Making

At its 19th Annual Meeting held in Warsaw, Poland, June 2–7, 1969, the International Commission for the Northwest Atlantic Fisheries recommended that member governments take appropriate action to adopt proposals which would permit rehabilitation of the haddock stocks in the Convention Area.

In § 240.1, additional definitions are stated.

It is proposed in § 240.2 that all commercial fishing vessels which will take haddock using any type of fishing gear be licensed.

It is proposed in § 240.5 that none of the exceptions provided in this section shall apply to §§ 240.6, 240.7, 240.8, and 240.9.

Section 240.6 provides for an annual total catch quota of haddock taken by all contracting governments conducting fishing operations in Division 4X of Subarea 4 and in Subarea 5.

Section 240.7 sets forth the proposed fishing season by date and time.

In § 240.8, proposed closed seasons and closed areas are set out. The closed seasons are based on catch limits set on the total catch of haddock taken from Division 4X, Subarea 4, and Subarea 5. An area in Subarea 4 and two areas in Subarea 5 are closed during March and April to allow spawning activities in those areas to take place undisturbed. It is proposed to close an area within Subarea 5 when red hake and silver hake congregate in large concentrations during January, February, and March as one step toward rehabilitating those particular stocks of fish.

It is proposed in § 240.9 that certain restrictions shall apply during the period when the haddock season is closed after the quota has been met. Specifically, it allows a vessel which commenced its trip prior to the closure date to land without restriction the haddock taken on that trip; a vessel commencing its trip after the closure may land only the amount permitted when engaged in another fishery; a trip commencing before December 31 and ending after January 1 shall be treated as a vessel having fished before the commencing of the new haddock year.

In § 240.10, it is proposed that all firms or corporations purchasing haddock shall maintain records of each transaction and shall transmit a copy of each receipt to an authorized representative of the U.S. Government. It further requires the master of the vessel to assert to the correctness of certain information required and the purchaser to the correctness of weight of all fish received. It further provides for the vessel master to maintain a logbook of his fishing operations and to submit a copy at the conclusion of each trip. The final proposal allows for inspection of catch and gear used by all vessels licensed under these proposals.

The proposed amendments are to be issued under the authority contained in subsection (a) of section 7 of the Northwest Atlantic Fisheries Act of 1950 (64 Stat. 1069; 16 U.S.C. 986).

Prior to the final adoption of the proposed amendments, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Director, Bureau of Commercial Fisheries, Washington, D.C., within the period of 20 days from the date of publication of this notice in the FEDERAL REGISTER.

Issued at Washington, D.C., pursuant to authority delegated to me by the Secretary of the Interior on August 26, 1966 (31 F.R. 11685), and dated November 18, 1969.

J. M. PATTON,
Acting Director,
Bureau of Commercial Fisheries.

The proposed amendments are described below.

1. Add new paragraphs (h) through (q) to § 240.1 to read as follows:

§ 240.1 Meaning of terms.

* * * * *

(h) Convention: The International Convention for the Northwest Atlantic Fisheries signed at Washington, February 8, 1949.

(i) Commission: The International Commission for the Northwest Atlantic Fisheries established pursuant to the Convention.

(j) Contracting governments: Member governments of the Conventions.

(k) Executive Secretary: The Executive Secretary of the International Commission for the Northwest Atlantic Fisheries.

(l) Bureau: The Bureau of Commercial Fisheries, Fish and Wildlife Service, U.S. Department of the Interior.

(m) Bureau Director: The Director of the Bureau of Commercial Fisheries.

(n) Regional Director: The Regional Director, North Atlantic Region, Bureau of Commercial Fisheries, Federal Building, 14 Elm Street, Gloucester, Mass. 01930. Telephone No. 617, 281–0640.

(o) Open season: The time during which haddock may lawfully be captured and taken on board a fishing vessel without limitation on the quantity permitted to be retained during each fishing voyage except as provided under § 240.5.

(p) Closed season: The time during which haddock in specified areas may not be taken or retained aboard a fishing vessel in quantities exceeding the amounts permitted to be taken and retained as an incident to fishing for other species.

(q) Demersal species: Fishes living at the bottom of the sea.

2. Add new paragraphs (d), (e), and (f) to § 240.2 to read as follows:

§ 240.2 Registration certificates.

* * * * *

(d) All commercial fishing vessels of any tonnage which shall fish for, catch and offer for sale haddock taken in any manner or which shall transport haddock otherwise than a common carrier documented by the Government of the United States, must be licensed annually by the Department of the Interior, Bureau of Commercial Fisheries.

(e) Each vessel licensed by the Department of the Interior, Bureau of Commercial Fisheries, shall carry the haddock license on board at all times while at sea, and this license shall at all times be subject to inspection by an authorized officer of the Government of the United States.

(f) The haddock license and the logbook required under § 240.10(b) shall be issued without fee by authorized officers of the Government of the United States.

3. Amend introductory paragraph of § 240.5 while leaving paragraphs (a), (b), (c), and (d) unchanged to read as follows:

§ 240.5 Certain persons and vessels exempted.

Except as otherwise provided in this section, nothing contained in §§ 240.2 to 240.4 shall apply to the following: *Provided*, That the provisions of §§ 240.6 to 240.9 are not excepted. During any closed period under § 240.8(a), the exemption provided for haddock under § 240.5(d) shall automatically be suspended during such closed period.

* * * * *

4. Add new §§ 240.6, 240.7, 240.8, 240.9, and 240.10 to read as follows:

§ 240.6 Catch limits.

An annual limitation is placed on the quantity of haddock permitted to be taken from Division 4X of Subarea 4 and Subarea 5 by the fishing vessels of all contracting governments participating in the fishery in each year during 1970, 1971, and 1972.

(a) The annual catch in Subarea 4, Division 4X shall not exceed 18,000 metric tons (round, fresh weight).

(b) The annual catch in Subarea 5 shall not exceed 12,000 metric tons (round, fresh weight).

§ 240.7 Open season.

The open season for haddock fishing in Division 4X of Subarea 4, and Sub-

area 5 shall begin annually at 0001 hours of the 1st day of January and terminate at a time and date to be determined and announced as provided in § 240.8: *Provided*, That the areas described in § 240.8 shall be closed to the use of gear capable of catching demersal species including but not limited to bottom trawls, sink gill nets, and bottom long lines from 0001 hours, March 1 to 2400 hours, April 30 during the years 1970, 1971, and 1972.

§ 240.8 Closed seasons and areas.

(a) The Executive Secretary of the International Commission for the Northwest Atlantic Fisheries maintains records of the catches of haddock made in Division 4X of Subarea 4 and Subarea 5 during the open season by the fishing vessels of all contracting governments participating in the fishery. He shall notify each contracting government of the date on which accumulative landings in Division 4X of Subarea 4 and Subarea 5 equal 80 percent of the catch limits described in § 240.6. The Director of the Bureau of Commercial Fisheries shall announce the season closure dates so that they fall within 10 days of the receipt of such notification from the Executive Secretary. Such announcement of the season closure dates shall be made by publication in the FEDERAL REGISTER. The closure date so announced shall be final except that if the Executive Secretary determines that the original notification has been affected by changed circumstances, he may substitute a further notification and the Bureau Director may in like manner announce a new season closure date.

(b) It shall be unlawful for any vessel to use, during the period from 0001 hours March 1 to 2400 hours, April 30 in the years 1970, 1971, and 1972 fishing gear capable of catching demersal species in the areas listed below. Such gear shall include but not be limited to bottom trawls, sink gill nets, and bottom long lines. The areas which this closure affects are:

(1) *Division 4X of Subarea 4.* The area that lies between 42°00′ North latitude and 43°00′ North latitude, and between 67°00′ West longitude and 64°30′ West longitude.

(2) *Subarea 5, two areas bounded by lines connecting the following coordinates.* (i) 70°00′ West longitude, 42°10′ North latitude; 69°10′ West longitude, 41°10′ North latitude; 68°30′ West longitude, 41°35′ North latitude; 69°20′ West longitude, 42°30′ North latitude.

(ii) 67°00′ West longitude, 42°20′ North latitude; 67°00′ West longitude, 41°15′ North latitude; 65°40′ West longitude, 41°15′ North latitude; 65°40′ West longitude, 42°00′ North latitude; 66°00′ West longitude, 42°20′ North latitude.

(c) It shall be unlawful to fish for or possess on board any fishing vessel red hake, *Urophycis chuss* (Walb.) and silver hake, *Merluccius bilinearis* (Mitch.) during the period January 1 to March 31, 1970, 1971, and 1972, in the area bounded by the coordinates 69°00′ West longitude and 71°40′ West longitude and 39°50′ North latitude and 40°20′ North latitude: *Provided, however*, That during this period vessels fishing for other species of fin fish, crustacea or mollusks may take on each trip during which they fish in the said area red and silver hake in amounts not to exceed 10 percent each of the total catch by weight in the said area on each trip.

§ 240.9 Restrictions applicable to fishing vessels.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, after the dates announced in the manner provided in § 240.7 for the closing of the haddock fishing seasons in Division 4X of Subarea 4 and Subarea 5, it shall be unlawful for any master or other person in charge of a fishing vessel to possess haddock on board such vessel in those areas or to land haddock taken in those areas in any port or place until the haddock fishing season reopens on January 1 next following the close of the season.

(b) Any master or other person in charge of a fishing vessel which has departed port to engage in haddock fishing prior to the date of closure of the haddock fishing season in Division 4X of Subarea 4 may continue to take and retain haddock in Division 4X of Subarea 4 without restriction as to quantity until the fishing voyage has been completed by unloading from such fishing vessel the whole or any part of the cargo of haddock and other groundfish taken during such voyage.

(c) Any master or other person in charge of a fishing vessel which has departed port to engage in haddock fishing prior to the date of closure of the haddock fishing season in Subarea 5 may continue to take and retain haddock in Subarea 5 without restriction as to quantity until the fishing voyage has been completed by unloading from such fishing vessel the whole or any part of the cargo of haddock or other groundfish taken during such voyage.

(d) Any master or other person in charge of a fishing vessel which has departed port after the date of closure of the haddock season in Division 4X of Subarea 4 or Subarea 5 may possess on board such vessel and land in any port or place haddock taken as an incident to fishing for other species, but in no event shall the haddock permitted to be possessed or landed by such vessels exceed ten percent (10%) by weight, of all other fish on board.

(e) The limitation on the quantity of incidentally caught haddock specified in paragraph (d) of this section shall be applied to any fishing vessel irrespective of its arrival in port prior or subsequent to December 31 in every case where the catch of haddock has been made during a fishing voyage begun in the closed season.

§ 240.10 Reports and recordkeeping.

(a) All persons, firms or corporations that shall buy haddock or receive haddock for any purpose from fishing or transporting vessels or from a carrier, licensed as a common carrier engaged in either intrastate or interstate commerce, shall keep and shall furnish to an authorized officer of the Government of the United States within 72 hours of sale, records of each purchase or receipt of haddock. The statistical return shall include, in addition to haddock, all other groundfish landed.

(1) The statistical return must be full and correct in all respects and shall be certified to by the signature of the master, operator, or his designated representative, and the true weight of each species landed by the vessel by a representative designated by the purchasing dealer.

(2) All records of all persons, firms, or corporations concerning the landing, purchase, receipt, and sale of haddock shall be retained for a period of 2 years and shall be open at all times to inspection by an authorized officer of the Government of the United States. Such persons, firms, or corporations may be required to certify to the correctness of such records and to support the certificate by a sworn statement.

(3) The possession by any person, firm, or corporation of haddock which such person, firm, or corporation knows to have been taken by a vessel of the United States without a valid haddock license is prohibited.

(b) The master or operator of any fishing vessel holding a license under the regulations of this part shall keep on forms furnished by the Bureau an accurate log of fishing operations showing date, type, and size of mesh of otter trawl or gill net, locality fished, duration of fishing time or tow, and the estimated poundage of each species taken at each retrieval of the fishing gear. Such logs shall be available for inspection by authorized officers of the Government of the United States. At the conclusion of each fishing trip, the duplicate log sheet shall be delivered to an authorized officer of the Government of the United States.

(1) The master or operator of any vessel licensed under the regulations in this part may be required by an authorized officer of the Government of the United States to certify to the correctness of such log record to the best of his belief and to support the certificate by a sworn statement.

(c) All obligations imposed by the regulations in this part shall be the personal responsibility of the master or operator of the vessel and he shall personally be responsible for the performance of any of said duties.

(d) For the purpose of inspection representatives of the Bureau, shall have at all times free and unobstructed access to any area on board a fishing vessel, transport vessel, or shore facility where fish are landed, handled, stored, or processed and to areas where fishing gear or parts of fishing gear are used, assembled, or stored.

[F.R. Doc. 69-13876; Filed, Nov. 21, 1969; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 724]

TOBACCO

Notice of Determinations To Be Made With Respect to Marketing Quotas for 1970–71 Marketing Year

Pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq., hereinafter referred to as the "Act"), the Secretary is preparing with respect to Cigar-binder (types 51 and 52) and Cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco, to determine and announce the respective national marketing quotas for the 1970–71 marketing year; to convert such 1970–71 marketing quotas into national acreage allotments and announce such allotments; to apportion such national acreage allotments, less a reserve of not to exceed 1 per centum thereof, through the local committees among old farms; to apportion the aforementioned reserve for use in (1) establishing acreage allotments for new farms and (2) making corrections and adjusting inequities in old farm allotments.

In conformity with the provisions of section 312(a) of the Act, the Secretary proclaimed marketing quotas on Cigar-binder and Cigar-filler and binder tobacco for the 1969–70, 1970–71, and 1971–72 marketing years (34 F.R. 1629). Cigar-binder and Cigar-filler and binder tobacco growers approved marketing quotas for the 1969–70, 1970–71, and 1971–72 marketing years (34 F.R. 5903).

Section 301(b)(15) of the Act (7 U.S.C. 1301(b)(15)) defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13, and 14;
Fire-cured tobacco, comprising type 21;
Fire-cured tobacco, comprising types 22, 23, and 24;
Dark Air-cured tobacco, comprising types 35 and 36;
Virginia Sun-cured tobacco, comprising type 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and Cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54, and 55; and
Cigar-filler tobacco, comprising type 41.

Section 301(b)(15) also provides that any one or more of the types comprising any such kind of tobacco shall be treated as a "kind of tobacco" for the purposes of the Act if the Secretary finds that there is a difference in supply and demand conditions as among such types of tobacco which results in a difference in the adjustments needed in the marketings thereof in order to maintain supplies in line with demand. Pursuant to this authority, the Secretary has determined (15 F.R. 8214) that type 46 tobacco shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports. Pursuant to such authority, the Secretary has also determined (22 F.R. 367) that Cigar-binder (types 51 and 52) tobacco, beginning with the 1957–58 marketing year, shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports. Type 45 tobacco is no longer grown.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of February 1970 with respect to Cigar-binder (types 51 and 52) tobacco and Cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco, the amount of the national marketing quota which will be in effect for the 1970–71 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of the 1970–71 national marketing quota (determined pursuant to such section) may, not later than March 1, 1970, be increased by not more than 20 per centum if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The Act (7 U.S.C. 1301 (b)) defines the "total supply" of tobacco for any marketing year as the carryover at the beginning of the marketing year (on January 1 of such marketing year in the case of Maryland tobacco), plus the estimated production in the United States during the calendar year in which such marketing year begins. "Reserve supply level" is defined as the normal supply plus 5 per centum thereof. "Normal supply" is defined as a normal year's domestic consumption and exports, plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports. A "normal year's domestic consumption" is defined as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A "normal year's exports" is defined as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment on the basis of the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed, and to apportion the national acreage allotment (less a reserve of not to exceed 1 per centum thereof for new farms and for making corrections and adjusting inequities in old farm allotments) among old farms.

The Act (7 U.S.C. 1313(g)) also provides that any acreage of tobacco harvested in excess of the farm acreage allotment for the year 1955 or any subsequent crop shall not be taken into account in establishing * * * farm acreage allotments.

The Act (7 U.S.C. 1313(i)) provides that notwithstanding any other provision of the Act, whenever after investigation the Secretary determines with respect to any kind of tobacco that a substantial difference exists in the usage or market outlets for any one or more of the types comprising such kind of tobacco and that the quantity of tobacco of such type or types to be produced under marketing quotas and acreage allotments established pursuant to this section would not be sufficient to provide an adequate supply for estimated market demands and carryover requirements for such type or types of tobacco, the Secretary shall increase the marketing quotas and acreage allotments for farms producing such type or types of tobacco in the preceeding year to the extent necessary to make available a supply of such type or types of tobacco adequate to meet such demands and carryover requirements; the increases in farm marketing quotas and acreage allotments shall be made on the basis of the production of such type or types of tobacco during the period of years considered in establishing farm marketing quotas and acreage allotments for such kind of tobacco; the additional production authorized by section 313(i) shall be in addition to the national marketing quota established pursuant to section 312 of the Act; and the increase in acreage under section 313(i) shall not be considered in establishing future * * * farm acreage allotments.

The Secretary, may, under section 317(c) of the Act, in his discretion, offer acreage-poundage quotas on Cigar binder (types 51 and 52) and Cigar filler binder (types 42–44, 53–55) tobacco for the 1970–71 marketing year if he determines that acreage poundage quotas would result in more effective marketing quotas than the program on an acreage basis. While it is not contemplated that acreage-poundage quotas will be offered on such kinds of tobacco for the 1970–71 marketing year, should the making of such a determination be considered probable for either or both of such kinds of tobacco, public hearings will be conducted in the areas where such tobacco is produced for the purpose of ascertaining and taking into consideration the attitudes of producers and other interested persons with respect to acreage-poundage quotas.

The subjects and issues involved in making the determinations described in this notice are:

1. The amount of the national marketing quota for each kind of tobacco for the 1970–71 marketing year.

2. The conversion of the national marketing quotas into national acreage

allotments and apportionment of same, less reserve of not to exceed 1 percent thereof, among old farms.

3. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments.

4. Whether the Secretary should determine that any one or more of the types comprising a kind of tobacco should be treated as a separate kind of tobacco under section 301(b)(15) of the Act.

5. Whether the Secretary should take any action under section 313(i) of the Act.

6. Whether the Secretary should offer acreage-poundage quotas on Cigar binder (types 51 and 52) or Cigar filler and binder (types 42–44, 53–55) tobacco.

Consideration will be given to data, views, and recommendations pertaining to the proposed determinations covered by this notice which are submitted in writing to the Director, Tobacco Division, Agricultural Stabilization and Conservation Service, U.S. Deaprtment of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to the notice will be made available for public inspection at such time and in a manner convenient to the public business (7 CFR 1.27(b)). All submissions must, in order to be considered, be postmarked not later than December 12, 1969.

Signed at Washington, D.C., on November 18, 1969.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 69-13882; Filed, Nov. 21, 1969; 8:45 a.m.]

[7 CFR Part 724]

TOBACCO

Notice of Determinations To Be Made With Respect to Marketing Quotas for 1970–71, 1971–72 and 1972–73 Marketing Years

Pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq., hereinafter referred to as the "Act"), the Secretary is preparing (1) with respect to Fire-cured (type 21), Fire-cured (types 22–24), and dark Air-cured (types 35 and 36) tobacco, to proclaim national marketing quotas for the 1970–71, 1971–72, and 1972–73 marketing years; to determine and announce the respective national marketing quotas for the 1970–71 marketing year; to convert such 1970–71 marketing quotas into national acreage allotments and announce such allotments; to apportion such national acreage allotments, less a reserve of not to exceed 1 percent thereof, through the local committees among old farms; to apportion the aforementioned reserve for use in (a) establishing acreage allotments for new farms and (b) making corrections and adjusting inequities in old farm allotments; and to conduct within 30 days after the proclamation and announcement of such national marketing quotas, referenda of farmers engaged in the 1969 production of each of such kinds of tobacco to determine whether they favor or oppose marketing quotas for the 1970–71, 1971–72, and 1972–73 years; and (2) with respect to Virginia Sun-cured (type 37) tobacco, to determine and announce the national marketing quota for the 1970–71 marketing year; to convert such marketing quota into a national acreage allotment and announce such allotment; to apportion such national acreage allotment, less a reserve of not to exceed 1 per centum thereof, through the local committees among old farms; to apportion the aforemention reserve for use in (a) establishing acreage allotments for new farms and (b) making corrections and adjusting inequities in old farm allotments.

Virginia Sun-cured tobacco growers approved marketing quotas for the 1968–69, 1969–70, and 1970–71 marketing years (33 F.R. 5038), and Fire-cured and dark Air-cured tobacco growers approved marketing quotas for the 1967–68, 1968–69, and 1969–70 marketing years (32 F.R. 4055).

The Act (7 U.S.C. 1312(a)) provides that the Secretary shall proclaim not later than February 1 of any marketing year, with respect to these kinds of tobacco, a national marketing quota for any of such kinds of tobacco for each of the next 3 succeeding marketing years whenever he determines with respect to such kind of tobacco—

(1) That a national marketing quota has not previously been proclaimed and the total supply as of the beginning of such marketing year exceeds the reserve supply level therefor;

(2) That such marketing year is the last year of 3 consecutive years for which marketing quotas previously proclaimed will be in effect;

(3) That amendments have been made in provisions for establishing farm acreage allotments which will cause material revision of such allotments before the end of the period for which quotas are in effect; or

(4) That a marketing quota previously proclaimed for such marketing year is not in effect because of disapproval by producers: *Provided*, That if such producers have disapproved national marketing quotas for 3 successive years subsequent to 1952, thereafter a national marketing quota shall not be proclaimed hereunder which would be in effect for any marketing year within the 3-year period for which national marketing quotas previously proclaimed were disapproved by producers, unless prior to November 10 of the marketing year one-fourth or more of the farmers engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary, in accordance with such regulations as he may prescribe, to proclaim a national marketing quota for each of the next 3 succeeding marketing years. Since the 1969–70 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for Fire-cured (type 21), Fire-cured (types 22–24), and dark Air-cured (types 35 and 36) tobacco, proclamations of quotas for the 1970–71, 1971–72, and 1972–73 marketing years, and referenda thereon, are required for these kinds of tobacco.

Section 301(b)(15) of the Act (7 U.S.C. 1301(b)(15)) defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13, and 14;
Fire-cured tobacco, comprising type 21;
Fire-cured tobacco, comprising types 22, 23, and 24;
Dark Air-cured tobacco, comprising types 35 and 36;
Virginia Sun-cured tobacco, comprising type 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and Cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54, and 55; and Cigar-filler tobacco, comprising type 41.

Section 301(b)(15) also provides that any one or more of the types comprising any such kind of tobacco shall be treated as a "kind of tobacco" for the purposes of the Act if the Secretary finds that there is a difference in supply and demand conditions as among such types of tobacco which results in a difference in the adjustments needed in the marketings thereof in order to maintain supplies in line with demand. Pursuant to this authority, the Secretary has determined (15 F.R. 8214) that type 46 tobacco shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports. Pursuant to such authority, the Secretary has also determined (22 F.R. 367) that Cigar-binder (types 51 and 52) tobacco, beginning with the 1957–58 marketing year, shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports. Type 45 tobacco is no longer grown.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of February 1970 with respect to Fire-cured (type 21), Fire-cured (types 22, 23, and 24), dark Air-cured and Virginia Sun-cured (type 37) tobacco, the amount of the national marketing quota which will be in effect for the 1970–71 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of the 1970–71 national marketing quota (determined pursuant to such section) may, not later than March 1, 1970, be increased by not more than 20 per centum if the Secretary determines that such

increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The Act (7 U.S.C. 1301(b)) defines the "total supply" of tobacco for any marketing year as the carryover at the beginning of the marketing year (on January 1 of such marketing year in the case of Maryland tobacco), plus the estimated production in the United States during the calendar year in which such marketing year begins. "Reserve supply level" is defined as the normal supply plus 5 per centum thereof. "Normal supply" is defined as a normal year's domestic consumption and exports, plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports. A "normal year's domestic consumption" is defined as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A "normal year's exports" is defined as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The Act (7 U.S.C. 1312(c)) requires that within 30 days after a national marketing quota is proclaimed under section 312(a) of the Act for the 1970–71, 1971–72, and 1972–73 marketing years for Fire-cured (type 21), Fire-cured (types 22–24), and dark Air-cured (types 35–36) tobacco, respectively, the Secretary shall conduct referenda of farmers engaged in the production of the 1969 crops of such kinds of tobacco, to determine whether such farmers are in favor of or opposed to quotas for the next 3 succeeding marketing years. (Section 301(b)(15) provides that for purposes of marketing quota referenda, Fire-cured (types 21–24) shall be considered as one kind of tobacco.) If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose such quota, such results shall be proclaimed by the Secretary and the national marketing quota so proclaimed shall not be in effect but such results shall in no way affect or limit the subsequent proclamation and subsequent submission to a referendum, as otherwise provided in section 312 of the Act (7 U.S.C. 1312), of a national marketing quota.

The Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment on the basis of the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed, and to apportion the national acreage allotment (less a reserve of not to exceed 1 per centum thereof for new farms and for making corrections and adjusting inequities in old farm allotments) among old farms.

The Act (7 U.S.C. 1313(g)) also provides that any acreage of tobacco harvested in excess of the farm acreage allotment for the year 1955 or any subsequent crop shall not be taken into account in establishing * * * farm acreage allotments.

The Act (7 U.S.C. 1313(i)) provides that notwithstanding any other provision of the Act, whenever after investigation the Secretary determines with respect to any kind of tobacco that a substantial difference exists in the usage or market outlets for any one or more of the types comprising such kind of tobacco and that the quantity of tobacco of such type or types to be produced under marketing quotas and acreage allotments established pursuant to this section would not be sufficient to provide an adequate supply for estimated market demands and carryover requirements for such type or types of tobacco, the Secretary shall increase the marketing quotas and acreage allotments for farms producing such type or types of tobacco in the preceding year to the extent necessary to make available a supply of such type or types of tobacco adequate to meet such demands and carryover requirements; the increases in farm marketing quotas and acreage allotments shall be made on the basis of the production of such type or types of tobacco during the period of years considered in establishing farm marketing quotas and acreage allotments for such kind of tobacco; the additional production authorized by section 313(i) shall be in addition to the national marketing quota established pursuant to section 312 of the Act; and the increase in acreage under section 313(i) shall not be considered in establishing future * * * farm acreage allotments.

The Secretary, may, under section 317(c) of the Act, in his discretion, offer acreage-poundage quotas on Virginia Sun-cured tobacco for the 1970–71 marketing year if he determines that acreage-poundage quotas would result in more effective marketing quotas than the program on an acreage basis. Should the making of such a determination be considered probable for this kind of tobacco, public hearings will be conducted in the areas where such tobacco is produced for the purpose of ascertaining and taking into consideration the attitudes of producers and other interested persons with respect to acreage-poundage quotas. There is no provision under which acreage-poundage quotas may be offered on Fire-cured or dark Air-cured tobacco for the 1970–71 marketing year.

The subjects and issues involved in making the determinations described in this notice are:

1. The amount of the national marketing quota for each kind of tobacco for the 1970–71 marketing year.

2. The conversion of the national marketing quotas into national acreage allotments and apportionment of same, less reserve of not to exceed 1 percent thereof, among old farms.

3. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments.

4. The date(s) or period(s) of the two referenda on quotas for the 1970–71, 1971–72, and 1972–73 marketing years for Fire-cured and dark Air-cured tobacco, and whether either or both referenda should be conducted at polling places rather than by mail ballot (31 F.R. 12011).

5. Whether the Secretary should determine that any one or more of the types comprising a kind of tobacco should be treated as a separate kind of tobacco under section 301(b)(15) of the Act.

6. Whether the Secretary should take any action under section 313(i) of the Act.

7. Whether the Secretary should offer acreage-poundage quotas on Virginia Sun-cured tobacco.

Consideration will be given to data, views and recommendations pertaining to the proposed determinations covered by this notice which are submitted in writing to the Director, Tobacco Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to the notice will be made available for public inspection at such time and in a manner convenient to the public business (7 CFR 1.27(b)). All submissions must, in order to be considered, be postmarked not later than December 22, 1969.

Signed at Washington, D.C., on November 18, 1969.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 69-13883; Filed, Nov. 21, 1969; 8:45 a.m.]

[7 CFR Part 811]

[Sugar Reg. 811]

SUGAR REQUIREMENTS AND QUOTAS

Proposed Determination for Calendar Year 1970

Notice is hereby given that the Secretary of Agriculture pursuant to authority vested in him by the Sugar Act of 1948, as amended (61 Stat. 922), is considering the determination of the amount of sugar needed to meet the requirements of consumers in the continental United States in 1970 and the establishment of sugar quotas for the calendar year 1970. Such determination is to be made during the last 3 months of this year.

In accordance with the rule making requirements of 5 U.S.C. 553 (80 Stat. 378), all persons who desire to submit written data, views, or arguments for consideration in connection with the proposed regulation shall file the same in duplicate with the Director, Sugar Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 15 days after the date of publication of this notice in the FEDERAL REGISTER.

The proposed determination of 1970 sugar requirements for the continental United States and quotas for the calendar year 1970 are set forth essentially in form and language appropriate for issuance, if adopted by the Secretary as follows:

Basis and purpose and bases and considerations. Sugar distribution for the year ended September 30, 1969, amounted to 10,825,000 tons. Recognition of the 1.1 percent expected increase in population and the usual 50,000 ton refiners' processing loss would indicate 1970 quota needs of 11 million tons before consideration of inventory variations and changes in other demand conditions.

There is no present basis for expecting either an upward or downward revision in quota inventories during 1970. Evaluation of other demand conditions is unusually complicated this year. The fruit pack may not reach the record level of 1969 especially since that was the second successive good crop. The cyclamate order could result in increased sugar usage of, say, 100,000 tons but this depends in part upon Food and Drug Administration's attitude toward mixtures of saccharin and sugar or corn syrup. Widespread use of such mixtures could have a net adverse effect on sugar consumption. Sugar distribution in 1968 and 1969 was quite high (107 pounds, raw value, per capita compared to 104 pounds, typical of earlier years) and could revert toward the lower figure especially if the rate of increase in personal income should recede.

To allow a margin for error and recognizing that quota reductions entail difficult commercial and foreign relations problems which quota increases do not, an initial determination of 10.9 million tons appears appropriate. During the first 10 months of 1969 the domestic price of raw sugar fluctuated from a low of 7.50 cents per pound as an average for July to a high of 7.89 cents per pound as an average for October. The average for the period was 7.76 cents per pound or 3.5 percent higher than the 7.50 cents per pound average for the first 10 months of 1968. In the development of this determination, consideration has been given to the desirability of obtaining generally stable prices that will carry out, over the long term, the price objectives of the Act.

In view of all of these considerations, it is hereby determined that the amount of sugar needed to meet the requirements of consumers in the continental United States during 1970 is 10,900,000 tons.

A quota of 1,150,000 short tons, raw value, is established herein for Hawaii pursuant to section 202(a)(2)(B) of the Act. Such quota is subject to adjustment pending final data on the production and marketing of sugar by Hawaii in 1969.

The quota for Southern Rhodesia has been withheld pursuant to Executive Order 11322 issued on January 5, 1967, and is prorated herein to Western Hemisphere countries pursuant to section 202(d)(1)(B) of the Act.

On the basis of evidence submitted by Peru and other information available to the Department and pursuant to section 202(d)(4) of the Act it is hereby determined that the amount of shortfall in the 1969 quota for Peru (34 F.R. 13319) was due to crop disaster and the quota for future years will not be subject to reduction by reason of such shortfall.

It is also determined that no reduction is required at this time pursuant to section 202(d)(3) and (4) of the Act in the quotas established herein for other foreign countries. This action is based on the findings heretofore made with respect to Panama (34 F.R. 13319) and on the tentative assumption as to the other countries that each country either will fill its 1969 quota within a reasonable tolerance or that facts will be submitted which will support a finding that the shortfall in the country's 1969 quota was due to force majeure.

Mainland cane processors will have an unusually large carryover of raw sugar at the beginning of 1970. Beet sugar processors for the second year in a row will be able to market a seasonally appropriate share of their annual quota during the first quarter of the year. In addition, there will be a tendency for some quota countries, especially those with sizable inventories, to market a disproportionately large share of their sugar in this premium market early in the year. Therefore, to provide a more orderly market throughout the year it is hereby determined that imports of foreign sugar be limited during the first quarter of the year to the sum of 850,000 tons and the quantity of 1970 quota sugar which entered under bond in 1969 for refining and storage, a quantity now estimated at 30,000 tons.

To give recognition to the seasonality of production and movement of sugar from the foreign countries, quota allocations to foreign countries during the first quarter of 1970 will primarily be based on average imports from such foreign countries during the first quarters of the 3-year period 1967 through 1969.

Sec.
811.80 Sugar requirements 1970.
811.81 Quotas for domestic areas.
811.82 [Reserved]
811.83 Quotas for foreign countries.
811.84 Applicability of quotas.
811.85 Restrictions on importations and marketings within quotas.

AUTHORITY: §§ 811.80 to 811.85 issued under sec. 403, 61 Stat. 932, 7 U.S.C. 1153. Interprets or applies to secs. 201, 202, 207, 208, 209, 210; 61 Stat. 923, as amended, 924, as amended, 925, as amended, 927, as amended, and 928, as amended; 7 U.S.C. 1111, 1112, 1117, 1118, and 1119.

§ 811.80 Sugar requirements 1970.

The amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1970 is hereby determined to be 10,900,000 short tons, raw value.

§ 811.81 Quotas for domestic areas.

(a) For the calendar year 1970, domestic area quotas limiting the quantities of sugar which may be brought into or marketed for consumption in the continental United States are established, pursuant to section 202(a) of the Act in column (1), and the amounts of such quotas for offshore areas that may be filled by direct-consumption sugar are established, pursuant to section 207 of the Act in column (2), as follows:

Area	Quotas (1)	Direct-consumption limits (2)
	(Short tons, raw value)	
Domestic beet sugar	3,263,333	No limit
Mainland cane sugar	1,186,667	No limit
Hawaii	1,150,000	37,278
Puerto Rico	1,140,000	163,300
Virgin Islands	15,000	0

(b) Of the quantity established in paragraph (a) of this section for Puerto Rico which may be filled by direct-consumption sugar, 126,033 short tons, raw value, may be filled only by sugar principally of crystalline structure.

§ 811.82 [Reserved]

§ 811.83 Quotas for foreign countries.

(a) The quotas or prorations for foreign countries limiting the quantities of sugar which may be imported into the continental United States during the calendar year 1970 for consumption therein and the amounts of such quotas and prorations that may be filled by direct-consumption sugar are hereby established as set forth in paragraphs (b), (c), (d), and (e) of this section.

(b) For the calendar year 1970, the quota for the Republic of the Philippines is 1,126,020 short tons, raw value, and the quantity of such quota that may be filled by direct-consumption sugar is 59,920 short tons, raw value.

(c) For the calendar year 1970, the prorations or allocations to individual foreign countries other than the Republic of the Philippines pursuant to section 202(c)(3) and (4) and section 202(d) of the act are as follows:

Production area	Basic quotas	Temporary quotas and prorations pursuant to Sec. 202(d) [1]	Total quotas and prorations
	(Short tons, raw value)		
Mexico	232,181	249,016	481,197
Dominican Republic	227,074	243,539	470,613
Brazil	227,074	243,539	470,613
Peru	181,119	194,252	375,371
British West Indies	90,710	78,130	168,840
Ecuador	33,040	35,436	68,476
French West Indies	28,535	23,634	52,169
Argentina	27,934	29,959	57,893
Costa Rica	26,732	28,670	55,402
Nicaragua	26,732	28,670	55,402
Columbia	24,029	25,772	49,801
Guatemala	22,827	24,160	46,987
Panama	16,820	18,041	34,861
El Salvador	16,520	17,718	34,238
Haiti	12,615	13,531	26,146
Venezuela	11,414	12,242	23,656
British Honduras	6,608	5,473	12,081
Bolivia	2,703	2,899	5,602
Honduras	2,703	2,899	5,602
Australia	108,131	88,994	197,125
Republic of China	45,055	37,081	82,136
India	43,252	35,598	78,850
South Africa	31,838	26,204	58,042
Fiji Islands	23,729	19,529	43,258

See footnote at end of table.

Production area	Basic quotas	Temporary quotas and prorations pursuant to Sec. 202(d) [1]	Total quotas and prorations
	(Short tons, raw value)		
Thailand	9,912	8,158	18,070
Mauritius	9,912	8,158	18,070
Malagasy Republic	5,106	4,203	9,309
Swaziland	3,905	3,214	7,119
Ireland	5,351		5,351
Bahamas	10,000		10,000
Total	1,513,261	1,505,719	3,018,980

[1] Proration of the quotas withheld from Cuba and Southern Rhodesia.

(d) (1) of the total quotas and prorations for foreign countries established in paragraphs (b) and (c) of this section, an amount not to exceed 850,000 short tons, raw value, of raw sugar, plus the quantity imported in late 1969 under bond for refining and storage, may be charged against such 1970 quotas and authorized for importation or release from bond from all such foreign countries in accordance with Part 817 of this chapter during the first quarter of 1970. The quantity imported in late 1969 under bond for refining and storage will be released from bond and charged to quotas on January 1, 1970. The quantity, 850,000 short tons, raw value, will be authorized for importation and charged to quotas during the first quarter of 1970 as set forth in subparagraphs (2) and (3) of this paragraph (d).

(2) (i) The importation of raw sugar within the annual quotas and the quarterly limitation specified in subparagraph (1) of this paragraph (d) will be authorized on the basis of applications for "Set Aside of Quota" on Form SU-8A or "Sugar Quota Clearance" on Form SU-3 in accordance with the provisions of Part 817 of this chapter, subject to the priorities for countries as provided in subparagraph (3) of this paragraph and the limitations as provided in subdivision (ii) of this subparagraph. Applications to import raw sugar from the Republic of the Philippines must, before final approval within the quantity reserved for the Republic of the Philippines pursuant to subparagraph (3) of this paragraph, be supplemented by certification from the Sugar Quota Administrator for the Government of the Philippines granting the applicant the permission to export sugar to the U.S. market.

(ii) Applications for the importation of sugar during the first quarter received on or before 5 days after the effective date of this subdivision will be considered as having been received at the same time.

(3) (i) Allocations of first quarter importations among countries will be made in the following manner within the limits of applications received.

(ii) First priority shall be given to countries from which sugar was imported during the first quarter of 1967, 1968, and 1969, but not to exceed the average of the country's first quarter importations as set forth in subparagraph (4) of this paragraph: *Provided*, That if the quantity of sugar which may be imported during the first quarter is less than the quantity needed to approve all applications for importation in the first quarter, the quantity of sugar which may be imported during the first quarter under this priority shall be prorated among countries on the basis of first quarter importations from countries as set forth in subparagraph (4) of this paragraph.

(iii) Second priority shall be given to countries by making an allocation to countries in order of size of quota, smallest first, limiting such allocation to any country to the amount by which 5,000 short tons, raw value, exceeds the allocation made under subdivision (ii) of this subparagraph (3).

(iv) Third priority shall be given to those countries whose respective accumulated allocations for the first quarter under priorities (ii) and (iii) is less than 20 percent of the country's annual quota by making additional allocations to any such country which shall be so limited that the total allocations under priorities in subdivisions (ii), (iii), and (iv) of this subparagraph during the first quarter for such country as a percentage of its annual quota will not exceed the percentage similarly calculated for any other such country and shall be further limited so that the total quantity which may be imported from such country during the first quarter shall not exceed 20 percent of the country's annual quota.

(v) Any quantity not allocated under subdivisions (ii), (iii), and (iv) of this subparagraph shall be prorated among countries having priority under subdivision (ii) of this subparagraph that received allocations less than the full amount applied for, and such additional proration shall be made on the basis of the average imports of sugar from the countries during the first quarter as set forth in subparagraph (4) of this paragraph.

(4) Average importations into the continental United States within quotas, during the first quarter of the years 1967, 1968, and 1969 are as follows:

Country	First quarter (short tons, raw value)
Philippines	192,498
Mexico	144,317
Dominican Republic	109,019
Brazil	131,948
Peru	85,949
British West Indies	30,703
Ecuador	9,501
French West Indies	11,387
Argentina	26,104
Costa Rica	13,964
Nicaragua	8,139
Colombia	9,930
Guatemala	24,749
Panama	4,838
El Salvador	17,439
Haiti	4,380
Venezuela	7,835
British Honduras	575
Bolivia	575
Honduras	3,552
Australia	2,538
Republic of China	3,033
India	896
South Africa	28,558
Fiji Islands	676
Thailand	244
Mauritius	532
Malagasy Republic	82
Swaziland	310
Ireland	0
Bahamas	1,058
Total	874,794

(e) For the calendar year 1970, the quantity of each proration established in paragraph (c) of this section that may be filled by direct-consumption sugar pursuant to section 207(e) of the act is as follows:

Country	Short tons, raw value
Ireland	5,351
Panama	3,817

(f) For the calendar year 1970, the quota for liquid sugar for foreign countries as a group is 2 million gallons of sirup of cane juice of the type of Barbados molasses, limited to liquid sugar containing soluble nonsugar solids (excluding any foreign substance that may have been added or developed in the product) of more than 5 percent of the total soluble solids, which is not to be used as a component of any direct-consumption sugar but is to be used as molasses without substantial modification of its characteristics after importation.

§ 811.84 Applicability of quotas.

(a) All sugar and liquid sugar marketed or imported into the continental United States is subject to the provisions of Part 816 or Part 817 of this chapter which prescribe the time, manner, and conditions under which quotas and prorations are filled by the marketing and importation of sugar of liquid sugar.

(b) The quantitative limitations established by §§ 811.81 to 811.83, inclusive, do not apply to sugar or liquid sugar marketed or imported pursuant to section 211 and 212 of the act in accordance with the provisions of Part 816 or Part 817 of this chapter.

§ 811.85 Restrictions on importations and marketings within quotas.

Subject to the provisions of Parts 816 and 817 of this chapter all persons are prohibited from bringing or importing into or marketing in the continental United States, (a) any sugar or liquid sugar from any country for which no quota is established or in excess of or after the applicable quota or quantity set forth in §§ 811.81 to 811.83 inclusive has been filled, or (b) any sugar or liquid sugar as direct-consumption sugar from any country for which no direct-consumption sugar limitation is established or after the direct-consumption portion of the applicable quota has been filled.

Signed at Washington, D.C., on November 17, 1969.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 69-13808; Filed, Nov. 21, 1969; 8:45 a.m.]

[7 CFR Part 814]

1970 SUGAR QUOTA FOR MAINLAND CANE SUGAR AREA

Notice of Hearing on Proposed Allotment

Pursuant to the authority contained in the Sugar Act of 1948, as amended (61 Stat. 922), and in accordance with the applicable rules of practice and procedure (7 CFR 801.1 et seq.) and on the basis of information before me, I do hereby find that the allotment of the 1970 sugar quota for the Mainland Cane Sugar Area is necessary to prevent disorderly marketing and to afford all interested persons an equitable opportunity to market sugar, and hereby give notice that a public hearing will be held at Washington, D.C., in Room 2-W, Administration Building, U.S. Department of Agriculture, on December 4, 1969, at 10 a.m., e.s.t.

The preliminary finding made above is based on the best information now available. It will be appropriate to present evidence at the hearing on the basis of which the Secretary of Agriculture may affirm, modify, or revoke such preliminary finding.

The purpose of such hearing is to receive evidence to enable the Secretary of Agriculture to establish fair, efficient, and equitable allotments of a portion of the quota for the Mainland Cane Sugar Area which will enable persons who process sugar and liquid sugar from sugarcane grown in the continental United States to market such sugar and liquid sugar in an orderly manner during the period January 1, 1970, to the date the Secretary prescribes a method for alloting the entire 1970 quota for the area on the basis of the record of another hearing to be held subsequently.

To avoid disorderly marketing by any allottee who might market early in 1970 a quantity of sugar larger than its allotment of the entire 1970 sugar quota for the area, it is necessary to make allotments effective on January 1, 1970. Part of the evidence necessary to provide an adequate basis for establishing allotments of the entire 1970 quota for the area for the full calendar year cannot be adduced on the date for which the hearing is called. Therefore, the testimony on that date will be limited to data, views, and arguments regarding the identity of the allottees and consideration of the factors cited in section 205(a) of the Act pertinent to establishing allotments of a portion of the quota for the area to be in effect from January 1, 1970, until an order establishing the method for allotting the entire quota for the area for the calendar year 1970 is made effective.

Upon notice hereafter to be given in accordance with applicable rules of practice and procedure, a public hearing for the area will be held early in 1970 for the purpose of receiving evidence to enable the Secretary to establish allotments of the entire 1970 quota for the area for the calendar year 1970 under the provisions of the Sugar Act of 1948, as amended.

Signed at Washington, D.C., on November 19, 1969.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 69-13880; Filed, Nov. 21, 1969; 8:45 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 21, 45]

[Docket No. 8020; Notice 69-36A]

REPLACEMENT AND MODIFICATION PARTS

Extension of Comment Period

The Federal Aviation Administration proposed in Notice 69-36, published in the FEDERAL REGISTER on August 20, 1969 (34 F.R. 13421), to amend Parts 21 and 45 of the Federal Aviation Regulations to clarify the requirements for the manufacture of approved replacement and modification parts.

Aircraft Supplies of Nutley, N.J., has requested a 30-day extension of time for submission of comments. The extension is requested to enable Aircraft Supplies to provide technical data showing the effect of the proposed regulation on the replacement parts industry and to provide to the FAA alternative means of achieving the same proposed goal.

I find that petitioners have shown a substantial interest in the proposed rule, and that good cause exists for the extension 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 69-36 will be received is extended to December 18, 1969.

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

JAMES F. RUDOLPH,
Director, Flight Standards Service.

[F.R. Doc. 69-13899; Filed, Nov. 21, 1969; 8:47 a.m.]

[14 CFR Part 39]

[Docket No. 69-EA-139]

AIRWORTHINESS DIRECTIVE

DeHavilland Aircraft

The Federal Aviation Administration is considering amending § 39.13 of the Federal Aviation Regulations so as to revoke AD 65-25-2 and issue a new airworthiness directive applicable to DeHavilland DHC-2 type airplanes.

This Airworthiness Directive supersedes AD 65-25-2 based on the manufacturer's reevaluation of the fatigue life retirement times for the wing lift strut assemblies on the subject aircraft.

Interested persons are invited to participate in the making of the proposed rule by submitting written data and views. Communications should identify the docket number and be submitted in duplicate to the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430.

All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before action is taken on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Office of Regional Counsel for examination by interested parties.

In consideration of the foregoing, it is proposed to issue a new airworthiness directive as hereinafter set forth:

1. Amend § 39.13 of the Federal Aviation Regulations by:

(a) Revoking Airworthiness Directive 65-25-3.

(b) By issuing the following Airworthiness Directive:

DEHAVILLAND. Applies to all DeHavilland Model DHC-2 Series Aircraft.

Compliance required as indicated.

To preclude failure of lift strut upper fitting, accomplish the following:

(a) For airplanes with wing lift strut assemblies, C2W-545A or C2W-546A, comply with (a) through (d) within the next 100 hours' time in service after the effective date of this AD unless already accomplished within the last 400 hours' time in service and thereafter at intervals not to exceed 500 hours' time in service from the last inspection.

(b) Detach each wing lift strut assembly from its wing upper lift strut fitting. Using a dye penetrant method with at least a 10-power glass or an FAA-approved equivalent method inspect the lift strut upper fitting for cracks.

NOTE: During the inspection required by (b), particular attention should be given to the ¼-inch radius junction of the lug to the attachment flanges.

(c) With each wing lift strut assembly detached, visually inspect the lift strut upper fitting at each ½-inch radius junction of the lug to the attachment flanges to insure that each radius is smooth and blends smoothly into the lug without machine marks or nicks.

(d) If a crack mark or nick is found in the radius, replace the lift strut assembly before further flight with an unusued strut assembly C2W1103A or 1104A, C2W-1115-1 or -2 or an equivalent approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(e) For aircraft engaged in other than those operations described in paragraphs (f) and (g), replace strut assemblies as follows:

(1) Strut assemblies C2W-469A or 470A, C2W-473A or 474A, C2W-545A or 546A, and C2W-685A or 686A, must be replaced before their total time in service exceeds 10,000 hours.

Strut assemblies C2W-1103A or 1104A must be replaced before their total time in service exceeds 20,000 hours.

Strut assemblies C2W-1115-1 or -2 retirement is not required.

(2) Whenever new wing strut assemblies are installed, new attachment bolts AN180-28 bolt strut, lower attachment and C2W-497

bolt strut, upper attachment, must be used.

(f) For aircraft engaged in low level operations where flying is done at less than 500 feet above ground, and flight maneuvers at 2g (60° banked turn, etc.) and higher are not performed, and are engaged in special purpose operations, replace strut assemblies as follows:

(1) Strut assemblies C2W-545A or 546A must be replaced before their total time in service exceeds 2,600 hours.

Strut assemblies C2W-469A or 470A, C2W-473A or 474A, and C2W-685A or 686A must be replaced before their total time in service exceeds 5,000 hours.

Strut assemblies C2W-1103A or 1104A must be replaced before their total time in service exceeds 10,000 hours.

Strut assemblies C2W-115-1 or -2 retirement is not required.

(2) Whenever new wing strut assemblies are installed, new attachment bolts AN180-26 bolt strut, lower attachment and C2W-497, bolt strut, upper attachment, must be used.

NOTE: Special purpose operations are defined in DeHavilland's Service Bulletin No. 2/3, paragraph 3.1, dated December 20, 1967.

(g) For aircraft engaged in operations requiring turning or pullout maneuvers which impose accelerations of 2g and higher or overload operations in excess of 5,100 pounds, comply with the requirements of paragraph 4 through 4.3 of DeHavilland's Service Bulletin No. 2/3 or an equivalent schedule approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(h) For aircraft operated under both categories specified in (e) and (f):

(1) Strut assemblies must be replaced at the time specified in (f), for any of the operations which the aircraft has performed.

(2) Upon request with substantiating data submitted through an FAA maintenance inspector, the replacement intervals specified in this AD may be adjusted by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(i) Modified or repaired struts as defined in paragraphs 5.1 and 5.2 of DeHavilland Service Bulletin No. 2/3, Series DHC-2 Beaver, dated December 20, 1967, must be replaced in accordance with the times prescribed therein.

DeHavilland Service Bulletin No. 2/3, Series DHC-2 Beaver, dated December 20, 1967, and Engineering Bulletin Series B, No. 32, dated August 10, 1964, pertain to this subject.

This directive supersedes Airworthiness Directive 65-25-2.

This amendment is made under the authority of section 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on November 6, 1969.

WAYNE HENDERSHOT,
Acting Director, Eastern Region.

[F.R. Doc. 69-13898; Filed, Nov. 21, 1969; 8:47 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-SO-126]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Wetumpka, 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 Region, Room 724, 3400 Whipple Street, East Point, Ga.

The Wetumpka transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Elmore Field (lat. 32°31'45" N., long. 86° 19'30" W.); within 3 miles each side of the Maxwell VOR 066° radial, extending from the 7-mile radius area to 22 miles northeast of the Maxwell VOR; excluding the portion that coincides with the Montgomery, Ala., transition area.

The proposed transition area is required for the protection of 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. A prescribed instrument approach procedure to Elmore Field, utilizing the Maxwell VOR, is proposed in conjunction with the designation of this transition area.

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 November 12, 1969.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 69-13897; Filed, Nov. 21, 1969; 8:47 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Internal Revenue Service

LEONARD JOSEPH BOWERS

Notice of Granting of Relief

Notice is hereby given that Leonard Joseph Bowers, 4609 Ashburner Street, Philadelphia, Pa. 19136, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on May 6, 1964, by the U.S. District Court, Eastern District of Pennsylvania, at Philadelphia, of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Leonard J. Bowers because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Leonard J. Bowers to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Leonard J. Bowers' application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Leonard J. Bowers be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 17th day of November 1969.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 69-13928; Filed, Nov. 21, 1969; 8:49 a.m.]

SAMUEL JAMES EVOLA

Notice of Granting of Relief

Notice is hereby given that Samuel James Evola of Detroit, Mich., has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on December 11, 1935, in the Wayne County, Mich., Recorders Court, of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Samuel James Evola because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Samuel James Evola to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Samuel James Evola's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Samuel James Evola be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 17th day of November 1969.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 69-13929; Filed, Nov. 21, 1969; 8:49 a.m.]

FRANK GRELL

Notice of Granting of Relief

Notice is hereby given that Frank Grell, 2600 East Court Street, Iowa City, Iowa, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on January 11, 1946, in the District Court of Hardin County, Iowa, of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Frank Grell because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C. Appendix), because of such conviction, it would be unlawful for Frank Grell to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Frank Grell's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety; and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Frank Grell be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 14th day of November 1969.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 69-13930; Filed, Nov. 21, 1969; 8:49 a.m.]

JAMES A. GRIFFITH

Notice of Granting of Relief

Notice is hereby given that James A. Griffith, 1101 White Street NW., Grand

Rapids, Mich. 49504, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on September 4, 1945, by a General Court Martial convened at Keesler Field, Miss., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for James A. Griffith because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Mr. Griffith to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered James A. Griffith's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That James A. Griffith be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 17th day of November 1969.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 69-13931; Filed, Nov. 21, 1969; 8:49 a.m.]

JERRY JEROME JENKINS

Notice of Granting of Relief

Notice is hereby given that Jerry Jerome Jenkins, 12723 Monica, Detroit, Mich., has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on June 10, 1954, in the Recorders Court, Detroit, Mich., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Jerry Jerome Jenkins because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Mr. Jenkins to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Jerry Jerome Jenkins' application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Jerry Jerome Jenkins be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 17th day of November 1969.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 69-13932; Filed, Nov. 21, 1969; 8:49 a.m.]

STANLEY SAMUEL MARCUS

Notice of Granting of Relief

Notice is hereby given that Stanley Samuel Marcus of 6813 Belrose, Apartment 42, El Paso, Tex., has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on March 17, 1966, in the U.S. District Court for the Western District of Texas of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Stanley Samuel Marcus because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Stanley Samuel Marcus to receive, possess, or transport in commerce or affecting commece, any firearm.

Notice is hereby given that I have considered Stanley Samuel Marcus' application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Stanley Samuel Marcus be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 17th day of November 1969.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 69-13933; Filed, Nov. 21, 1969; 8:49 a.m.]

KENNETH K. McGREW

Notice of Granting of Relief

Notice is hereby given that Kenneth K. McGrew, 1100 Seventh Avenue SW., Quincy, Wash., has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on April 19, 1938, by the Superior Court, Klickitat County, Wash., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Kenneth K. McGrew because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Kenneth K. McGrew to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Kenneth K. McGrew's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Kenneth K. McGrew be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 17th day of November 1969.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 69-13934; Filed, Nov. 21, 1969; 8:49 a.m.]

KENNETH WALLACE MORRISON

Notice of Granting of Relief

Notice is hereby given that Kenneth Wallace Morrison, 1145 Liberty Street, Franklin, Pa. 16323, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on May 22, 1961, by the Court of Quarter Sessions, Crawford County, Pa., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Kenneth W. Morrison because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code, as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Kenneth W. Morrison to receive, possess, or transport in commerce or affecting commerce, any firearms.

Notice is hereby given that I have considered Kenneth W. Morrison's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Kenneth W. Morrison be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 17th day of November 1969.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 69-13935; Filed, Nov. 21, 1969; 8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

LIVESTOCK FEED PROGRAM

Notice of Designation of Emergency Areas

Notice is hereby given that, pursuant to the provisions of section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1472, 63 Stat. 1055), and the Act of September 21, 1959, as amended (secs. 1-4, 73 Stat. 574), the Secretary of Agriculture has designated the counties specified in this notice as emergency areas for purposes of the Livestock Feed Program (7 CFR Part 1475, as amended). Feed grains will be made available for sale to livestock owners in such counties in accordance with the terms and conditions in the regulations for such program. The designated counties are as follows:

ALASKA

Fairbanks (North Star Borough).

ARKANSAS

Cleburne.
Izard.
Nevada.
Stone.

GEORGIA

Baker.
Decatur.
Grady.
Mitchell.

LOUISIANA

Bienville.
Bossier.
Caddo.
Claiborne.
De Soto.
Jackson.
Lincoln.
Ouachita.
Red River.
Sabine.
Union.
Webster.
West Carroll.
Winn.

VIRGINIA

Albemarle.
Amherst.
Buckingham.
Fluvanna.
Goochland.
Louisa.
Nelson.
Powhatan.
Rockbridge.

Signed at Washington, D.C., on November 18, 1969.

GEORGE V. HANSEN,
Deputy Vice President,
Commodity Credit Corporation.

[F.R. Doc. 69-13913; Filed, Nov. 21, 1969; 8:48 a.m.]

Office of the Secretary

EXPORT MARKETING SERVICE, FOREIGN AGRICULTURAL SERVICE, AND AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

Further Implementation of Reorganization of Department With Respect to Activities Relating to Export Sales

In accordance with Reorganization Plan No. 2 of 1953, the Department of Agriculture was reorganized effective March 28, 1969, with respect to programs assisting exports of agricultural commodities by establishing the Export Marketing Service and transferring to it certain of the functions of the Foreign Agricultural Service and of the Agricultural Stabilization and Conservation Service relating to export sales of agricultural commodities. 34 F.R. 6337-8. In order to further implement the purpose of the reorganization it is necessary to transfer to the Export Marketing Service additional functions. The following is a statement of all the functions of the Export Marketing Service, both those functions transferred effective March 28, 1969, and those hereby transferred effective November 8, 1969:

1. From the Foreign Agricultural Service, the functions of the General Sales Manager, the Barter and Stockpiling Manager, the Assistant to the Administrator concerning sales program compliance, the Deputy Assistant Administrator for program development, the Program Development Division, the Program Operations Division, and the Ocean Transportation Division.

2. From the Agricultural Stabilization and Conservation Service, (a) functions relating to the domestic operations to implement the Wheat Trade Convention of the International Grains Arrangement, including but not limited to fixing export wheat and flour subsidy rates and export wheat marketing certificate costs and otherwise administering the pricing provisions of the IGA, and (b) functions relating to export subsidy programs and programs for the export sale of CCC-owned commodities, except for tobacco, peanuts, tung oil and gum naval stores.

In addition to the services furnished to the Export Marketing Service by the Agricultural Stabilization and Conservation Service on all management support activities as provided for in 34 F.R. 6337-8, the Agricultural Stabilization and Conservation Service will also furnish supporting services for the preparation and issuance of information releases initiated by the Export Marketing Service

relating to program activities carried out by it.

All previously effected rules, regulations, licenses, approvals, orders, forms, certificates, and other official documents relating to all functions transferred shall continue to be effective until further notice, except that any delegations or authorizations inconsistent with the assignments made herein shall be construed to conform to the assignments made herein.

Done at Washington, D.C., this 8th day of November 1969.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 69-13920; Filed, Nov. 21, 1969; 8:49 a.m.]

LOUISIANA

Designation of Areas for Emergency Loans; Correction

In F.R. Doc. 69-13435 appearing in the FEDERAL REGISTER of November 13, 1969, on page 18189, the date "June 30, 1969" is corrected to read "June 30, 1970".

Done at Washington, D.C., this 18th day of November 1969.

T. K. COWDEN,
Assistant Secretary.

[F.R. Doc. 69-13885; Filed, Nov. 21, 1969; 8:46 a.m.]

Packers and Stockyards Administration

CATTLEMANS LIVESTOCK AUCTION, INC., ET AL.

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Name and location of stockyard and date of posting
Cattlemans Livestock Auction, Inc., Nampa, Idaho, Dec. 29, 1955.
Harlan Auction Co., Harlan, Iowa, May 19, 1959.
Kentwood Livestock Sales, Inc., Kentwood, La., Sept. 6, 1967.
Sardis Livestock Sales Company, Inc., Sardis, Miss., Mar. 31, 1964.
Elwood Livestock Commission Co., Elwood, Nebr., June 8, 1959.
Madill Livestock Auction, Madill, Okla., Nov. 6, 1964.
Morgantown Livestock Sales, Inc., Morgantown, W. Va., Nov. 9, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule since it is found that the giving of such notice would prevent the due and timely administration of the Packers and Stockyards Act and would, therefore, be impracticable and contrary to the public interest. There is no legal warrant or justification for not deposting promptly a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule granting an exemption or relieving a restriction and, therefore, may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective upon publication in the FEDERAL REGISTER.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 17th day of November 1969.

E. L. THOMPSON,
Acting Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[F.R. Doc. 69-13917; Filed, Nov. 21, 1969; 8:48 a.m.]

[P. & S. Docket No. 298]

ST. JOSEPH STOCK YARDS DIVISION OF UNITED STOCKYARDS CORP.

Notice of Petition To Vacate Order and Dismiss Proceeding

Pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), a basic order was issued on May 4, 1934, in the case of In regard St. Joseph Stock Yards Co., prescribing the rates and charges to be assessed by the respondent for the stockyard services rendered by it at the St. Joseph Stock Yards, St. Joseph, Mo. Such rates and charges have been modified from time to time by subsequent orders issued in the proceeding. The latest such order was issued on July 7, 1969, prescribing the rates and charges to be assessed by the respondent to and including April 30, 1970, unless modified or extended before the latter date.

On October 20, 1969, the respondent filed a petition requesting that rate orders in this proceeding be dismissed in conformity with § 203.11 of the Statements of General Policy under the Packers and Stockyards Act. The petition reads as follows:

This is a rate proceeding under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.).

Respondent is now operating under an order issued July 7, 1969, which became effective July 14, 1969, and which shall remain in effect to and including April 30, 1970, unless modified or extended.

The basic rate order in this proceeding was issued May 4, 1934, as a part of P. & S. Docket No. 298. During the period since the basic rate order has been in effect, the respondent has followed the procedure, prior to filing a petition for modification of basic order, of submitting statistical information supporting such proposals.

Respondent feels after some discussion with the Department that changing economic conditions in the industry, together with a changing marketing structure in the trade territory and other circumstances, have brought about a situation which makes the necessity and continuation of formal procedure for obtaining modification in rates and charges no longer necessary.

It is requested, therefore, that in conformity with the policy expressed in § 203.11 of the Statements of General Policy under the Packers and Stockyards Act (9 CFR 203.11) that the rate order in this proceeding be vacated and the proceeding be dismissed.

Any interested person may file with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, within 10 days after publication of this notice in the FEDERAL REGISTER, written data, views, comments, or arguments with respect to the petition filed by the respondent.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., this 18th day of November 1969.

DONALD A. CAMPBELL,
Administrator, Packers and Stockyards Administration.

[F.R. Doc. 69-13918; Filed, Nov. 21, 1969; 8:49 a.m.]

[P. & S. Docket No. 344]

UNION STOCK YARDS COMPANY OF OMAHA (LTD.)

Notice of Petition To Vacate Order and Dismiss Proceeding

Pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), a basic order was issued on March 1, 1933, in the case of In regard Union Stock Yards Company of Omaha (Ltd.), respondent, prescribing the rates and charges to be assessed by the respondent for the stockyard services rendered by it at the Union Stock Yards, Omaha, Nebr. Such rates and charges have been modified from time to time by subsequent orders issued in the proceeding. The latest such order was issued on June 3, 1969, prescribing the rates and charges to be assessed by the respondent to and including May 31, 1971, unless modified or extended by further order before the latter date.

On October 6, 1969, the respondent filed a petition requesting that the rate orders in this proceeding be dismissed in conformity with § 203.11 of the Statements of General Policy under the Packers and Stockyards Act. The petition reads as follows:

Comes now the Respondent, Union Stock Yards Company of Omaha (Ltd.), and requests that an order be entered herein vacating the rate order in effect and dismissing this proceeding.

The basic rate order in this proceeding was entered March 1, 1933. The respondent is now operating under an order issued on June 25, 1968 (27 A.D. 722), as modified by orders on April 1, 1969, and June 3, 1969, respectively, which orders remain in effect unless ratified or extended by further order to and including May 31, 1971.

The respondent does not believe that the economic conditions in the industry, or the marketing structure in its trade territory, or any other circumstance necessitates the continuation of the formal procedure for obtaining modification in the rates and charges assessed by respondent.

It is requested therefore that in conformity with the policy expressed in § 203.11 of the Statements of General Policy under the Packers and Stockyards Act (9 CFR 203.11) that the rate order in this proceeding be vacated and the proceeding be dismissed.

Any interested person may file with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, within 10 days after the publication of this notice in the FEDERAL REGISTER, written data, views, comments, or arguments with respect to the petition filed by the respondent.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., this 18th day of November 1969.

DONALD A. CAMPBELL,
Administrator, Packers and Stockyards Administration.

[F.R. Doc. 69-13919; Filed, Nov. 21, 1969; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[File No. 23(69)-14]

MOCAMBIQUE INDUSTRIAL, S.A.R.L.

Order Denying Export Privileges for Indefinite Period

The Director, Investigations Division, Office of Export Control, Bureau of International Commerce, U.S. Department of Commerce, has applied for an order denying to the above-named respondent all export privileges for an indefinite period because the said respondent, without good cause being shown, failed to furnish answers to interrogatories and failed to furnish certain records and other writings specifically requested. This application was made pursuant to § 388.15 of the Export Control Regulations (Title 15, Chapter III, Subchapter B, Code of Federal Regulations).

In accordance with the usual practice, the application for an Indefinite Denial Order was referred to the Compliance Commissioner, Bureau of International Commerce, who after consideration of the evidence has recommended that the application be granted. The report of the Compliance Commissioner and the evidence in support of the application have been considered.

The evidence presented shows that the respondent, Mocambique Industrial, S.A.R.L. of Beira, Mozambique, is engaged in various phases of the processing, distribution, and exportation of grains, grain mill products, cotton seed, cotton seed oil, and other vegetable oils, also that in the latter part of 1967 a U.S. manufacturer of equipment used in the processing of cotton seed sold and exported to respondent equipment and spare parts of that type valued in excess of $75,000. The said Investigations Division is conducting an investigation to ascertain the disposition of said equipment and spare parts, particularly whether said commodities were reexported from Mozambique to Southern Rhodesia or some other unauthorized destination in violation of the U.S. Export Control Regulations. It is impracticable to subpoena the respondent and the Investigations Division, pursuant to § 388.15 of the Export Control Regulations, served on it relevant and material interrogatories inquiring as to the location of said commodities if still in possession of the respondent and also inquiring as to the disposition of said commodities if sold, transferred, or disposed of by respondent. The respondent also, pursuant to said section, was requested to furnish certain specific documents relating to the disposition of said commodities if disposed of by it. Said respondent has failed to furnish answers to said interrogatories or to furnish the documents requested, and it has not shown good cause for such failure. I find that an order denying export privileges to said respondent for an indefinite period may properly be entered under § 388.15 of the Export Control Regulations and that such an order is reasonably necessary to protect the public interest and to achieve effective enforcement of the Export Control Act of 1949, as amended.

Accordingly, it is hereby ordered:

I. All outstanding validated export licenses in which respondent appears or participates in any manner or capacity are hereby revoked and shall be returned forthwith to the Bureau of International Commerce for cancellation.

II. The respondent is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or which are otherwise subject to the Export Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any validated export license application; (b) in the preparation or filing of any export license application or reexportation authorization, or any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control document; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data in whole or in part exported or to be exported from the United States; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent, but also to its successors, agents, employees, representatives, and to any other person, firm, corporation, or business organization with which the respondent now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. This order shall remain in effect until the respondent provides responsive answers, written information and documents in response to the interrogatories heretofore served upon it or gives adequate reasons for failure to do so, except insofar as this order may be amended or modified hereafter in accordance with the Export Control Regulations.

V. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Bureau of International Commerce, shall do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for any such respondent or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VI. A copy of this order shall be served on respondent.

VII. In accordance with the provisions of § 388.15 of the Export Control Regulations, the respondent may move at any time to vacate or modify this Indefinite Denial Order by filing with the Compliance Commissioner, Bureau of International Commerce, U.S. Department of Commerce, Washington, D.C. 20230, an appropriate motion for relief, supported by substantial evidence, and may also request an oral hearing thereon, which, if requested shall be held before the Compliance Commissioner at Washington, D.C., at the earliest convenient date.

This order shall become effective forthwith.

Dated: November 17, 1969.

RAUER H. MEYER,
Director, Office of Export Control.

[F.R. Doc. 69-13822; Filed, Nov. 21, 1969; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-130; NDA No. 4-673]

JOHN B. STRIBLING & SON

Stribling's Pink Eye Powder; Notice of Withdrawal of Approval of New Animal Drug Application

A notice of opportunity for a hearing on the proposed withdrawal of approval for the approved new animal drug application and supplements thereto pertaining to Stribling's Pink Eye Powder marketed by John B. Stribling and Son, 1507 South Oakes, San Angelo, Tex. 76901, was published in the FEDERAL REGISTER of June 7, 1969 (34 F.R. 9097).

No written appearance in answer to the notice was filed within the 30-day time period specified. Failure to do so is construed as an election by the applicant and interested persons not to avail themselves of an opportunity for a hearing.

The Commissioner of Food and Drugs finds available information does not establish that the drug is effective for its intended use, to wit, on the basis of new information before him with respect to said drug, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that said drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-47; 21 U.S.C. 360b(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120) approval of new animal drug application No. 4-673, and all supplements pertaining thereto, is withdrawn effective on the date of signature of this document.

Dated: November 17, 1969.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 69-13892; Filed, Nov. 21, 1969; 8:46 a.m.]

Office of Education

ALLOTMENT RATIOS FOR VOCATIONAL EDUCATION ACT OF 1963, AS AMENDED BY VOCATIONAL EDUCATION AMENDMENTS OF 1968

Promulgation

Pursuant to section 103(d)(2) of the Vocational Education Amendments of 1968 (Public Law 90-576), which amends the Vocational Education Act of 1963 (Public Law 88-210), the following allotment ratios computed for the purpose of making grants under Parts B and C of title I of the Vocational Education Amendments of 1968 to the States, the District of Columbia, American Samoa, Guam, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands are hereby promulgated for the fiscal year ending June 30, 1971:

Alabama	0.6000
Alaska	.4031
Arizona	.5635
Arkansas	.6000
California	.4177
Colorado	.5143
Connecticut	.4000
Delaware	.4360
Florida	.5428
Georgia	.5961
Hawaii	.4856
Idaho	.6000
Illinois	.4106
Indiana	.4947
Iowa	.5125
Kansas	.5177
Kentucky	.6000
Louisiana	.6000
Maine	.5866
Maryland	.4564
Massachusetts	.4417
Michigan	.4614
Minnesota	.5125
Mississippi	.6000
Missouri	.5249
Montana	.5623
Nebraska	.5165
Nevada	.4213
New Hampshire	.5231
New Jersey	.4200
New Mexico	.6000
New York	.4000
North Carolina	.6000
North Dakota	.5976
Ohio	.4859
Oklahoma	.5806
Oregon	.5108
Pennsylvania	.4987
Rhode Island	.4806
South Carolina	.6000
South Dakota	.5850
Tennessee	.6000
Texas	.5624
Utah	.5875
Vermont	.5525
Virginia	.5561
Washington	.4611
West Virginia	.6000
Wisconsin	.5058
Wyoming	.5358
District of Columbia	.4000
American Samoa	.6000
Guam	.6000
Puerto Rico	.6000
Trust Territory of the Pacific Islands	.6000
Virgin Islands	.6000

Dated: November 6, 1969.

JAMES E. ALLEN, Jr.,
U.S. Commissioner of Education.

[F.R. Doc. 69-13960; Filed, Nov. 20, 1969; 3:24 p.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ACTING DIRECTOR, URBAN PLANNING RESEARCH AND DEMONSTRATION PROGRAM

Designation

Milton R. Edelin, Director, Land and Site Development, Operation Breakthrough, is hereby designated to serve as Acting Director, Urban Planning Research and Demonstration Program, during the present vacancy in the position of Director, Urban Planning Research and Demonstration Program, with all the powers, functions, and duties redelegated or assigned to the Director, Urban Planning Research and Demonstration Program.

(Secretary's delegation to Assistant Secretary for Research and Technology, 32 F.R. 9325, June 30, 1967, as amended, particularly at 34 F.R. 7873, May 17, 1969)

Effective date. This designation shall be effective as of November 22, 1969.

HAROLD B. FINGER,
Assistant Secretary for Research and Technology.

[F.R. Doc. 69-13912; Filed, Nov. 21, 1969; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

[Dockets Nos. 19973, 18078; Order 69-11-68]

CONTINENTAL AIR LINES, INC.

Order To Show Cause

Issued under delegated authority November 17, 1969.

Establishment of mail rates for Continental Air Lines, Inc., Docket No. 19973; service mail rates for transatlantic and transpacific priority mail, Docket No. 18078; service mail rates for military ordinary mail, Docket No. 18078.

By petition filed October 10, 1969, Continental Air Lines, Inc. (Continental), requests that the Board establish standard mileages, as attached to its petition, for computation of mail payments for service between points within the Trust Territory of the Pacific Islands and between points in the Trust Territory and Honolulu, Johnston Island, Guam, and Okinawa.

In support of its petition, Continental states it was granted an exemption to perform operations pursuant to a Franchise Agreement entered into with the Government of the Trust Territory of the Pacific Islands,[1] and that it has provided services continuously since commencement on May 16, 1968. Continental states that the Board has established the fair and reasonable rates of compensation to be paid for the transportation of mail by aircraft for the Trust Territory operations,[2] but notes that no tabulation of standard mileages was attached to the rate order when initially issued, and that the Board intended to publish such mileages in a supplemental order. The mileages proposed by Continental are computed on a point-to-point great circle airport mileage basis.

The Postmaster General, in reply to Continental's petition, supports Continental's mileage proposals, subject to correction of an inadvertent error. Con-

[1] Orders E-26466 of Mar. 5, 1968, and E-26687 of Apr. 19, 1968.
[2] Order 69-10-40 of Oct. 9, 1969.

tinental, in turn, agrees to the correction suggested by the Postmaster General.

In addition, the Postmaster General notes that rates for the competitive points (Honolulu, Guam, and Okinawa) were established by the Board for Continental's services [3] but no mileages have been established for these services. The Postmaster General and Continental are in agreement as to the appropriate standard mileages for such services.

Upon consideration of Continental's petition, the reply of the Postmaster General, additional comments of Continental, and other matters officially noticed, the Board proposes to issue an order adopting the standard mileages agreed to by Continental and the Postmaster General.[4]

The Board tentatively finds and concludes that effective May 16, 1968:

(1) Order 69–10–40, October 9, 1969, should be amended so as to add an Appendix A thereto, as appended to the instant order to show cause,[5] providing standard mileages for carriage of U.S. mail by air for Continental Air Lines, Inc.

(2) Order 68–9–9, September 4, 1968, as amended by Order 69–7–11, July 2, 1969, and as further amended by Orders 69–8–110, August 19, 1969, and 69–10–23, October 6, 1969, should be further amended by adding to page 18 of Appendix A of Order 69–7–11, standard mileages for Continental, as follows:

CONTINENTAL AIR LINES, INC.

Between	*Miles*
GUM–HNL	4305
GUM–OKA	1518
HNL–OKA	5823

Accordingly, pursuant to the Federal Aviation Act of 1958 and particularly sections 204(a) and 406 thereof, the Board's procedural regulations, 14 CFR Part 302, and the authority duly delegated by the Board in its organization regulations, 14 CFR 385.14(f):

It is ordered, That:

1. All interested persons are directed to show cause why the Board should not adopt the foregoing findings and conclusions.

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of objection to the findings and conclusions proposed herein shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order.

3. If no notice of objection is filed within 10 days after service of this order, or if notice is filed and no answer is 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.

4. If answer is filed presenting issues for hearing, the issues involved shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307).

5. This order shall be served on the Postmaster General, Continental Air Lines, Inc., Northwest Airlines, Inc., The Flying Tiger Line Inc., Pan American World Airways, Inc., and Trans World Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] MABEL MCCART,
Acting Secretary.

[F.R. Doc. 69–13900; Filed, Nov. 21, 1969; 8:47 a.m.]

[3] Order 68–10–167 of Oct. 29, 1968.

[4] As this order to show cause is not a final action and merely provides for interested persons to be heard on the matters herein proposed, it is not subject to the review provisions of Part 385 (14 CFR, Part 385). These provisions will apply to any final action taken by the staff in this matter under authority delegated in § 385.14(g).

[5] Filed as part of the original document.

[Docket Nos. 21374, 18381; Order 69–11–80]

CROWN AIRWAYS, INC.

Order To Show Cause

Issued under delegated authority November 10, 1969.

The establishment of final and temporary service mail rates for Crown Airways, Inc., Docket No. 21374; nonpriority mail rates, Docket No. 18381.

Crown Airways, Inc. (Crown), is an air taxi operator providing services pursuant to Part 298 of the Board's economic regulations. By Order 69–11–49, November 13, 1969, the Board approved Agreement CAB 20714–A2 between Allegheny Airlines, Inc., and Crown. This agreement contemplates that Crown will discharge Allegheny's certificate obligation to serve Franklin, Pa., through the operation of small aircraft between Franklin and Pittsburgh. Crown expects to initiate service with Beech 99 turboprop type aircraft.

No service mail rate is currently in effect for this service by Crown. By petition filed September 2, 1969, Crown requested the establishment of final service mail rates for the transportation of priority and nonpriority mail by air between Franklin and Pittsburgh. Crown requests that the multi-element rates previously paid to Allegheny on this route pursuant to Orders E–25610 and E–17255 be established.[1]

On September 12, 1969, the Postmaster General filed an answer in support of Crown's petition, with the proviso that mail enplaned and/or deplaned at Franklin, Pa., destined to and/or dispatched from points on Allegheny Airlines' system be accorded intraline status in order to safeguard current transportation costs over the segment and preclude the payment of additional terminal charges. Inasmuch as the graduated terminal charges incorporated in the domestic multi-element priority and nonpriority rates are an integral part of those rates it is considered that withholding them from Crown or Allegheny as suggested by the Postmaster General would be a modification of the overall rate and rate structure. This proviso of the Postmaster General is therefore denied.

The rate for the air transportation of mail applicable to service by Allegheny was established by the Board in the Domestic Service Mail Rate Investigation, Order E–25610, August 28, 1967. This rate is the same as that requested in Crown's petition. Therefore, we propose to establish a service rate for the air transportation of mail by Crown at the same level as that established in Order E–25610, and the terms and provisions of that order also shall be applicable to Crown in the same manner as they were applicable to Allegheny in providing mail services between Franklin and Pittsburgh, Pa.

An open-rate situation has existed for the air transportation of nonpriority mail since April 6, 1967, when the Post Office petitioned for new nonpriority mail rates in Docket 18381. The rates currently being paid air carriers (including Allegheny) for the transportation of nonpriority mail, established by Order E–17255, July 31, 1961, in the Nonpriority Mail Rate Case, are subject to such retroactive adjustment to April 6, 1967, as the final decision in Docket 18381 may provide. Since it is equitable that Crown receive the same compensation as Allegheny for the same services, we propose to establish temporary service rates for nonpriority mail for Crown at the level established in Order E–17255; as amended. By Order 69–2–158 issued February 28, 1969, in Docket 20657 Crown has already been made a party to the proceedings in Docket 18381 so the temporary nonpriority mail rates established herein will be subject to any retroactive adjustment ordered in that proceeding.

Under the circumstances, the Board finds it in the public interest to fix and determine the fair and reasonable rates of compensation to be paid to Crown Airways, Inc., by the Postmaster General for the air transportation of mail, and the facilities used and useful therefor, and the services connected therewith, beween Franklin and Pittsburgh, Pa. Upon consideration of the petition, the answer of the Postmaster General, and other matters officially noticed, the Board proposes to issue an order [2] to

[1] The present rates are as follows:

Priority mail by air: 24 cents per ton-mile plus 9.36 cents per pound at Franklin and 2.34 cents per pound at Pittsburgh.

Nonpriority mail by air: 15.115 cents per ton-mile plus 4.98 cents per pound at Franklin and 1.660 cents per pound at Pittsburgh.

[2] As this order to show cause is not a final action and merely provides for interested persons to be heard on the matters herein proposed, it is not subject to the review provisions of Part 385 (14 CFR Part 385). Those provisions will apply to any final action taken by the staff in this matter under authority delegated in § 385.14(g).

include the following findings and conclusions:

1. The fair and reasonable final service mail rate to be paid on and after November 13, 1969, to Crown Airways, Inc., pursuant to section 406 of the Act, for the transportation of priority mail by aircraft, the facilities used and useful therefor, and the services connected therewith between Franklin and Pittsburgh, Pa., shall be the rate established by the Board in Order E-25610, August 28, 1967, and shall be subject to the other provisions of that order;

2. The fair and reasonable temporary service mail rate to be paid on and after November 13, 1969, to Crown Airways, Inc., pursuant to section 406 of the Act for the transportation of nonpriority mail by aircraft, the facilities used and useful therefor, and the services connected therewith between Franklin and Pittsburgh, Pa., shall be the rates established by the Board in Order E-17255, July 31, 1961, as amended, subject to such retroactive adjustment as may be made in Docket 18381; and

3. The 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 regulations promulgated in 14 CFR Part 302 and 14 CFR 385.14(f):

It is ordered, That:

1. All interested persons and particularly Crown Airways, Inc., the Postmaster General, and Allegheny Airlines, Inc., are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the rates specified above, as the fair and reasonable rates of compensation to be paid to Crown Airways, Inc., for the transportation of priority and nonpriority mail by aircraft, the facilities used and useful therefor, and the services connected therewith as 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, and if notice is filed, written answer and supporting documents shall be filed within 30 days after the date of service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and an 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 final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Crown Airways, Inc., the Postmaster General, and Allegheny Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] MABEL MCCART,
Acting Secretary.

[F.R. Doc. 69-13901; Filed, Nov. 21, 1969; 8:47 a.m.]

[Docket No. 20580]

GROUP INCLUSIVE TOUR BASING FARES TO HAWAII

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 case is assigned to be heard on December 10, 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., November 18, 1969.

[SEAL] RALPH L. WISER,
Associate Chief Examiner.

[F.R. Doc. 69-13902; Filed, Nov. 21, 1969; 8:47 a.m.]

[Docket No. 21624; Order 69-11-72]

NATIONAL AIRLINES, INC.

Fare Revisions and Increases in Stopover Charges; Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of November 1969.

By tariff revisions marked to become effective November 20, 1969,[1] National Airlines, Inc. (National), proposes to (1) introduce a first class fare in the Boston-Los Angeles/San Diego markets; (2) reduce its existing coach fares between Boston, on the one hand, and San Francisco and Las Vegas, on the other and between New York and Las Vegas; and (3) increase its Miami stopover charges in seven markets. All fares apply on routings via Miami.

The proposed fares would, in each case, match existing fares of carriers providing direct service in the markets involved. The proposed stopover charges range from $25 to $35 for adult transportation, as compared with the present charge of $10.

No justification has been submitted by National regarding its proposals and no complaints have been filed.

Upon consideration of all relevant matters, the Board has determined that National's proposed fares and stopover charges may be unjust or unreasonable, or unjustly discriminatory, or unduly preferential or unduly prejudicial, or otherwise unlawful and should be investigated. The Board further concludes that the tariffs in question should be suspended pending investigation.

The Board has no difficulty in principle with application of direct route fares to transportation via Miami. However, the reduction here proposed in fares to/from Boston while, at the same time, maintaining existing fares to/from other East Coast points creates long haul-short haul situations for which there appears no valid justification. Similarly, there appears no justification for an increase in the stopover charges which would set them at more than twice the present level. Nor is it apparent that cost or value of service considerations would warrant differences in the charge depending only upon the ultimate origin and destination of the passenger.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof:

It is ordered, That:

1. An investigation is instituted to determine whether the fares and provisions described in Appendix A attached hereto,[1] and rules, regulations, or practices affecting such fares and provisions, are or will be, unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful to determine and prescribe the lawful fares and provisions, and rules, regulations, and practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, the fares and provisions described in Appendix A hereto[1] are suspended and their use deferred to and including February 17, 1970, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The investigation be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated; and,

4. A copy of this order be filed with the aforesaid tariff and be served upon National Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] MABEL MCCART,
Acting Secretary.

[F.R. Doc. 69-13904; Filed, Nov. 21, 1969; 8:47 a.m.]

[Docket No. 14437; Order 69-11-71]

TARIFF AND RATE ACTIVITIES AND PRACTICES ON NORTH ATLANTIC ROUTES

Order Amending Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of November 1969.

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariff CAB 101, filed Oct. 21, 1969.

[1] Filed as part of the original document.

Order E–19492 instituting the investigation authorized the Chief Examiner or such other hearing examiner as he may designate to issue subpoenas for the testimony of witnesses and the production of books or papers or documents and to designate persons before whom depositions may be taken, and Order E–19855 amended the above order to direct that all proceedings shall be nonpublic and confidential and shall conform to the requirements of §§ 305.6, 305.9, 305.10, 305.11, and 305.12 of the Board's rules of practice. Section 305.12 relates to motions to quash or modify an investigation subpoena. Since the Board has delineated the scope of and has provided guidelines for the investigation, as noted in E–19855, it now appears to be unnecessary that motions to quash or modify subpoenas should conform to the provisions of 305.12 which among other things requires action on such motions by the Board, and that such motions can be more expeditiously handled by the examiner pursuant to the provisions of § 302.19 of the procedural regulations.

Therefore it is ordered:

1. That ordering paragraph 3 of Order E–19492, as amended, be revised to omit the reference to § 305.12 of the procedural regulations.

2. That motions to quash or modify subpoenas issued by a hearing examiner pursuant to the authority delegated by ordering paragraph 2 of Order E–19492 shall conform to and be processed pursuant to the provisions of § 302.19(f) of the Board's procedural regulations.

3. That this order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] MABEL MCCART,
Acting Secretary.

[F.R. Doc. 69–13903; Filed, Nov. 21, 1969; 8:47 a.m.]

CIVIL SERVICE COMMISSION

DEPARTMENT OF DEFENSE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Defense to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary of Defense (Education), Office of Assistant Secretary of Defense (Manpower and Reserve Affairs).

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc 69–13887; Filed, Nov 21, 1969; 8:46 a.m.]

DEPARTMENT OF DEFENSE

Notice of Revocation of Authority To Make Noncareer Executive Assignments

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Defense to fill by noncareer executive assignment in the excepted service the positions of Director for ROTC Programs, Office of Assistant Secretary of Defense (Manpower and Reserve Affairs) and Deputy Assistant Secretary (Education and Manpower Resources), Office of the Assistant Secretary of Defense (Manpower).

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 69–13888; Filed, Nov. 21, 1969; 8:46 a.m.]

DEPARTMENT OF THE TREASURY

Notice of Title Change in Noncareer Executive Assignment

By notice of November 17, 1967, F.R. Doc. 67–13608, the Civil Service Commission authorized the department and agencies to fill by noncareer executive assignment, certain positions removed from Schedule C of Civil Service Rule VI by 5 CFR 213.3301a on November 17, 1967. This is notice that the title of one such position so authorized to be filled by noncareer executive assignment has been changed from "Special Assistant to the Under Secretary" to "Assistant to the Under Secretary".

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 69–13889; Filed, Nov. 21, 1969; 8:46 a.m.]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the National Foundation on the Arts and the Humanities to fill by noncareer executive assignment in the excepted service the additional identical position of Deputy Chairman, National Endowment for the Arts.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 69–13890; Filed, Nov. 21, 1969; 8:46 a.m.]

FEDERAL MARITIME COMMISSION

R.C.D. SHIPPING SERVICES

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed by:

Mr. Edward P. Cotter, 1776 K Street NW., Washington, D.C. 20006.

Agreement No. 9490–3, between the parties to the "R.C.D. Shipping Services," a joint service comprising Turkish, Iranian, and Pakistan national flag common carriers, operating in the trade from U.S. Atlantic and gulf ports to Turkish, Iranian, and Pakistan ports, modifies the basic agreement by adding South Shipping Line, an Iranian flag carrier, as a member thereof in accordance with the terms and conditions set forth in the Agreement.

Dated: November 19, 1969.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 69–13905; Filed, Nov. 21, 1969; 8:47 a.m.]

RAILROAD RETIREMENT BOARD

RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

Proclamation

Pursuant to section 8(a) of the Railroad Unemployment Insurance Act, as amended, the Railroad Retirement Board had determined, and hereby proclaims, that as of the close of business on September 30, 1969, there was a deficit of $93,479,498.43 in the railroad unemployment insurance account. The underlying figures relating to the computation of this deficit follow:

Unexpended amount in the railroad unemployment insurance account	$340,266.10

Deduct:	
Amounts borrowed from the Railroad Retirement Account which have not been repaid	—99,195,000.00
Accrued interest on such borrowed amounts	—1,184,937.50
Deficit in Railroad unemployment insurance account proper	100,039,671.40 (D)
Add:	
Baance in railroad unemployment insurance administration fund	+6,560,172.97
Deficit in railroad unemployment insurance account	93,479,498.43 (D)

In witness whereof the members of the Railroad Retirement Board have hereunto set their hands and caused its seal to be affixed.

Done at Chicago, Ill., this 17th day of November 1969.

[SEAL] HOWARD W. HABERMEYER, *Chairman.*

THOMAS M. HEALY, *Member.*

NEIL P. SPEIRS, *Member.*

By the Railroad Retirement Board:

RICHARD F. BUTLER, *Acting Secretary of the Board.*

[F.R. Doc. 69-13877; Filed, Nov. 21, 1969; 8:45 a.m.]

TARIFF COMMISSION

[AA1921-61]

AMINOACETIC ACID FROM FRANCE

Notice of Investigation and Hearing

Having received advice from the Treasury Department on November 17, 1969, that Aminoacetic Acid (Glycine) from France is being, and is likely to be, sold in the United States at less than fair value, the U.S. Tariff Commission has instituted an investigation under section 201(a) of the Anti-dumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, D.C., beginning at 10 a.m., e.s.t., on January 6, 1970. All parties will be given opportunity to be present, to produce evidence, and to be heard at such hearing. Interested parties desiring to appear at the public hearing should notify the Secretary of the Tariff Commission, in writing, at its offices in Washington, D.C., at least 5 days in advance of the date set for the hearing.

Issued: November 18, 1969.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[F.R. Doc. 69-13879; Filed, Nov. 21, 1969; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[S.O. 1002; Car Distribution Direction 75]

BOSTON AND MAINE CORP. AND MAINE CENTRAL RAILROAD CO.

Car Distribution

Pursuant to section 1 (15) and (17) of the Interstate Commerce Act and authority vested in me by Interstate Commerce Commission Service Order No. 1002:

It is ordered, That:

(1) Each common carrier by railroad subject to the Interstate Commerce Act shall comply with the following distribution directions:

(a) The Boston and Maine Corp. shall deliver to the Main Central Railroad Co. a weekly total of 105 empty plain serviceable boxcars. Exceptions: Canadian ownerships.

It is further ordered, That the rate of delivery specified in this direction shall be maintained within weekly periods ending each Sunday at 11:59 p.m., so that at the end of each 7 days the full delivery required for that period shall have been made.

It is further ordered, That cars applied under this direction shall be so identified on empty car cards, movement slips, and interchange records as moving under the provisions of this direction.

(b) The carrier delivering the empty boxcars as described above must advise Agent, R. D. Pfahler each Wednesday as to the number of cars, covered by this direction, delivered during the preceding week, ending each Sunday at 11:59 p.m.

(c) The carrier receiving the cars described above must advise Agent, R. D. Pfahler each Wednesday as to the number of cars received during the preceding week, ending each Sunday at 11:59 p.m.

(2) Regulations suspended: The operation of all rules and regulations, insofar as they conflict with the provisions of this direction, is hereby suspended.

(3) Effective date: This direction shall become effective at 12:01 a.m., November 20, 1969.

(4) Expiration date: This direction shall expire at 11:59 p.m., December 7, 1969, unless otherwise modified, changed, or suspended by order of this Commission.

It is further ordered, That a copy of this direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this direction be given to the general public by depositing a copy in the Office of the Secretary of the Commission in Washington, D.C., and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 18, 1969.

INTERSTATE COMMERCE COMMISSION,

[SEAL] N. THOMAS HARRIS, *Agent.*

[F.R. Doc. 69-13907; Filed, Nov. 21, 1969; 8:48 a.m.]

[S.O. 1002; Car Distribution Direction 76]

PENN CENTRAL CO. ET AL.

Car Distribution

Penn Central Co., Boston and Maine Corp., and Maine Central Railroad Co.

Pursuant to section 1 (15) and (17) of the Interstate Commerce Act and authority vested in me by Interstate Commerce Commission Service Order No. 1002:

It is ordered, That:

(1) Each common carrier by railroad subject to the Interstate Commerce Act shall comply with the following distribution directions:

(a) The Penn Central Co. shall deliver to the Boston and Maine Corp. a weekly total of 105 empty plain serviceable boxcars. Exceptions: Canadian ownerships.

(b) The Boston and Maine Corp. shall deliver to the Maine Central Railroad Co. a weekly total of 105 empty plain serviceable boxcars. Exceptions: Canadian ownerships.

It is further ordered, That the rate of delivery specified in this direction shall be maintained within weekly periods ending each Sunday at 11:59 p.m., so that at the end of each 7 days the full delivery required for that period shall have been made.

It is further ordered, That cars applied under this direction shall be so identified on empty car cards, movement slips, and interchange records as moving under the provisions of this direction.

(c) The carriers delivering the empty boxcars as described above must advise Agent R. D. Pfahler on or before each Wednesday as to the number of cars, covered by this direction, delivered during the preceding week, ending each Sunday at 11:59 p.m.

(d) The carriers receiving the cars described above must advise Agent, R. D. Pfahler on or before each Wednesday as to the number of cars received during the preceding week, ending each Sunday at 11:59 p.m.

(2) Regulations suspended: The operation of all rules and regulations, insofar as they conflict with the provisions of this direction, is hereby suspended.

(3) Effective date: This direction shall become effective at 12:01 a.m., November 20, 1969.

(4) Expiration date: This direction shall expire at 11:59 p.m., December 6, 1969, unless otherwise modified, changed, or suspended by order of this Commission.

It is further ordered, That a copy of this direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this direction be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 18, 1969.

INTERSTATE COMMERCE COMMISSION,
[SEAL] N. THOMAS HARRIS,
Agent.

[F.R. Doc. 69-13906; Filed, Nov. 21, 1969; 8:48 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 19, 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. 41804—*Clay, kaolin, or pyrophyllite to points in southwestern territory.* Filed by O. W. South, Jr., agent (No. A6140), for interested rail carriers. Rates on clay, kaolin or pyrophyllite, in carloads, as described in the application, from Stevens Pottery, Ga., to points in southwestern territory.

Grounds for relief—Rate relationship.

Tariff—Supplement 13 to Southern Freight Association, agent, tariff ICC S-801.

FSA No. 41805—*Clay, kaolin, or pyrophyllite from Letohatchie and Montgomery, Ala.* Filed by O. W. South, Jr., agent (No. A6141), for interested rail carriers. Rates on clay, kaolin, or pyrophyllite, in carloads, as described in the application, from Letohatchie and Montgomery, Ala., to points in western trunkline territory.

Grounds for relief—Rate relationship.

Tariff—Supplement 75 to Southern Freight Association, agent, tariff ICC S-751.

FSA No. 41806—*Iron and steel articles to Baton Rouge and New Orleans, La.* Filed by Western Trunk Line Committee, agent (No. A-2605), for interested rail carriers. Rates on iron and steel articles, in carloads, as described in the application, from Minneapolis, Minn., Transfer and St. Paul, Minn., to Baton Rouge and New Orleans, La.

Grounds for relief—Market competition.

Tariff—Supplement 19 to Western Trunk Line Committee, agent, tariff ICC A-4741.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 69-13908; Filed, Nov. 21, 1969; 8:48 a.m.]

[Notice 943]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 19, 1969.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 531 (Sub-No. 262 TA), filed November 13, 1969. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, Houston, Tex. 77021. Applicant's representative: Wray E. Hughes (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grape juice*, in bulk, in tank vehicles, from Hermann, Mo., to Hammondsport, N.Y., for 180 days. NOTE: Applicant does not intend to tack with existing authority. Supporting shipper: Gold Seal Vineyards, Inc. (George W. Kibbe, Assistant, Traffic Manager), Hammondsport, N.Y. 14840. Send protests to: District Supervisor John C. Redus, Interstate Commerce Commission, Bureau of Operations, Post Office Box 61212, Houston, Tex. 77061.

No. MC 51146 (Sub-No. 150 TA), filed November 10, 1969. Applicant: SCHNEIDER TRANSPORT & STORAGE, INC., 817 McDonald Street, Green Bay, Wis. 54306. Applicant's representative: D. F. Martin (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cellulose materials and products; cellulose materials and products joined to or combined with paper, plastics, synthetics, or cloth; sanitary paper and paper products; sanitary paper and paper products joined to or combined with paper, plastics, synthetics, or cloth; materials, equipment, supplies used or useful in the production, manufacture and distribution of the above described commodities; and related premium and advertising materials*, when shipped with the above described commodities, between the plantsite of the Charmin Paper Products Co., located at or near Neelys Landing, Mo., on the one hand, and on the other, points in Minnesota, Wisconsin, Iowa, Illinois, Indiana, Michigan, Ohio, Pennsylvania, West Virginia, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, and Louisiana, for 180 days. Supporting shipper: The Procter & Gamble Co., Post Office Box 599, Cincinnati, Ohio 45201 (R. N. Homleid, Warehouse & Trucking Division). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 95084 (Sub-No. 77 TA), filed November 13, 1969. Applicant: HOVE TRUCK LINE, Stanhope, Iowa 50246. Applicant's representative: Kenneth F. Dudley, Post Office Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Rotary hoes, parts, and attachments*, from Newton, Iowa, to Kirksville, Mo., and (2) *rotary hoe teeth*, from Bushnell, Ill., to Newton, Iowa, for 180 days. Supporting shipper: Kewanee Machinery & Conveyor Co., Kewanee, Ill. 61443. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 107295 (Sub-No. 226 TA), filed October 24, 1969. Applicant: PRE-FAB TRANSIT CO., 100 South Main Street, Farmer City, Ill. 61842. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Hardwood flooring, hardwood flooring blocks, lumber and woodmouldings, accessories such as adhesives, mastic flooring, cement, decorative strips, fasteners, nails, adhesive trowels, stains, putty, and advertising material when shipped with any of the named commodities*, from Cairo, Ill.; Jackson, Memphis, Monterey, and Nashville, Tenn.; to points in Minnesota, Wisconsin, Michigan, New York, Iowa, Illinois, Indiana, Ohio, Pennsylvania, Massachusetts, Connecticut, Rhode Island, New Jersey, Delaware, District of Columbia, Maryland, West Virginia, Kentucky, Missouri, Arkansas, South Carolina, North Carolina, and Virginia; and (2) *lumber, hardwood flooring, hardwood flooring blocks, wood mouldings, plywood, paneling, hardboard, composition board, and accessories such as adhesives, mastic flooring cement, decorative strips, fasteners, nails, adhesive trowels, stains, putty and advertising matter when shipped with any of the named commodities*, from Covington, Tenn., to points in Minnesota, Wisconsin, Michigan, New York, Iowa, Illinois, Indiana, Ohio, Pennsylvania, Massachusetts, Con-

necticut, Rhode Island, New Jersey, Delaware, District of Columbia, Maryland, West Virginia, Kentucky, Missouri, Arkansas, South Carolina, North Carolina, and Virginia, and *commodities as named in (1) and (2) above*, from points in Minnesota, Wisconsin, Michigan, New York, Iowa, Illinois, Indiana, Ohio, Pennsylvania, Massachusetts, Connecticut, Rhode Island, New Jersey, Delaware, District of Columbia, Maryland, West Virginia, Kentucky, Missouri, Arkansas, South Carolina, North Carolina, and Virginia, to the plantsites and facilities of E. L. Bruce Co., Inc., at Cairo, Ill., Jackson, Memphis, Monterey, Nashville, and Covington, Tenn., for 180 days. Supporting shipper: E. L. Bruce Co., Inc., Post Office Box 397, 1648 Thomas Street, Memphis, Tenn. 38101. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 107295 (Sub-No. 241 TA), filed November 12, 1969. Applicant: PRE-FAB TRANSIT CO., 100 South Main Street, Farmer City, Ill. 61842. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe, conduit, duct, raceways, tubing, and their fittings, connections, and accessories*, from New Kensington, Pa., to points in Kansas, Oklahoma, Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, Missouri, Arkansas, Kentucky, Tennessee, Alabama, New York, and Virginia, from Niles, Ohio, to points in Kansas, Oklahoma, Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, Missouri, Arkansas, Kentucky, Tennessee, Alabama, New York, and Virginia, plus District of Columbia, South Carolina, and North Carolina, for 180 days. Supporting shipper: Jones & Laughlin Steel Corp., 700 Constitution Boulevard, New Kensington, Pa. 15068. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 107496 (Sub-No. 755 TA), filed November 13, 1969. Applicant: RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, Des Moines, Iowa 50309. Applicant's representative: H. L. Fabritz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid animal feed*, in bulk, in tank vehicles, from Lucerne, Colo., to Keys, Okla., and Des Moines, N. Mex., for 150 days. Supporting shipper: Allied Chemical Corp., Room 620, 40 Rector Street, New York, N.Y. 10006. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 113267 (Sub-No. 223 TA), filed November 13, 1969. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 312 West Morris Street, Caseyville, Ill. 62232. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Yeast compressed or not compressed*, other than dry, in vehicles equipped with mechanical refrigeration, from St. Louis, Mo., to Rome, Ga., for 150 days. Supporting shipper: Anheuser-Busch, Inc., St. Louis, Mo. 63118. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 486, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 113828 (Sub-No. 167 TA), filed November 13, 1969. Applicant: O'BOYLE TANK LINES, INC., 4848 Cordell Avenue, Washington, D.C. 20014. Applicant's representative: John F. Grimm (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium sulfate ash*, in bulk, from Radford, Va., to Luke, Md., for 180 days. Supporting shipper: Hercules Inc., Radford Army Ammunition Plant, Radford, Va. Send protests to: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th & Constitution Avenue NW., Room 2210, Washington, D.C. 20423.

No. MC 117765 (Sub-No. 89 TA), filed November 13, 1969. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest 5th, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Component parts for mobile homes*, from the plantsite of Mobile Components, Inc., Halstead, Kans., to points in Arkansas, Kansas, Louisiana, Minnesota, Missouri, Nebraska, Oklahoma, and Texas, for 180 days. Supporting shipper: Harold E. Harris, President, Mobile Components, Halstead, Kans. 67056. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, Okla. 73102.

No. MC 117765 (Sub-No. 90 TA), filed November 13, 1969. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest Fifth, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising material*, from Fort Worth, Tex., to McAlester and Poteau, Okla., for 180 days. Supporting shipper: C. R. Plummer, Curtis Distributing Co., Post Office Box K, Poteau, Okla. 74953. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, Okla. 73102.

No. MC 123639 (Sub-No. 116 TA), filed November 13, 1969. Applicant: J. B. MONTGOMERY, INC., 5150 Brighton Boulevard, Denver, Colo. 80216. Applicant's representative: David Senseney, 3395 South Bannock Street, Englewood, Colo. 80110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses*, from National Beef Packing Co., Inc., at Liberal, Kans., to points in Indiana, Michigan, Missouri, New Hampshire, Vermont, Delaware, Rhode Island, Connecticut, New York, Maryland, District of Columbia, for 180 days. Supporting shipper: John Jacobson, Jr., General Manager, National Beef Packing Co., Inc., 300 Central Avenue, Kansas City, Kans. 66118. Send protests to: District Supervisor C. W. Buckner, 2022 Federal Building, Denver, Colo. 80202.

No. MC 126930 (Sub-No. 7 TA), filed November 17, 1969. Applicant: BRAZOS TRANSPORT CO., East Highway 80, Post Office Drawer 2679, Abilene, Tex. 79604. Applicant's representative: Jerry E. Matthews (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum products and building materials* (except commodities in bulk), from plantsite and warehouse of National Gypsum Co., near Fort Dodge, Iowa, to points in Minnesota, Nebraska, North Dakota, and South Dakota, for 180 days. Supporting shipper: National Gypsum Co., 325 Delaware Avenue, Buffalo, N.Y. 14202. Send protests to: Billy R. Reid, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9A27 Federal Building, 819 Taylor Street, Fort Worth, Tex. 76102.

No. MC 129433 (Sub-No. 3 TA), filed November 13, 1969. Applicant: EDWARD W. EMERT, doing business as J & E CASKET DISTRIBUTORS, Route No. 2, Stones River Road, La Vergne, Tenn. 37086. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Caskets, casket displays, and funeral supplies*, between Nashville, Tenn., and Corpus Christi, Dallas, Houston, Lubbock, and San Antonio, Tex., for 180 days. Supporting shipper: National Casket Co., Inc., Southern Division, 121 Woodland Street, Nashville, Tenn. 37213. Send protests to: Joe J. Tate, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 803—1808 West End Building, Nashville, Tenn. 37203.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 69-13909; Filed, Nov. 21, 1969; 8:48 a.m.]

[Notice 448]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 19, 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–71360. Dual operations are involved by order of November 18, 1969, the Motor Carrier Board approved the transfer, on reconsideration, to Miller Transfer and Rigging Co., a corporation, Clarion, Pa., of certificate No. MC–7569 issued November 13, 1953, to Kirby Transfer and Storage Corp., Pittsburgh, Pa., authorizing the transportation of: Such commodities as require specialized handling or rigging because of size or weight, between Pittsburgh, Pa., and points within 10 miles of Pittsburgh, on the one hand, and, on the other points in a specified part of Pennsylvania: A. David Millner, 744 Broad Street, Newark, N.J. 07102, and John Vuono, 2310 Grant Building, Pittsburgh, Pa. 15219, attorneys for applicants.

No. MC–FC–71765. By order of November 18, 1969, the Motor Carrier Board approved the transfer to American Security Vanlines, Inc., 1240 Oakleigh Drive, Atlanta, Ga. 30244, of certificates Nos. MC–7971 and MC–7971 (Sub-No. 7) issued March 10, 1955 and September 13, 1965 to American Security Moving & Storage Co., Inc., Jacksonville, Fla., authorizing the transportation of: Household goods, between points in Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and the District of Columbia.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 69–13910; Filed, Nov. 21, 1969; 8:48 a.m.]

[Notice 448A]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 19, 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 general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. 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–71560. By order of November 12, 1969, Division 3, acting as an Appellate Division, approved the transfer to Evelyn Mueller, doing business as Evelyn Mueller Trucking, Sturgeon Bay, Wis., of that portion of the operating rights in certificate No. MC–111594 (Sub-No. 39) issued June 25, 1969, to C W Transport, Inc., Wisconsin Rapids, Wis., authorizing the transportation of general commodities, with usual exceptions, between Gills Rock, Wis., and Sturgeon Bay, Wis., serving all intermediate and off-route points. James Ebbeson, 306 South Third Street, Sturgeon Bay, Wis. 54235, and David Axelrod, 39 South La Salle Street, Chicago, Ill. 60603, attorneys for applicants.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 69–13911; Filed, Nov. 21, 1969; 8:48 a.m.]

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FEDERAL REGISTER

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PART II

Administrative Committee of the Federal Register

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Guide to Federal Register Finding Aids

Title 1—GENERAL PROVISIONS

Chapter 1—Administrative Committee of the Federal Register

[Revision I]

APPENDIX C—GUIDE TO FEDERAL REGISTER FINDING AIDS

The purpose of this guide is to give users of the Federal Register publications a better understanding of the indexes and other finding aids to Federal statutes, Proclamations, Executive orders, and other Presidential materials, and agency rules and other legal instruments published by the Office of the Federal Register pursuant to law and Parts 1–40 of this chapter.

These materials are published in the daily *Federal Register*, the *Code of Federal Regulations*, the *slip laws*, and the *United States Statutes at Large* from the original acts of Congress and the Executive rules and notices filed with the Office. From related source material, the Office publishes the *U.S. Government Organization Manual*, the *Public Papers of the Presidents of the United States*, and the *Weekly Compilation of Presidential Documents*.

Each of the publications named above includes appropriate subject indexes and numerical finding aids designed to facilitate its use and reduce research time. This guide describes the indexes and finding aids and indicates where they may be found. It also includes a table of special information lists that are useful to researchers generally.

This guide is arranged as follows:

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Statutes at Large	37
National defense:	
Executive orders directly related to regulations in Title 32A, CFR	24, 30
Tabulation of abolished agencies or transfers of functions relating to	16
Nominations Submitted to the Senate	54
Presidential documents:	
Affected by Federal Register documents	5, 23
Affected by public laws (Tables of Laws Affected)	35
Parallel tables of Presidential documents and agency rules	13, 28
Published in:	
CFR	27
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Statutes at Large	34
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Presidential reports to the Congress	55
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Bills enacted	39
Proclamations:	
Affected by Federal Register documents	5, 23
Affected by public laws (Tables of Laws Affected)	35
Parallel Tables of Presidential Documents and Agency Rules	13, 28
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Published in Federal Register	22
Published in Statutes at Large	34
Statutes cited as authority for	29, 46
Public Land Orders, tables (Land Management Bureau, Interior Department)	6
Public laws:	
Legislative history	43
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Statutes cited as authority for Presidential documents	29, 46
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Treaties affected by public laws (Tables of Laws Affected)	44
United States Code:	
"How to Find U.S. Statutes and U.S. Code Citations"	48
Positive law titles affected by public laws (Tables of Laws Affected)	44
Sections of the U.S.C. cited in the CFR	4, 14, 45
Veterans' regulations affected by public laws (Tables of Laws Affected)	44
White House announcements, digests	59
White House Releases:	
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Table 1—Researching Agency Materials

This table describes the principal finding aids used to locate agency materials published in the daily *Federal Register*, the *Code of Federal Regulations* (CFR), and the *United States Government Organization Manual*. The finding aids are listed under the name of the publication containing the source materials to which they lead.

FEDERAL REGISTER

1. Contents table.
2. Subject index.
3. Codification guide (lists of CFR parts or sections affected).
4. Parallel Table of Statutory Authorities and Rules.
5. Table of Presidential documents affected by Federal Register documents.
6. Land Management Bureau (Interior Department), Table of Public Land Orders.
7. Securities and Exchange Commission, Tables of Interpretative Releases.
8. General Index.
9. Table of CFR Titles and Chapters.
10. Alphabetical List of CFR Subtitles and Chapters.

CODE OF FEDERAL REGULATIONS

11. List of Sections Affected.
12. Redesignation tables.
13. Parallel Tables of Presidential Documents and Agency Rules.
14. Parallel Table of Statutory Authorities and Rules.
15. Guide to Record Retention Requirements.
16. Tabulation of Abolished Agencies or Transfers of Functions Relating to National Defense.

U.S. GOVERNMENT ORGANIZATION MANUAL

17. Subject index.
18. List of Names.

FEDERAL REGISTER

The following finding aids lead to agency source materials published in the daily *Federal Register*.

Finding Aid	*Location*
1. Contents table. Identifies by subject, agency documents published in the Federal Register.	Federal Register, each issue, third page.
2. Subject index. Analyzes contents of the Federal Register for the period covered.	Federal Register, separately issued as follows: *Monthly* for Jan., Feb., Apr., May, July, Aug., Oct., Nov., and Dec.; *Quarterly* for Jan.–Mar., Apr.–June, July–Sept.; *Annually*.
3. Codification guide. Identifies by CFR number, agency regulations and rule-making proposals (and Presidential documents) currently published in the Federal Register.	
A. *List of CFR Parts Affected (Daily).* Lists CFR parts affected by documents appearing in each day's issue.	Federal Register, each issue, following table of Contents.
B. *Cumulative List of CFR Parts Affected.* Lists CFR parts affected by documents published during a particular month.	Federal Register, end of each issue, beginning with the second issue of each month.
C. *List of CFR Sections Affected.* i. *Current.* Lists CFR sections amended or otherwise affected by documents published in the Federal Register beginning January 1 of a particular year. Entries indicate nature of changes effected.	Federal Register, separately published each month until entire year has been cumulated. (Portions of the list are also published in pertinent units of the CFR.)
ii. *Prior years.* Lists CFR sections affected by Federal Register documents published from 1949 through 1963. Enables users to determine text in effect on any given date during the period covered.	Issued as separate CFR units.
4. Parallel Table of Statutory Authorities and Rules. Leads from sections of the United States Code to agency rules published in the Federal Register which contain new citations implementing statutory authority.	Included with List of CFR Sections Affected, at end (see Finding aid 3 C i).
5. Table of Presidential Documents Affected by Federal Register Documents. Leads to documents published in the Federal Register each year since 1945, which have amended or otherwise affected Presidential documents.	3 CFR: 5-year compilations, Table 4 (before 1948, Table 7) and Annual Supplements, Table 4.

Finding Aid	*Location*
6. **Land Management Bureau (Interior Department), Table of Public Land Orders.**	
A. *1948–present.* Lists orders and includes dates, subjects, and citations to publication in the Federal Register.	43 CFR Ch. II, Appendix.
B. *1943–1947.* Separate table for each year.	3 CFR, 1943–1948 Comp., Table 5.
7. **Securities and Exchange Commission, Tables of Interpretative Releases.** List by number, interpretative releases directed to individuals, partnerships, and corporations with respect to laws and regulations affecting their business conduct, including citations to publication in the Federal Register.	
A. Accounting matters.	17 CFR Part 211.
B. Securities Act of 1933.	17 CFR Part 231.
C. Securities and Exchange Act of 1934.	17 CFR Part 241.
D. Public Utility Holding Act of 1935.	17 CFR Part 251.
E. Trust Indenture Act of 1939.	17 CFR Part 261.
F. Investment Advisors Act of 1940.	17 CFR Part 276.
G. Corporate Reorganizations.	17 CFR Part 281.

CODE OF FEDERAL REGULATIONS

The following finding aids lead to agency source materials published in the *Code of Federal Regulations* (CFR).

Finding Aid	*Location*
8. **General Index.** Leads to regulatory areas of the CFR.	Issued as a separate unit of the CFR; revised annually.
9. **Table of CFR Titles and Chapters.** Lists titles of the CFR (broad subject areas) and chapters within each title (generally the name of the issuing agency).	Each CFR unit, at end; CFR General Index, at beginning.
10. **Alphabetical List of CFR Subtitles and Chapters.** Lists agencies prescribing regulations published in the CFR, showing location.	Each CFR unit, at end; CFR General Index, at beginning; and Government Organization Manual, Appendix C.
11. **List of Sections Affected.** Lists CFR sections affected by Federal Register documents.	See Finding aid 3 C.
12. **Redesignation tables.** Key new CFR section numbers to former section numbers for major recodifications of regulations.	CFR units, at end, as appropriate.
13. **Parallel Tables of Presidential Documents and Agency Rules.** Lead to currently effective rules in the CFR which include or cite Presidential documents, specifying whether the Presidential document is codified, cited as authority, quoted, or cited in the text.	
A. Proclamations.	3 CFR Ch. I.
B. Executive orders.	3 CFR Ch. II.
C. Other Presidential documents.	3 CFR Ch. III.
14. **Parallel Table of Statutory Authorities and Rules.** Leads from sections of the United States Code to CFR provisions which cite the statutory provisions as rule-making authority or as being interpreted or applied by the administering agency.	2 CFR Ch. I, revised annually as of Jan. 1. (Current additions to this table are carried cumulatively with the monthly List of CFR Sections Affected (Finding aid 3 C 1).)
15. **Guide to Record Retention Requirements.** Digests provisions of the United States Code and the CFR with respect to the keeping of records; includes an index to categories of persons, groups, and products covered.	1 CFR, Appendix A. Also published in Federal Register annually, and available in pamphlet form on separate order.
16. **Tabulation of Abolished Agencies or Transfers of Functions Relating to National Defense.** Lists agencies within 32A CFR (National Defense, Appendix) which have been abolished or whose emergency planning functions have been transferred since October 10, 1953, citing the order effecting the change.	32A CFR Ch. I.

U.S. GOVERNMENT ORGANIZATION MANUAL

The following finding aids lead to agency source materials published in the *United States Government Organization Manual.*

Finding Aid	*Location*
17. Subject Index. Analyzes contents of the official organization handbook of the Federal Government.	Government Organization Manual, at end.
18. List of Names. Lists key officials with page references to titles of their positions.	Government Organization Manual, at end.

Table 2—Researching Presidential Materials

This table describes the principal finding aids used to locate Presidential materials published in the daily *Federal Register*, the *Code of Federal Regulations* (CFR), the *Public Papers of the Presidents of the United States*, the *Weekly Compilation of Presidential Documents*, and the *United States Statutes at Large*. The finding aids are listed under the name of the publication containing the materials to which they lead.

FEDERAL REGISTER

19. Contents table.
20. Subject index.
21. Codification guide.
22. Presidential Documents Published in the Federal Register.
23. Table of Presidential documents affected by Federal Register documents.
24. Tabulation of Executive orders related to 32A CFR.
25. Alphabetical list of customs collection districts.

CODE OF FEDERAL REGULATIONS

26. Index.
27. Tables of Presidential documents.
28. Parallel Tables of Presidential Documents and Agency Rules.
29. Statutes Cited As Authority for Presidential Documents.
30. Tabulation of Executive orders related to 32A CFR.

PUBLIC PAPERS OF THE PRESIDENTS

31. List of items.
32. Index.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS

33. Indexes.

U.S. STATUTES AT LARGE

34. List of Proclamations.
35. Tables of Laws Affected (Presidential documents).

FEDERAL REGISTER

The following finding aids lead to Presidential source materials published in the daily *Federal Register*.

Finding Aid	*Location*
19. Contents table. Identifies by subject, Proclamations, Executive orders, and other Presidential documents published in the Federal Register.	Federal Register, beginning on third page.
20. Subject index. Analyzes contents of the Federal Register, including the documents issued by or relating to the President.	Federal Register, separately issued as follows: *Monthly* for Jan., Feb., Apr., May, July, Aug., Oct., Nov., and Dec.; *Quarterly* for Jan.–Mar., Apr.–June, and July–Sept.; *Annually*.
21. Codification guide. Lists by number, Proclamations, Executive orders, and other Presidential documents published in the Federal Register; includes earlier Presidential documents affected during the period covered.	
A. *List of CFR Parts Affected (Daily).* Lists documents published and affected in each day's issue.	Federal Register, following contents table, under "3 CFR."
B. *Cumulative List of CFR Parts Affected.* Lists documents published and affected during the month.	Federal Register, at end, beginning with second issue of each month; under "3 CFR."
C. *List of CFR Sections Affected.* Lists documents published and affected beginning Jan. 1 of each year.	Federal Register, published separately as monthly supplements; under "3 CFR."
22. Presidential Documents Published in the Federal Register. Lists Proclamations, Executive orders, and other Presidential documents published in the Federal Register during the period covered.	Public Papers of the Presidents, each volume, Appendix B.
23. Table of Presidential documents affected by Federal Register documents. Lists Proclamations, Executive orders, and other Presidential documents affected by documents published in the Federal Register each year since 1945.	3 CFR, annual supplements, Table 4 (before 1948, Table 7), and 5-year compilations, Table 4.
24. Tabulation of Executive orders related to 32A CFR. Lists Executive orders directly related to regulations in 32A CFR (National Defense, Appendix), including Federal Register citations.	32A CFR, at beginning.

Finding Aid	*Location*
25. Alphabetical list of customs collection districts. Leads to Executive orders issued since March 3, 1913, which make organization changes in customs collection districts; includes Federal Register citations for orders issued after March 1936.	19 CFR 1.2.

CODE OF FEDERAL REGULATIONS

The following finding aids lead to Presidential source materials published in the *Code of Federal Regulations* (CFR).

Finding Aid	*Location*
26. Index. Leads to Proclamations, Executive orders, and other Presidential documents published in the CFR.	
A. Annual.	3 CFR, annual supplements, at end.
B. Five-year compilations.	3 CFR, 5-year compilations, at end.
27. Tables of Presidential documents. List by number, Presidential documents published in the CFR.	
A. Proclamations.	3 CFR, annual supplements and 5-year compilations, Table 1.
B. Executive orders.	3 CFR, annual supplements and 5-year compilations, Table 2.
C. Other Presidential documents.	3 CFR, annual supplements and 5-year compilations, Table 3.
28. Parallel Tables of Presidential Documents and Agency Rules. List by number, Presidential documents included or cited in currently effective rules in the CFR, specifying whether the Presidential document is codified, cited as authority, quoted, or cited in the text.	
A. Proclamations.	3 CFR Ch. I.
B. Executive orders.	3 CFR Ch. II.
C. Other Presidential documents.	3 CFR Ch. III.
29. Statutes Cited as Authority For Presidential Documents. Leads to Presidential documents which cite statutes as issuing authority; lists revised statutes and U.S.C. citations numerically, and lists Statutes at Large provisions chronologically.	3 CFR, annual supplements, Table 5, and 5-year compilations, Table 5.
30. Tabulation of Executive orders related to 32A CFR. Lists Executive orders directly related to regulations in Title 32A (National Defense, Appendix), including CFR position.	32A CFR, at beginning.

PUBLIC PAPERS OF THE PRESIDENTS

The following finding aids lead to Presidential source materials published in the *Public Papers of the Presidents of the United States.*

Finding Aid	*Location*
31. List of items. Lists by number and subject, items included in volumes of the Public Papers of the Presidents.	Public Papers of the Presidents, each volume, at beginning.
32. Index. Leads to items included in volumes of the Public Papers of the Presidents.	Public Papers of the Presidents, each volume, at end.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS

The following finding aids lead to Presidential source materials published in the *Weekly Compilation of Presidential Documents.*

Finding Aid	*Location*
33. Indexes:	
A. Index of contents of current issues.	Weekly Compilation, each issue, at beginning.
B. Index to prior issues cumulated for a 3-month period.	Weekly Compilation, each issue, at end.
C. Semiannual: Subject index to documents published during a 6-month period.	Weekly Compilation, separately published.
D. Annual: Subject index to documents published during the year.	Weekly Compilation, separately published.

U.S. STATUTES AT LARGE

The following finding aids lead to Presidential materials published in the *United States Statutes at Large*.

Finding Aid	*Location*
34. List of Proclamations. Lists by number, Proclamations issued during each session of Congress, including title, date of issuance, and page number of the Statutes volume where text is published.	Statutes at Large, each volume, at beginning.
35. Tables of Laws Affected (Presidential documents). List by number, Presidential documents (since 1956) which are amended, repealed, or otherwise expressly affected, or referred to or otherwise cited by provisions of public laws: Expressly affected: Table 6—Reorganization Plans. Table 8—Executive Orders and Proclamations. Referred to or cited: Table 16—Reorganization Plans. Table 18—Executive Orders and Proclamations.	Statutes at Large: Separate pamphlet for Vol. 70; at end of each volume beginning with Vol. 71; 10-year cumulation in separate volume for 1956–1965.

Table 3—Researching Statutory Materials

This table describes the principal finding aids published by the Office of the Federal Register which pertain to statutory materials published in the *United States Statutes at Large*, the *Revised Statutes*, the *United States Code*, and related legislative source materials.

36. Subject Index (Statutes at Large).
37. Individual Index (Statutes at Large).
38. List of Bills Enacted into Public Law.
39. List of Bills Enacted into Private Law.
40. List of Public Laws.
41. List of Private Laws.
42. List of Concurrent Resolutions.
43. Guide to Legislative History of Bills Enacted into Public Law.
44. Tables of Laws Affected.
45. Parallel Tables of Statutory Authorities and Rules.
46. Statutes Cited as Authority for Presidential documents.
47. Guide to Record Retention Requirements.
48. "How to Find U.S. Statutes and U.S. Code Citations."

Finding Aid	*Location*
36. Subject Index (Statutes at Large). Leads to laws and concurrent resolutions enacted during each session of Congress, reorganization plans, proposed and ratified amendments to the Constitution, and Presidential Proclamations published with the Statutes.	Statutes at Large, each volume, at end.
37. Individual Index (Statutes at Large). Lists persons and private entities mentioned in the text of public and private laws enacted during a given session of Congress.	Statutes at Large, each volume, at end.
38. List of Bills Enacted into Public Law. Lists by number, Senate bills, House bills, and joint resolutions enacted into law during a given session of Congress (since 1963), including corresponding public law number.	Statutes at Large, each volume, at beginning.
39. List of Bills Enacted into Private Law. Lists by number, Senate bills, House bills, and joint resolutions enacted into law during a given session of Congress (since 1963), including corresponding private law number.	Statutes at Large, each volume, at beginning.
40. List of Public Laws. Lists by number, public laws enacted during a given session of Congress, including subject, date of enactment, and Statutes page numbers.	Statutes at Large, each volume, at beginning.
41. List of Private Laws. Lists by number, private laws enacted during a given session of Congress, including subject, date of enactment, and Statutes page numbers.	Statutes at Large, each volume, at beginning.
42. List of Concurrent Resolutions. Lists in chronological order, concurrent resolutions passed during a given session of Congress, including subject, date of passage, and the Statutes page numbers.	Statutes at Large, each volume, at beginning.
43. Guide to Legislative History of Bills Enacted Into Public Law. Lists by number, public laws enacted during a given session of Congress giving background sources, including approval dates, Statutes volume and page numbers, bill numbers, committee names and report numbers, dates of consideration and passage, and pertinent Congressional Record references.	Statutes at Large, each volume (since 1963), at end. *Note:* Separate history for each public law is carried on each slip law print.
44. Tables of Laws Affected. Lists (since 1956) laws and other Federal instruments amended, repealed, or otherwise expressly affected, or referred to or otherwise cited by provisions of public laws: Expressly affected: Table 1—General Legislation. Table 2—Revised Statutes. Table 3—Internal Revenue Code of 1939.	Statutes at Large: Separate pamphlet for Vol. 70; at end of each volume beginning with Vol. 71; 10-year cumulation in separate volume for 1956–1965.

Finding Aid	*Location*
44. Tables of Laws Affected—Continued Lists (since 1956) laws and other Federal instruments amended, repealed, or otherwise expressly affected, or referred to or otherwise cited by provisions of public laws (continued): Expressly affected (continued): Table 4—Internal Revenue Code of 1954. Table 5—Positive Law Titles. (a) United States Code. (b) District of Columbia Code. (c) Panama Canal Code. Table 6—Reorganization Plans. Table 7—Veterans' Regulations. Table 8—Executive Orders and Proclamations. Table 9—Treaties and International Agreements. Public laws expressing relationships in general terms (such as, "notwithstanding any other provision of law", "all laws in conflict with this law are hereby repealed", etc.): Table 10—Provisions Respecting General Repeals, Conflicts, Etc. Referred to or cited: Table 11—General Legislation. Table 12—Revised Statutes. Table 13—Internal Revenue Code of 1939. Table 14—Internal Revenue Code of 1954. Table 15—Positive Law Titles. (a) United States Code. (b) District of Columbia Code. (c) Panama Canal Code. Table 16—Reorganization Plans. Table 17—Veterans' Regulations. Table 18—Executive Orders and Proclamations. Table 19—Treaties and International Agreements.	Statutes at Large: etc.—Con.
45. Parallel Tables of Statutory Authorities and Rules. A. *Table of United States Code Citations.* Lists sections of the United States Code which are (a) cited as rule-making authority or (b) noted as being interpreted or applied by currently effective rules codified in the CFR.	2 CFR Ch. I, revised annually.
B. *Additions to 2 CFR.* Lists sections of the United States Code added to 2 CFR because of new or amended citations of authority in documents currently published in the Federal Register.	Included with List of CFR Sections Affected, at end (see Finding aid 3 C 1).
46. Statutes Cited as Authority for Presidential Documents. Lists statutes cited as issuance authority by Presidential documents published during a given year.	3 CFR: 5-year compilations, Table 5, and in annual supplements, Table 5.
47. Guide to Record Retention Requirements. Digests provisions of the United States Code and the CFR with respect to the keeping of records; includes an index to categories of persons, groups, and products covered.	1 CFR, Appendix A. Also published in Federal Register annually and available in pamphlet form on separate order.
48. "How To Find U.S. Statutes and U.S. Code Citations." Presents typical reference situations and illustrated procedures for finding accurate up-to-date citations to U.S. Statutes at Large and the U.S. Code.	Separate pamphlet published by the House Committee on the Judiciary, sold by Superintendent of Documents, Government Printing Office.

Table 4—Special Information Lists

The following special lists, published by the Office of the Federal Register, are not direct finding aids to agency, Presidential, or legislative materials, but contain information useful to legal researchers and others interested in such materials.

49. Acts Approved by the President.
50. CFR Checklist.
51. Executive agencies abolished, transferred, or terminated.
52. FAA Advisory Circulars Checklist.
53. Lists of current and superseded CFR volumes.
54. Nominations Submitted to the Senate.
55. Presidential Reports to Congress.
56. White House Releases.
57. List of Acts Requiring Publication in the Federal Register.
58. Checklist of White House Press Releases.
59. Digests of other White House announcements.

List	*Location*
49. Acts Approved by the President. Lists Acts approved by the President during a given week, including legislative and law numbers, and titles.	Weekly Compilation of Presidential Documents, at end.
50. CFR Checklist. Shows the issuance date and price of current bound volumes and supplements of the Code of Federal Regulations.	Federal Register, first issue of each month, under 1 CFR.
51. Executive agencies abolished, transferred, or terminated. Lists Federal departments, commissions, boards, committees, functions, and similar authorities that have been abolished, transferred, or terminated since March 4, 1933.	Government Organization Manual, Appendix A.
52. FAA Advisory Circulars Checklist.	Federal Register, published triennially.
53. Lists of current and superseded CFR volumes. List by title, volumes of the CFR which are currently effective and those which have been superseded since January 1, 1945.	CFR, most volumes and supplements, at end.
54. Nominations Submitted to the Senate. Lists Presidential nominations to various positions, indicating the individual, legal residence, and position for which nominated.	Weekly Compilation of Presidential Documents each issue, at end.
55. Presidential Reports to Congress. Lists the reports, including subject, House document number if so published, date sent to Congress, and White House release date, if so issued.	Public Papers, each volume, Appendix C.
56. White House Releases. Lists press releases and other White House announcements of concern to the President.	Public Papers, each volume, Appendix A.
57. List of Acts Requiring Publication in the Federal Register. Cites in chronological order, provisions of U.S. Statutes at Large and U.S. Code requiring or authorizing publication of documents in the Federal Register.	1 CFR, Appendix B.
58. Checklist of White House Press Releases. Lists releases of the Office of the White House Press Secretary which have not been included in the issue.	Weekly Compilation, each issue, at end.
59. Digests of other White House announcements. Digests of other announcements not included in the issue.	Weekly Compilation, each issue, at end.